No. 8487

Supreme Court of Illinois

J. W. Pinnener

vs.

Price J.Patton & Co

71641 7

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 in a certain Cause heretofore pending in said Court wherein James H Primmer is Plaintiff and Price J Patten & Co Defendants

Be it Remembered that on the 1st day of April AD 1861 being of the March term 1861 of said Court. the following order was made in said Cause Towit

"Price J Patten & Co
vs
James H Primmer } Assumpsit

The defendant files pleas and the Plaintiffs Replication thereto. the defendant by his Attorney moves the Court for leave to file Bill of Discovery and for an Injunction which motion the Court overules, and defendants takes exception to the ruling of the Court. And this Cause is now Called for trial and the parties Consent to trial by the Court without a Jury. And the Court having heard the evidence gives its Verdict for Plaintiffs for the amount of the Note and Interest with Cost and the damages being unknown to the Court ordered that

[8487-1]

The Clerk assess same and report. Whereupon the Clerk reports same at $515.00 principal and Interest as damages. and Costs $5.48 which report is ~~[illegible]~~ approved. It is therefore ordered and adjudged by the Court that said plaintiffs do have and recover of and from said defendant said sum of $515.00 damages together with $5.48 his Cost herein expended and may have execution &c and defendant prays an appeal which is granted on defendant entering into Bond in $700. in 30 days with security to be approved by the Clerk of this Court"

The Bill of Discovery above mentioned is in words and figures following to wit

March Term Marion
County Circuit Court AD 1861

James W Primmer
vs
Price J Patton & co
} Bill for Discovery

State of Illinois
Marion County } ss To the Hon W K S Crawford judge of the Second judicial district in the State of Illinois in Chancery sitting Humbly complaining sheweth unto your Hon. Your Petitioner James W Primmer a citizen and resident of the county of Marion and State of Illinois respectfully representing unto your Hon: that there is now pending in the Circuit Court of the county of Marion and State of Illinois and undetermined a certain suit at law wherein said Price J Patton & co are plaintiffs and your Orator defendant That said suit is brought upon a certain promissory note given by your Orator to one Stanford & Sasaler for the sum of Five hundred dollars, dated Sandoval October 9th 1858 and payable two years from date being the third and last installment on lot and house bought of said Sasaler in the town of Sandoval

[9487-2]

and that said note was by said Lusater indorsed to said Price & Patten & bo; That the declaration in said suit at law contains two counts one upon said note before mentioned and the common count and that to said declaration and counts therein contained your Orator has plead four several pleas: first the general issue and secondly a special plea for failure of consideration in this. That the consideration of said note mentioned in the first count of said plaintiffs declaration and two other notes given by your Orator to said Stanford & Lusater was for the purchase of Lot no nine in Block no six in Primmers addition to the town of Sandoval, County of Marion and State of Ills. That by an articles of agreement entered into by and between said Stanford & Lusater and your orator on the ninth day of October 1858 it was agreed between said parties that on payment of one hundred dollars the first installment for said Lot by your Orator, said Stanford & Lusater agreed to convey said Lot to your Orator in fee simple by a good and sufficient warranty

deed and your Orator avers that agreeable to said article of agreement aforesaid your Orator was to pay said first installment on or before the 25th day of December 1858 at which time said Stanford & Lasater was to make said warranty deed to your Orator that your Orator was on said day last mentioned ready and willing to pay said one hundred dollars the first installment on said lot as by said article of agreement but the said Stanford & Lasater was unable and unwilling to make said deed as aforesaid and did not make said deed as per agreement nor has not at any time since made your Orator a warranty deed to said lot; and that by reason of the failure of said Stanford & Lasater to make said deed as by said article of agreement your Orator and said Stanford & Lasater afterwards agreed to rescind said contract and agreement; and did rescind said contract and agreement, and that said Stanford & Lasater delivered to your Orators two of said notes and agreed to deliver up immediately said note in said plaintiffs due

[5447-3]

