

8606

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

# Supreme Court of Illinois


c. Yates

---

vs.

Thomas Monroe et al

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71641  7

State of Illinois, }  
SUPREME COURT. } ss.

The People of the State of Illinois,

To the Clerk of the Circuit Court for the County of *Schuyler* 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 *Schuyler* county, before the Judge thereof, between

*Christopher E. Yates*

plaintiff and *Thomas Monroe*  
*Annis Monroe* and *William A. Newman*

defendant it is said manifest error hath interwened to the injury of the aforesaid *Christopher E Yates* 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 Springfield in the county of Sangamon, on the *2nd Monday in December* 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. *Samuel H. Peat*. Chief

Justice of the Supreme Court, and the seal thereof, at Springfield, this *25th* day of *November* in the year of our Lord, one thousand eight hundred and

*fifty one*

*W. B. Warner*

Clerk of the Supreme Court.

*A record*

A transcript of the record and proceedings  
of the suit whereof mention is within made with all  
things concerning the same I herewith Certify to the  
Justices of the Said Supreme Court at the day and  
place within mentioned as within I am Commanded  
Decr 1<sup>st</sup> 1857 Joseph Montgomery Cky

Supreme Court.

Plaintiff in error

*O. Yale*

vs.

Defendant in error,

*P. Moore Et al*

Writ of error,

Filed

~~A transcript of the record and proceedings of the suit whereof  
mention is made within with all things concerning the same  
I herewith Certify to the Justices of the Said Supreme Court  
at the day and place within mentioned as within I am  
Commanded  
December 1<sup>st</sup> 1857  
Joseph Montgomery Cky of the  
Said Court~~

State of Illinois  
Schuyler County ss.

Pleas in Chancery before  
the Honorable William A Minshall at a  
Circuit Court began and held at the Court house  
in Rushville on Monday the fifteenth day of  
September A. D. 1851.

Present the Hon. William A Minshall Judge.

Be it remembered that heretofore  
to wit on the 15th day of August A. D. 1850,  
Complainant in the cause hereinafter sta-  
ted, filed in the said Circuit Court his bill  
of Complaint, which said bill of Com-  
plaint is in the words and figures following  
to wit :

Christ. E Yates

vs

Thomas Monroe

& Annis Monroe

& William A Hinman

In the Schuyler Circuit  
Court of the term of Au-  
gust A. D. 1850

In Chancery.

To the Honorable William  
A Minshall Judge of the 5th Judicial Circuit  
in Chancery sitting.

Humblly complaining showed unto your  
Honor your orator Christ. E Yates of the County  
of Hancock & State of Illinois, that on or about  
the first day of January 1840 your orator pur-  
chased a horse of one William A Hinman  
and in consideration of the same executed  
and delivered his certain promissory note to

Annis Hinman (who has since that time intermarried with one Thomas Monroe) said promissory bearing date January 4th 1840 being made payable to Annis Hinman or bearer one year from date with twelve percent interest & conditioned that the said note might be discharged within six months from the date thereof by the sum of eighty five dollars. And your orator further states that it was then understood & agreed by & between your orator & the said William A Hinman & Annis Hinman that said note so given for one hundred dollars might be discharged for seventy five dollars by your orator in breaking up prairie on a farm belonging (as was represented to your orator) to one Benjamin Hinman in said County of Schuyler at four dollars per acre, & your orator further states that in pursuance of said agreement your orator did in & during the months of May & June & July A.D. 1840 proceed to break the said prairie on the farm aforesaid, to the amount of thirty seven &  $\frac{3}{4}$  acres of thirty five &  $\frac{3}{4}$  acres, which your orator states to have been done <sup>in</sup> pursuance of the agreement aforesaid & that afterwards on or about the first day of October A.D. 1840 the said prairie so broken up by your orator was measured by your orator & the said William A Hinman & ascertained to contain thirty seven &  $\frac{3}{4}$  acres or thirty five &  $\frac{3}{4}$  acres, which at the price agreed upon, more than discharged the said note, given by your orator to the said Annis