Your orator says that the consideration for which the said note in said plaintiffs declaration mentioned

laration mentioned to your orator, wherefore A was given, has wholly failed, and your orator avers that A said plaintiffs had notice of such failure of consideration, and agreement to deliver up said note to your orator upon cancelling of the said contract as aforesaid prior and at the time of said indorsement and delivery of said note to them by said Stanford & Lusater. Thirdly your orator pleads to said declaration and said first count therein mentioned that said note in said first count in said plaintiffs declaration mentioned together with two other notes for the sum of six hundred dollars were given by your orator to one Stanford & Lusater on the ninth day of October AD 1858 for the purchase money of lot no nine in block no six in Primmers addition to the town of Sandoval Ills That on said ninth day of October AD 1858 said Stanford & Lusater bargained and sold unto your orator said lot for which said notes were given, one for one hundred dollars payable on or before the 25th day of December 1858 one for Five hundred dollars payable on or before the ninth

day of October 1859 and said note mentioned in said plaintiffs declaration for Five hundred dollars payable on or before the ninth day of October 1860 and agreed with your Orator to make him on the payment of said first note to wit, on or before the 25th day of December 1858 a good and sufficient warranty deed to said Lot. And your Orator avers that he was ready and willing to pay said note for one hundred dollars on said day last aforesaid when the same became due and payable, and offered to pay said Stanford & Lasater said note for one hundred dollars as per agreement; but avers that said Stanford & Lasater wholly refused and neglected to make your Orator a good and sufficient warranty deed on said 25th day of December AD 1858 to said Lot as by him the said Stanford & Lasater agreed: That by ~~the~~ reason of the failure of said Lasater to make said deed to said Lot as aforesaid they the said Lasater and your Orator mutually rescinded said contract and agreement and the said Lasater agreed to give

L8457-4

up all of said notes and did give up to your Orator two of said notes, and your Orator did deliver up to said Lasater said Lot wherefore your Orator avers that the consideration for said note in said plaintiffs declaration has wholly failed, and your Orator avers that said Lasater neglecting to deliver up said note as per agreement afterwards, and after said note became due and payable indorsed said note to said plaintiffs: And fourthly your Orator pleads that after the execution of the said promissory note in first count of said plaintiffs declaration mentioned and before the exhibiting of the declaration against your Orator and long before the said note became due and payable a long before the indorsement of the said note by the said S. A. Lasater to the said plaintiffs, to wit: on the 29th day of June 1860 at the County of Marion aforesaid your Orator sold to and delivered to the said S. A. Lasater Lot No nine in block No six in Brimmers addition to the town of Sandoval of great value to wit: One thousand dollars in full satisfaction and

discharge of the said promissory note mentioned, and which said Lot No nine in block ~~No~~ six aforesaid he the said S A Sasaler then and there accepted and received of and from your Orator in full satisfaction & discharge of the said promissory note by his written release of all which the said plaintiffs then & there had notice, to wit; on the 29th day of June 1860 at the County of Marion and State of Illinois to which said several pleas said Plaintiffs have taken issue by replying with three several replications first to your Orators second plea that said note indorsed and delivered by said Sasaler to said plaintiffs for a valuable consideration before its maturity and that said plaintiffs had no notice of any failure of consideration of said note or of any agreement to deliver up said note by said Sasaler to said defendant prior to or at the time of such indorsement and delivery to said Plaintiffs as aforesaid, Secondly to your Orators third plea that said note was indorsed and delivered to said plaintiffs by said Sasaler before the maturity of said note: And thirdly to your

[94-81-5]

Orators fourth plea That said Plaintiffs did not have notice at the time or prior to the time of the indorsement of said note by said Lasater to said Plaintiffs that the said Lasater had accepted or received from your Orator any thing in full discharge or satisfaction of said note or that he had executed a written release therefor, to all of which said replications your orator has joined issue. Your Orator further shows unto your Hon That he was informed and believes that said note was indorsed after the same became due and payable, and that said Price & Patterson knew of all the facts set up in said pleas pleaded by your Orator to said count in said declaration at the time, and prior to the indorsement of said note to said Price Patterson by said Lasater, That said Lasater informed said Price & Patterson at the time he indorsed said note to them that the consideration for said note had failed and that he had agreed to deliver up the same to your Orator But your Orator charges the truth to be that said Lasater being in failing cir

cumstances, and being indebted to said Price & Patterson in a large sum of money said Price & Patterson insisted that said Sasaler should indorse said note to them to secure said indebtedness of Sasaler to them: and that said parties colluded together and said indorsement was made and said note transfered as collateral security: Your Orator further shows that he has no witness by whom he can prove said facts set up in said plea except the said Sasaler or said Price & Patterson, and which facts are necessary to your Orators defense in said suit at law That said Sasaler is now absent and has been absent all the time since the commencement of said suit at law, and that his whereabouts is unknown and has been unknown to your Orator at all times since the commencement of said suit, and moreover that said Sasaler is an interested witness in said suit and that your Orator can not proceed to trial in said cause without a discovery from said Price & Patterson of the facts and charges set forth in this Petition: Your Orator

therefore prays that said Price & Potter &
be made party defendants hereto
and that they be compelled upon their
corporal oaths to answer all and
singular the matters and things set-
forth in this bill of complaint and
a true discovery to all and singu-
lar the allegations & charges herein-
setforth as fully and explicitly as
though they were directly thereunto in-
terrogated, and will your Hon grant
the writ of summons to issue directed
to the Sheriff of Marion county com-
manding him to summon said
Price & Potter & co to be and appear be-
fore your Hon at the next term
of this Hon Court on the third mon-
day of August AD 1861 to abide the or-
der and decree of this Hon Court and
will your Hon grant such other &
further relief in the premises as to
your Hon may seem just and equi-
table, and in duty bound your
Orator will ever pray &c

James W Primmer
By Willard & Gaddis
his Solicitors

State of Illinois
Marion County } James W Primmer comes

and being first duly sworn deposes and says that the facts set forth in the foregoing Bill are true as he is informed and believes, and further says not so

sworn to & signed J W Primmer
before me this 27th day
of March 1861 J O Chance Clk

On the back of this Bill is: James W Primmer vs Price J Patterson et al
Bill for Discovery Willard & Gradnow
Attys for Pltff Filed April 1st 1861
J O Chance Clk

State of Illinois
Marion County } I, J. O. Chance clerk of the Circuit Court of said County hereby certify the foregoing to be a true and complete 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 29th day of December AD 1862
J. O. Chance clerk

[9487-7]

James W. Trimmer } In Error
vs
Price J. Patten & Co } And now Cometh Said Plff by Willard & Goodnow his attorneys and Sts down and assigns the following Cause of Error

1st The Court Erred in refusing the motion of Trimmer by his atty to file this bill of discovery & in dismissing the same, Said Bill of discovery setting up a good & substantial defence to said action at law which defence had been pleaded to Said Suit at Law as shown by Bill

2d The Court Erred in not allowing Said bill of discovery to be filed and granting thereon an Injunction or order staying the proceedings of the Suit at law until Said Bill was answered by Price J. Patten & Co --

3d And for these and other manifest Errors in the Record the Cause ought to be reversed and an Injunction or supersedeas granted staying the proceedings at Law as by Statute in required on the filing of bills for discovery

Willard & Goodnow
atty for Plff in Error

The writ of Error will be no a supersedeas on Plaintiff in Error executing a bond in the penalty of twelve hundred dollars with William Reid and Reca L. Chitwood his sureties Cost taxed according to Law. Done at Chambers Feb. 11. 1863

Sidney Breese
Presiding Justice S. C.

And the said defendants in
error come and say that there
is no error appearing in said record
and do hereby join with said plaintiff
in error and submit the same
to the court for supervision and
judgment. Now this 18th day Silas D. Bryan Atty
for defendants

4

James W. Skinner -
Plaintiff in Error.

vs.

Rice J. Patton & Co.
Defendants in Error.

Error to Marion -

Filed July 26-1863.
N. Johnston Cl
Reports — $11.00

Salem June 13th 1862

Mr. Johnson

Sir. We herewith send you the papers in the case of Charles Duffield vs Wm J & Delancy also Eleven 50/100 dollars fees &c in the case for which send receipt

Please issue the writ immediately and send to us as the parties are anxious to execute the judgment of the circuit court and we wish to prevent it. We think Brimmer will pay the costs in the case you wrote us about without a fee bill being issued against him We will as soon as we can see him, tell him of the costs and have him send you the costs

Yours &c

Willard & Goodnow

Salem

Ills

[2487-9]

Letter
14

Know all men by these presents that we James W Pommer and William Aud and ~~Martin Klein~~ Green L Cypresswood of the County of Marion and State of Illinois are held and firmly bound unto Price J Patten & Co in the penal sum of Twelve hundred 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 22d day of January AD 1863

The condition of the above obligation is such that whereas the said James W Primmer has sued out of the Supreme Court of the State of Illinois his writ of Error and Supersedeas in the Case of James W Primmer vs Price J Patten & Co Bill for Discovery which said Bill was filed in the Marion County Circuit Court at the March term AD 1861 Now if the said James W. Primmer shal prosecute his said writ of Error with Effect and shall pay whatever Judgment or decree may be rendered in the premisis by the said

Supreme Court and shall abide the order of the same upon dismissal or trial of said writ of Error
Then this obligation shall be void otherwise to remain in full force and Effect

J W Rimmer (Seal)
William Bird (Seal)
G. L. Chitwood (Seal)

Supreme Court
District of Illinois

James M Rimmer
vs
Price & Patterson
Bond

Filed July 26. 1865.
A. Johnston Cl

State of Illinois }
Marion County } ss

James W Brimner
vs
Price J Patten } Bill for Discovery

James W Brimner being first duly sworn deposes and says that he is well acquainted with ~~William And~~ the Pecuniary Circumstances of William And and Green L Whitwood both residents of Marion County and State aforesaid That William And is worth five thousand dollars over and above his Liabilities And that Green L Whitwood is worth two thousand dollars over and above all his Liabilities as he verily believes and further deponent saith not

Subscribed & Sworn
To before me this Jany 27
AD 1863

W N Mundell
N.P.