Hinman. And your orator further states & charges the fact to be that the said William A Hinman, Thomas Monroe & Annis Monroe (all of whom your orator prays may be made parties hereto) have refused to deliver said promissory note to your orator & have combined and confederated for the purpose of defrauding your orator & the said Thomas Monroe & Annis Monroe at the instigation of the said William A Hinman have instituted suit against your orator in this Honorable Court on the Common lawside thereof for the purpose of compelling your orator to pay the said note so given as aforesaid, contrary to equity & good conscience. And your orator further states that he is apprehensive that unless the facts herein set forth are proved as stated that the said Thomas Monroe & Annis Monroe may under the circumstances obtain a verdict in said action. And your orator charges that unless the said Defendants shall set forth & discover the several matters & particulars of which the discovering is hereby prayed your orator will be unable to prove said allegations to be true. And your orator charges that some of your orators witnesses whose evidence it will be necessary for him to adduce in relation to the matters aforesaid are now resident in the Territories of Deseret & California & that until their evidence shall be obtained it will be unsafe for your orator to proceed to a trial of the said action. And under all the circumstances aforesaid

your orator charges that the said defendants ought to be restrained from any further proceeding in the said action at law already commenced by them and from commencing & prosecuting any further proceedings at law in relation to the matters aforesaid, but that they are now prosecuting & they threaten & intend to proceed in the said action & they refuse to discover the matters aforesaid or any of them. All which actings & doings pretences & refusals are contrary to equity and good conscience & tend to the manifest wrong & injury of your orator in the premises. In consideration whereof & for as much as your orator can only have adequate relief in the premises in a court of equity, where matters of this nature are properly cognizable & relivable. To the end therefore that the said William A Hinman, Thomas Monroe & Annis Monroe may upon their several & respective corporal oaths to the best & utmost of the several & respective knowledge, remembrance, information & belief, full, true, direct & perfect answers make to all & singular the matters aforesaid and that as fully & particularly as if the same were here repeated & they & every of them distinctly interrogated thereto. May it please your honor to grant unto your orator not only a writ of injunction issuing out of and under the seal of this honorable Court to be directed to the said Thomas Monroe & Annis Monroe to restrain them from proceeding at law against your orator touching any

of the matters in question but also a writ of subpoena to be directed to the said Thomas Monroe, Annis Monroe & William A Hinman thereby commanding them at a certain day & under a certain pain there in to be limited personally to be & appear before your honor in this honorable Court & then & there full, true, direct & perfect answers make to all & singular the premises. And your orator shall ever pray & be  
Christ. E. Yates.

State of Illinois }  
Schuyler County } ss.

This day personally appeared before me Christopher E Yates who being duly sworn on his oath states that all the several matters & things which are stated in the foregoing Bill as from the information of others he believes to be true & that all the several other matters & things therein set forth are true in substance & in fact. Sworn to & subscribed before me this 13th day of August A.D. 1850.  
Joseph Montgomery Clerk.

And afterwards to wit on the 14th day of August A.D. 1850 the following order was made in said Court to wit:



Christopher E Yates  
vs  
Thos. Monroe &  
Annis Monroe &  
William A Hinman

In the Schuyler Circuit  
Court of the August  
Term A D 1850.

Bill for discovery & Injunction  
In Chancery—

On motion to the Court by John C Bagby  
Counsel for Plaintiff, it is ordered that an  
Injunction be allowed as prayed for in the  
Bill & that the Plaintiff give bond & security  
to the defendants Monroe & wife in the  
sum of three hundred & fifty dollars and  
cents conditioned according to Law.

August 14th 1850.

Judge.