J W Brimner

[8487-11]

4

James W Pommer
vs
Price & Patten & Co

Affidavit

Filed July 26 1863.
N. Johnston Cl

Supreme Court at Mt. Vernon Illinois

November Term A.D. 1863.

James W. Primmer
vs
Price J. Patton & Co
} Error to Marion

We the Defendants in the above entitled Cause do hereby waive service of process and enter our appearance and agree to submit and abide by the judgment of this Court the same as if process had been actually served upon us Witness our hands this 8th day of October A.D. 1863

Price J. Patton & Co
Per S. L. Bryan & M. S. Macaffee } their Attys

[8487-12]

4

James W. Skinner
vs
Price J. Patton & Co

Error to Marion

Waiver of summons and entering Appearance

~~8480~~

Filed Oct. 8. 1863.
N. Johnston Clk

Salem Feb 24th 1863

Noah Johnston Esq

Dear Sir Enclosed please find $65 for Docketing Case of James W Brimmer vs Price J Patten & Co we were of the impression that this Law did not take Effect at this time

Millard & Goodnow

Mr Clerk of the Supreme Court

You will please Issue Writ of Error and Supersedeas in the case of James W Brimmer vs Price J Patten & Co individual name Price J Patten and Abraham Oppenheimer the Supersedeas in the Suit at Law of Price J Patten & Co vs James W Brimmer to stay proceedings until the bill of discovery is answered

Millard & Goodnow

Salem February 16th 1863

Noah Johnson Esqr

Dear Sir herewith we enclose record with order of Judge Brewse for writ of Error and Supersedeas in the Case of James W Brunner vs Once J Patten & Co Bill for Discovery the Supersedeas is to be Issued in the Suit at Law Once J Patten & Co vs James W Brunner. as you will see by record we also send $5.00 to Docket Case

Yours Truly
Willard & Goodnow

[9487-14]

J. W. Prinner

vs

Prier J. Patten et al.

Precipe

Filed July 26-1863.

A. Johnston Cl

November Term, Supreme Court, 1863.

JAMES W. PRIMMER,
vs.
PRICE J. PATTON & CO.
} ERROR TO MARION.

DEFENDANT'S BRIEF.

1st Point.—Every presumption is indulged, in favor of the Rulings of the Lower Court. 25th Ill. Rep. 467

2d.—The Bill of Discovery is contradictory and absurd on its face.

SILAS L. BRYAN, Att'y. for &c.

Exh. 4

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

JAMES W. PRIMMER,
vs.
PRICE J. PATTEN & CO. } **Bill for Discovery.**

1 Shows pendancy of suit in assumpsit in favor of Price J. Patten & Co., against J. W. Primmer, in Marion Circuit, March Term, 1861. That defendant files pleas and plaintiff's reprications.—That defendant by attornies, moved the court for leave to fill Bill for Discovery and for Injunction. The court overruled motion, the defendant takes exceptions to rulling of court. That cause is then tried by court, by consent of parties. That court heard evidence and gave verdict for plaintiffs for amount of note and costs.

2 Shows reference to Clerk to report amount of damages, also report of $515 and judgment for same and $5,48 costs and order of execution.

3 Caption of bill of Discovery together with the allegation in bill of pendancy of suit at law, in Marion Circuit Court at March Term, 1861, between Primmer & Price J. Patten & Co. That suit is on a certain promissory note, given by J. W. Primmer to Stanford A. Lasater, for $500, date 9th October 1858, and payable two years after date and being 3d and last installment on lot and house bought of said Lasater, in Sandoval.

4 That said note was by Lasater indorsed to P. J. Patten & Co. That declaration contains two counts, one on said note and a common count. That to declaration and counts, Primmer plead several pleas. The general issue and a plea of failure of consideration. That the note in first count and two other notes, were given by Primmer to Lasater, was for purchase Lot No. 9, in Block No. 6, in Primmer's Addition to Sandoval in county of Marion, Illinois. That by article of agreement entered into, said Lasater agreed with orator on 9th day of October, 1858, that upon payment of of first installment of $100 being paid by orator to Lasater; Lasater should convey said Lot in fee simple by good warrantee deed.

5 That orator agreeable to article was to pay first installment on or before 25th December, 1858, said Lasater to make a warrantee deed at same time to orator. That orator on said day mentioned he was ready and willing to pay first installment of one hundred dollars ($100) on said lot. That said Lasater was unable to and unwilling to make said deed as aforesaid and did not make said deed as agreed to nor has not since made the same. That by reason of failure to make deed, orator and said Lasater afterwards agreed to rescind said contract and did rescind said contract, and that Lasater delivered to orator two of said notes and agreed to deliver up immediately the note in
6 declaration mentioned to orator and therefore consideration has wholly failed. That plaintiffs had notice of such failure of consideration before said note was indorsed and delivered to them by said Lasater.

Orator pleads to declaration and said first count that said note in said count with two other notes for the sum of $600, were given by orator to one S. A. Lasater, on the 9th October, 1858, for purchase money of Lot 9, Block 6, in Primmer's addition to the town of Sandoval, Ill. That on said day Lasater sold said lot to orator and for $100 payable on or before 25th of December, 1858.
7 That one note was for $500 payable on or berore 9th October, 1859, and the said note mentioned in plaintiffs declaration for $500 payable on or before 9th October, 1860, and agreed with orator to make on payment of first note on 25th December, 1858, a good and sufficient warrantee deed to him for said lot. Avers that he was ready and willing to pay said note for $100 on said day last aforesaid, when the same became due and offered to pay said Lasater said note for $100 as per agreement. Avers that Lasater wholly refused and neglected to make deed as by agreement to said lot. That by reason of failure to make deed, orator and Lasater mutually rescinded said contract
8 and Lasater agreed to give up all of notes and did give up two of said notes to orator, and orator did deliver up to said Lasater said lot. Orator therefor avers consideration wholly failed, and orator avers Lasater neglected to deliver said note, and that after said note became payable, indorsed said note to plaintiffs.

And further your orator pleads that after the execution of said note in declaration mentioned and before the exhibiting of the declaration against orator and long before said note became due, and long before the indorsement of said note by Lasater to plaintiffs, to-wit: on 29th June, 1860, at Marion county, Ill., orator sold to and delivered to said Lasater, Lot No. 9, Block 6, in Primmer's addition to Sandoval, Ill., of great value to-wit:—$1000 in full satisfaction and discharge of said note.

9 In declaration mentioned which lot aforesaid, he the said Lasater accepted and received of and from orator in full satisfaction and discharges by his written release, of all which plaintiffs had notice on 29th day of June 1860, at the county of Marion, Illinois. To which several pleas plaintiffs took issue by three replications. To 2d plea of orator, that note was indorsed for valuable condition before its maturity and plaintiffs had no notice of failure of consideration and agreement to deliver up same prior to or at time of indorsement. Secondly to third plea that note was indorsed
10 and delivered to plaintiff by Lasater before maturity, and thirdly to orator's 4th plea. That plaintiffs did not have notice at the time or prior to indorsement of note by Lasater to plaintiffs. That

Lasater had accepted or received from orator anything in full of satisfaction and discharge, or that Lasater had executed a written release therefor to all of which orator has taken issue. Orator further avers that he was informed and believes that said note was indorsed to plaintiffs after it became due and payable and that P. J. Patten & Co., knew of all the facts set up in said pleas by orator to said count in declaration, at the time and prior to indorsement of note to Price J. Patton & Co., by Lasater. That Lasater so informed P. J. Patten & Co., at the time of indorsing same to them. That the consideration for note had failed and he had agreed to deliver same to orator.—But orator charges that Lasater was in failing circumstances,

11 And was indebted to Price J. Patton & Co., in a large sum of money, and Patten & Co., insisted that Lasater should indorse said note to them to secure indebtedness, and that said parties colluded together and indorsement was made and note transfered as collateral security. Orator shows that he has no witness by whom he can prove said facts set up in pleas, except the said Lasater or said Price J. Patten & Co., and that facts are necessary to orators defence in suit at law. That Lasater is now and has been absent since commencement of suit, and orator knows not his whereabouts, that he is an interested witness in said suit and orator cannot proceed to trial in cause without a discovery from P. J. Patten & Co., of the facts and charges set forth in this Petition.

12 Orator therefore prays that Price J. Patten & Co., be made parties defendants hereto, that they be compelled to answer under oath, the matters and things set forth in bill and true discovery make to all the allegations and charges herein set forth, fully and explicitly as if directly interrogated. With prayer for summons to issue to Sheriff of Marion county, Ill., to summon Price J. Patten & Co., to appear before the Court at next Term, on 3rd Monday of August, 1861, to which the decree of Court and for such other and further relief in the premises as your honors may seem just, equitable &c.