And afterwards to wit on the 15th day of August  
A D. 1850 the said complainant filed in the Clerks  
office of said Circuit Court his Bond in the words  
and figures following, to wit:

Know all men by these presents that we Christopher E Yates and John M Creery of the County of Schuyler & State of Illinois are held and firmly bound unto Thomas Monroe & Annis Monroe also of the same County & State in the penal sum of three hundred & fifty (350) Dollars current money of the United States for the payment of which well & truly to be made we bind ourselves our heirs executors and administrators jointly, severally & firmly by these presents. Witness our hands and seals this 15th Day of August A.D. 1850.

The condition of the above obligation is such that where as the above bound Christopher E Yates has payed for and obtained a writ of Injunction from the Circuit Court of said County restraining & injoing the said Thomas Monroe & Annis Monroe from proceeding against the said Christopher E Yates in a certain action now pending in said Court, when in the said Thomas Monroe & Annis Monroe are Plaintiffs & the said Christopher E Yates is defendant, until said Court shall make other order, to the contrary. Now if the said Christopher E Yates shall pay or cause to be paid to the said Thomas Monroe & Annis Monroe all money and costs due or to be due to him in the said action at Law and also all such costs & Damages

as shall be awarded against the said complainant in case the said Injunction herein granted shall be dissolved, then this obligation to be void, otherwise to remain in full force & virtue.

Approved in  
open Court

Christ E Yates (seal)  
John McCreery (seal)

Minshall Judge

And afterwards to wit on the 26th day of February A.D. 1851 a writ of injunction issued out of said Court in this cause in the words and figures following to wit:

State of Illinois } The people of the State of  
Schuyler County } ss. Illinois to

Thomas Monroe, Annis Monroe  
and William A Hinman, their counsellors,  
attorneys, solicitors and agents - Greeting.

Where as Christopher E Yates,  
has lately exhibited his bill of complaint,  
to the Judge of the Circuit Court in, and for  
the County and State aforesaid, on the Chancery

side thereof against you the said Thomas Monroe Annis Monroe and William A Hinman Defendants, wherein, among other things, it is alledged, that you unjustly prosecute the said complainant at law, touching the matters and things therein stated and set forth.

We therefore, in consideration of the premises, do strictly Enjoin and command you, the said Thomas Monroe, Annis Monroe and William A Hinman, and all, and every the persons above mentioned, that you, and each of you, do absolutely and entirely desist from all further proceeding at law against the said complainant concerning any of the matters in said bill complained of. until you and each of you, shall appear to, and fully answer the complainants Bill, and the said Court make other order to the contrary. Hereof fail not, under the penalty of what the law directs.

To the Sheriff of said County to Execute.

Seal

Witness Joseph Montgomery Clerk of our said Circuit Court at Nashville, and the seal thereof. this 26th day of February A.D. 1857.

Joseph Montgomery Clk.

The foregoing writ returned with the following endorsement: to wit: "I have <sup>sewed</sup> the within on the within named William A Hinman by reading the same to him on the 13th day of March A.D. 1857 — also by reading the same to the within named Thomas Monroe and Annis Monroe this 18th day of March 1857. Lewis D Erwin Sheriff Schuyler County Ill. And afterward to wit on the 26th day of February A.D. 1857 a summons in said cause issued out of said Court in the words and figures following to wit:

State of Illinois } The people of the State of Illinois  
Schuyler County } ss. To the Sheriff of said County - Greeting.

We command you to summon  
Thomas Monroe, Annis Monroe and William  
A Hinman if to be found in your County,  
personally to be and appear before the Circuit  
Court of said County, on the first day of the  
next term thereof, to be holden at the Court  
House in Rushville, on the fourth Monday  
in the month of April next, to answer  
to a certain Bill of Complaint, filed in  
our said Circuit Court on the Chancery  
side thereof, against them by Christopher  
E Yates. And have you then and there  
this writ, and make return thereon in  
what manner you execute the same.

Witness Joseph Montgomery,  
Clerk of our said Circuit Court,  
at Rushville, this 26th day of  
February in the year of our Lord  
one thousand eight hundred and  
fifty one.

Joseph Montgomery Clk.