JAMES W. PRIMMER,
By WILLARD & GOODNOW, Sol's.

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13 James W. Primmer, sworn according to law, states facts set forth in foregoing bill, are true as he informed and believes. Sworn to before Clerk, 27th day of March, 1861. Also filing of the bill by J. O. Chance, Clerk, April 1st, 1861.

Also, certificate of the Clerk of Circuit Court, in usual form to correctness of Record under seal of Court, 29th day of December, A. D. 1862.

WILLARD & GOODNOW,
Atty's. for Primmer.

ERRORS ASSIGNED.

And now comes said Plaintiff, by Willard & Goodnow his Attornies, and sets down and assigns the following causes of error :

1st. The Court erred in refusing the motion of Primmer by his Attornies to file his bill of discovery and in dismissing same ; said bill of discovery setting up a good and substantial defence to said action at law, which defence had been pleaded to said suit at law as shown by bill.

2d. The Court erred in not allowing said bill of discovery to be filled and granting thereon an Injunction or order staying the proceedings of the suit at law, until said bill was answered by Price J. Patten & Co.

3d. And for these and other manifest errors in the record, the cause ought to be reversed and an Injunction or Supersedeas granted, staying the proceedings at law, as Statute required on filing bill for discovery.

WILLARD & GOODNOW,
Atty's. for Plt'ff. in Error.

BRIEF.

JAMES W. PRIMMER,
vs.
PRICE J. PATTEN & CO. } **Bill for Discovery.**

Courts of Equity will become assistants to Courts of Law &c. 2d Story's Equity Jurisprudence Sec. 1481, 1483 & 1484. Story's Equity Pleadings, Sec. 311, 312, 313 & 316.

The object of Bill of Discovery is to make an incompetant party, competant to testify. Beecher's Breese, 277 & 13th Ill. Rep. 321 & 322.

James W Brimmer
vs
Price Patton & bro

Abstract

4

Abstract
Agreed by Bryan
Nov. 11. 1863 –

Filed Nov. 9 – 1863.
A. Schuster Clk

November Term, Supreme Court, 1863.

JAMES W. PRIMMER,
vs.
PRICE J. PATTON & CO.
} ERROR TO MARION.

DEFENDANT'S BRIEF.

1st Point.—Every presumption is indulged, in favor of the Rulings of the Lower Court. See Rept—29th Page 467

2d.—The Bill of Discovery is contradictory and absurd on its face.

SILAS L. BRYAN, Att'y. for &c.

[8487-19]

Nov. Term - Supt. Court 1863

4	James W. Remmes Plaintiff in error vs Price J. Patten, and Abraham Oppenheimer Price J. Patten & Co. Defendants in error	Error to Marion Judgment Affirmed

Pltffs Costs - Collectable of Defn

1863.	To filing Transcript 20 - Docketing Cause 12 -	32
	" Mot of Error - made a Supersedeas with Stamp	1-00
	" Sci fa	1.00
	" filing Papers	67
	" Abstracts (1500 Words Each)	21.00
	" Entering Orders	50
	" " Opinion of Court	1.10
	" Docket fee	6.00
	" Costbill Stat Cause 37, Postage 15	.52
	" Fee Bill 50. Stamps 5. Postage 6-	61
		32.72
	Cr. Prepaid 11-00	14 00
	Abs furnished 3 00	~~21.72~~
	$14.00	~~[illegible]~~
		18.72

Defts Costs - Collectable of Pltff

	To filing Papers 43 - Costbill 37	80
	" Ex. 50. Postage 6-	56
	Bal. Due —	$20.08

Pltffs Costs ——	$32-72
Defts do	1-36
	34.08
Paid $11- Cbr fees $3-	14-00
	20.08
If paid new. Ex & full off	1 10
Due	$18.98

And to write Primm & Millard & Goodwin
May 27-64

4

Premium
on
Policy
Certificate

1863

56
64
117

2088
117
1941

This Certificate is
entitled on payment by
578 - Spears
Millard & Goodwin &
Receipt Sent.
Aug 3-64

State of Illinois,
SUPREME COURT,
First Grand Division. } SS

The People of the State of Illinois,

To the Clerk of the Circuit Court for the County of Marion Greeting:

Because, *In the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of* Marion *county, before the Judge thereof between*

Peter J. Patten & Co *plaintiffs and*

James M. Preimer *defendant it is said manifest error hath intervened to the injury of the aforesaid* James M Preimer *as we are informed by* his *complaint, and we being willing that error, if any there be, should be corrected in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly without delay send to our Justices of our Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at* **Mount Vernon,** *in the County of Jefferson, on the* first Sunday after the Second Monday in November *next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.*

WITNESS, *the Hon.* John D. Caton *Chief Justice of the Supreme Court and the seal thereof, at* MOUNT VERNON, *this* 26th *day of* February *in the year of our Lord one thousand eight hundred and* Sixty-Three.

Noah G. Preston
Clerk of the Supreme Court.

[9487-81]

4

SUPREME COURT.

First Grand Division.

James M. Rimmer

Plaintiff in Error,

VS.

Price J. Patten et al.

Defendants in Error.

WRIT OF ERROR.

Issued - Made a Supersedeas and

FILED July 26. 1863.

N. Johnston Cl

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

JAMES W. PRIMMER,
vs.
PRICE J. PATTEN & CO. } **Bill for Discovery.**

1 Shows pendancy of suit in assumpsit in favor of Price J. Patten & Co., against J. W. Primmer, in Marion Circuit, March Term, 1861. That defendant files pleas and plaintiff's reprications.—That defendant by attornies, moved the court for leave to fill Bill for Discovery and for Injunction. The court overruled motion, the defendant takes exceptions to rulling of court. That cause is then tried by court, by consent of parties. That court heard evidence and gave verdict for plaintiffs for amount of note and costs.

2 Shows reference to Clerk to report amount of damages, also report of $515 and judgment for same and $5,48 costs and order of execution.

3 Caption of bill of Discovery together with the allegation in bill of pendancy of suit at law, in Marion Circuit Court at March Term, 1861, between Primmer & Price J. Patten & Co. That suit is on a certain promissory note, given by J. W. Primmer to Stanford A. Lasater, for $500, date 9th October 1858, and payable two years after date and being 3d and last installment on lot and house bought of said Lasater, in Sandoval.

4 That said note was by Lasater indorsed to P. J. Patten & Co. That declaration contains two counts, one on said note and a common count. That to declaration and counts, Primmer plead several pleas. The general issue and a plea of failure of consideration. That the note in first count and two other notes, were given by Primmer to Lasater, was for purchase Lot No. 9, in Block No. 6, in Primmer's Addition to Sandoval in county of Marion, Illinois. That by article of agreement entered into, said Lasater agreed with orator on 9th day of October, 1858, that upon payment of of first installment of $100 being paid by orator to Lasater; Lasater should convey said Lot in fee simple by good warrantee deed.

5 That orator agreeable to article was to pay first installment on or before 25th December, 1858, said Lasater to make a warrantee deed at same time to orator. That orator on said day mentioned he was ready and willing to pay first installment of one hundred dollars ($100) on said lot. That said Lasater was unable to and unwilling to make said deed as aforesaid and did not make said deed as agreed to nor has not since made the same. That by reason of failure to make deed, orator and said Lasater afterwards agreed to rescind said contract and did rescind said contract, and that Lasater delivered to orator two of said notes and agreed to deliver up immediately the note in
6 declaration mentioned to orator and therefore consideration has wholly failed. That plaintiffs had notice of such failure of consideration before said note was indorsed and delivered to them by said Lasater.

Orator pleads to declaration and said first count that said note in said count with two other notes for the sum of $600, were given by orator to one S. A. Lasater, on the 9th October, 1858, for purchase money of Lot 9, Block 6, in Primmer's addition to the town of Sandoval, Ill. That on said day Lasater sold said lot to orator and for $100 payable on or before 25th of December, 1858.
7 That one note was for $500 payable on or before 9th October, 1859, and the said note mentioned in plaintiffs declaration for $500 payable on or before 9th October, 1860, and agreed with orator to make on payment of first note on 25th December, 1858, a good and sufficient warrantee deed to him for said lot. Avers that he was ready and willing to pay said note for $100 on said day last aforesaid, when the same became due and offered to pay said Lasater said note for $100 as per agreement. Avers that Lasater wholly refused and neglected to make deed as by agreement to said lot. That by reason of failure to make deed, orator and Lasater mutually rescinded said contract
8 and Lasater agreed to give up all of notes and did give up two of said notes to orator, and orator did deliver up to said Lasater said lot. Orator therefor avers consideration wholly failed, and orator avers Lasater neglected to deliver said note, and that after said note became payable, indorsed said note to plaintiffs.

And further your orator pleads that after the execution of said note in declaration mentioned and before the exhibiting of the declaration against orator and long before said note became due, and long before the indorsement of said note by Lasater to plaintiffs, to-wit: on 29th June, 1860, at Marion county, Ill., orator sold to and delivered to said Lasater, Lot No. 9, Block 6, in Primmer's addition to Sandoval, Ill., of great value to-wit:—$1000 in full satisfaction and discharge of said note.