The foregoing summons returned with the follo-  
wing endorsement thereon to wit:

Seal

I have served the within summons by delivering  
to the within named William A Hinman a  
copy thereof on the 13th day of March A.D. 1851  
also by delivering to the within named Thomas  
Monroe & Annis Monroe each a copy of said  
summons on this 18th day of March A.D. 1851.  
Lewis D Erwin Sheriff, Schuylers County.

And afterwards to wit on the 28th day of April  
A.D. 1851 defendant William A Hinman in  
his proper person filed herein his demurer  
to the said complainants Bill of complaint  
in the words and figures following to wit:

Schuylers County Circuit Court.  
William A Hinman,  
Thomas Munroe &  
Annis Munroe his wife }  
advs.  
Christopher E Yates.

And the said William A  
Hinman in his proper person comes, and by  
protestation not confessing all or any of the mat-  
ters in the Complainants Bill to be true in  
manner & form as the same are set forth in said  
Bill, Doth demur to said Complainants Bill and  
for cause of demurer - Showeth. 1st. That the  
said Complaint has not by his said Bill made  
such a case as entitles him in a court of

equity to any discovery from this Defendant or any relief against this defendant as to matters contained in said Bill or any of such matters - and that any discovery which can be made by this defendant touching said matters or any of them, cannot be of any avail to the said Complainants for any purpose for which a discovery is sought against his CoDefendants, nor entitle the complainant to any relief in this court touching the matters complained of; For that the Complaint hath not by his said Bill shewt that he can have any decree against this defendant, whose answer could not be read in evidence against the other Defendants to said Bill or any of them, and said Complainant for any thing that appears in said Bill might examine this Defendant as a witness in the case at Law enjoined. 3<sup>d</sup>. And for that Complaint hath not by his said Bill made such a case as doth or ought to entitle him to any such discovery or relief as therein prayed against this Defendant.

Wherefor for diverse other causes this Defts doth demur thereto, and prays judgment of this Court, whether he shall be compelled to make further and other answer to the said Bill, and he humbly prays to be hence discharged with his costs. Wm. A Hinman in proper person.

And afterwards to wit on the 11th Day of February A D 1851 Defendants Thomas Monroe and Annis Monroe filed herein their joint & several answer to the said complainants Bill, which is in the words & figures following to wit:

State of Illinois } In the Circuit Court of said  
Schuyler County } ss. County on the Chancery side  
thereof.

The joint and several answer of Thomas Munroe and Annis Munroe wife of the said Thomas, two of the defendants to a bill of complaint exhibited against them and William A Hinman, by Christopher E Yates Complainant.

These defendants now, and at all times hereafter, saving and reserving to themselves, and each of them, all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainants said bill of complaint contained, for answer thereto, or unto so much, and such parts thereof, as these defendants are advised is or are material or necessary for them, or either of them, to make answer unto, they these defendants severally answering, say, they admit that the said complainant now is and was at the time of the filing of his said bill of Complaint a resident of the County of Hancock and State of Illinois, and that these defendants and their Co defendant William A Hinman now are, and were at the time of the filing of the said bill of Complaint residents of the County of Schuyler and State of Illinois. And this defendant Annis Munroe further severally answering sayth and this defendant Thomas Munroe believes it to be true, that on or about the first day of January 1840 the said complainant



purchased a horse of the said William A Hinman as alledged in the said bill of Complaint, but this defendant Annis Munroe denies and this defendant Thomas Munroe believes such denial to be true, that the said horse was the property of the said William A Hinman as the ambiguous statement in said bill of Complaint would seem to employ, but on the contrary this defendant Annis Munroe charges the fact to be and this defendant Thomas Munroe believes it to be true, that the said horse at the time of the sale thereof, by the said William A Hinman to the said complaint, was the proper good and chattel of her the said Annis Munroe and in her possession and under her control, and that the said William A Hinman in the bargain sale and delivery of the said horse to the said Complainant and in the taking of the note for the price of said horse in said bill of Complaint mentioned and alledged, acted as the agent of this defendant Annis Munroe, and in no other capacity whatever, and that the said William A Hinman had no other or further power from this defendant Annis Munroe over the said horse, than to sell the same for money in hand or upon a credit. And this Defendant Annis Munroe further severally answering admits, and this defendant Thomas Munroe believes said admission to be true, that the said Complainant in consideration of the sale and delivery of the said horse by the said William A Hinman as the agent of this defendant Annis Munroe executed and delivered