9 In declaration mentioned which lot aforesaid, he the said Lasater accepted and received of and from orator in full satisfaction and discharges by his written release, of all which plaintiffs had notice on 29th day of June 1860, at the county of Marion, Illinois. To which several pleas plaintiffs took issue by three replications. To 2d plea of orator, that note was indorsed for valuable condition before its maturity and plaintiffs had no notice of failure of consideration and agreement to deliver up same prior to or at time of indorsement. Secondly to third plea that note was indorsed
10 and delivered to plaintiff by Lasater before maturity, and thirdly to orator's 4th plea. That plaintiffs did not have notice at the time or prior to indorsement of note by Lasater to plaintiffs. That

Lasater had accepted or received from orator anything in full of satisfaction and discharge, or that Lasater had executed a written release therefor to all of which orator has taken issue. Orator further avers that he was informed and believes that said note was indorsed to plaintiffs after it became due and payable and that P. J. Patten & Co., knew of all the facts set up in said pleas by orator to said count in declaration, at the time and prior to indorsement of note to Price J. Patton & Co., by Lasater. That Lasater so informed P. J. Patten & Co., at the time of indorsing same to them. That the consideration for note had failed and he had agreed to deliver same to orator.—But orator charges that Lasater was in failing circumstances,

11 And was indebted to Price J. Patton & Co., in a large sum of money, and Patten & Co., insisted that Lasater should indorse said note to them to secure indebtedness, and that said parties colluded together and indorsement was made and note transfered as collateral security. Orator shows that he has no witness by whom he can prove said facts set up in pleas, except the said Lasater or said Price J. Patten & Co., and that facts are necessary to orators defence in suit at law. That Lasater is now and has been absent since commencement of suit, and orator knows not his whereabouts, that he is an interested witness in said suit and orator cannot proceed to trial in cause without a discovery from P. J. Patten & Co., of the facts and charges set forth in this Petition.

12 Orator therefore prays that Price J. Patten & Co., be made parties defendants hereto, that they be compelled to answer under oath, the matters and things set forth in bill and true discovery make to all the allegations and charges herein set forth, fully and explicitly as if directly interrogated. With prayer for summons to issue to Sheriff of Marion county, Ill., to summon Price J. Patten & Co., to appear before the Court at next Term, on 3rd Monday of August, 1861, to which the decree of Court and for such other and further relief in the premises as your honors may seem just, equitable &c.

JAMES W. PRIMMER,
By WILLARD & GOODNOW, Sol's.

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13 James W. Primmer, sworn according to law, states facts set forth in foregoing bill, are true as he informed and believes. Sworn to before Clerk, 27th day of March, 1861. Also filing of the bill by J. O. Chance, Clerk, April 1st, 1861.

Also, certificate of the Clerk of Circuit Court, in usual form to correctness of Record under seal of Court, 29th day of December, A. D. 1862.

WILLARD & GOODNOW,
Atty's. for Primmer.

ERRORS ASSIGNED.

And now comes said Plaintiff, by Willard & Goodnow his Attornies, and sets down and assigns the following causes of error :

1st. The Court erred in refusing the motion of Primmer by his Attornies to file his bill of discovery and in dismissing same; said bill of discovery setting up a good and substantial defence to said action at law, which defence had been pleaded to said suit at law as shown by bill.

2d. The Court erred in not allowing said bill of discovery to be filled and granting thereon an Injunction or order staying the proceedings of the suit at law, until said bill was answered by Price J. Patten & Co.

3d. And for these and other manifest errors in the record, the cause ought to be reversed and an Injunction or Supersedeas granted, staying the proceedings at law, as Statute required on filing bill for discovery.

WILLARD & GOODNOW,
Atty's. for Plt'ff. in Error.

BRIEF.

JAMES W. PRIMMER,
vs.
PRICE J. PATTEN & CO. } BILL FOR DISCOVERY.

Courts of Equity will become assistants to Courts of Law &c. 2d Story's Equity Jurisprudence Sec. 1481, 1483 & 1484. Story's Equity Pleadings, Sec. 311, 312, 313 & 316.

The object of Bill of Discovery is to make an incompetant party, competant to testify. Beecher's Breese, 277 & 13th Ill. Rep. 321 & 322.

James N Primmer
vs
Price Patterson & co

Abstract

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Abstract

Offer

Filed Nov-9-1863-
M. Johnston Clk

1500
20
300
7
$21.

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J. W. Parmer

vs

Price J. Patten & Co

Error to Marion

Affirmed

8487

Reported

Nov Term 1863