his certain promissory note to this defendant Annis Munroe, then Annis Hinman and since intermarried with the said Thomas Munroe, bearing date January 4th 1840 payable to the said Annis Hinman (now Annis Munroe) or bearer, in one year from the date thereof, with twelve percent interest from said date, and conditioned that the said note might be discharged within six months from the date thereof by the sum of eighty five dollars. And this defendant Annis Munroe further severally answering, saith that she denies, and this defendant Thomas Munroe believes such denial to be true, that at the time of the sale of the said horse by the said William A Hinman to the said Complainant, or at the time of the execution of the said note by the said complainant, or at any other time, it was understood and agreed by and between the said complainant and the said William A Hinman and this defendant Annis Munroe (then Annis Hinman) that the said note so given for one hundred dollars might be discharged by the said complainant for seventy five dollars, or any other sum, in breaking up prairie on a farm belonging to one Benjamin Hinman in said County of Schuylers at four dollars per acre, or upon any other farm or at any other price per acre. And these defendants further jointly and severally answering insist that if any such agreement was made as alledged in the said bill these defendants insist that such agreement was and

is void both at law and in equity, because no such agreement appears to have been embodied in said promissory note, it is inconsistent with the written agreement between said parties as contained in said note and such oral understandings had and agreements made between said parties at the time of the execution of said note are inadmissible both at law and in equity for the purpose of contradicting the express stipulation in said note that it was to be paid by the said Complainant to the said Annis Hinman (now Annis Munroe) in money, and the further stipulation in said note, that it might be discharged, by the payment of eighty five dollars in money, paid by the said complainant to the said Annis Hinman (now Annis Munroe) within six months from the date of said note, and if not paid in that time then the whole sum of one hundred dollars named in said note, was to be paid by the said Complainant to the said Annis Hinman (now Annis Munroe) with twelve percent interest thereon. And these defendants further jointly and severally answering say that they or either of them, to the knowledge or belief of the other of them, do not know, and have never been informed that any such agreement as that mentioned in the said bill was ever made by and between the said complainant and the said William A Hinman, but these defendants have severally been informed and believe such information to be true that no such agreement ever was made between the

said complainant and the said William A Hinman. And these defendants further jointly and severally answering, say, that if any such agreement was made between the said complainant and the said William A Hinman, it was made without the authority of this defendant Annis Munroe, without her knowledge, and without her subsequent ratification of the same, and that these defendants do now jointly and severally disclaim the said agreement if any such was made, and insist upon their rights in the premises. And these defendants further jointly and severally answering say, that they are informed, and believe that the said complainant did break up some prairie upon the farm of the said Benjamin Hinman, but when, how many acres, at what price or how much it was worth these defendants have no knowledge, and therefore cannot further answer the said allegation in said bill. But this defendant Annis Munroe denies, and this defendant Thomas Munroe believes such denial to be true, that said breaking of prairie was done in pursuance of the pretended agreement set forth in said bill or any other agreement between the said complainant, the said William A Hinman and the said Annis Hinman (now Annis Munroe). And these defendants deny that said breaking was done in discharge of the said note, or that the said complainant is entitled to any credit upon said note by reason of the said breaking, or from any other source. And these defendants further jointly and severally answering say, they know not, and have not been informed save by the complainant.

nants bill and cannot set forth as to their belief or otherwise whether the said complainant and William A Hinman about the first of October 1840 or at any other time, measured the prairie broken by the said Complainant upon the farm of Benjamin Hinman and ascertained that there was either  $35\frac{3}{4}$ , or  $37\frac{3}{4}$  acres of said prairie broken or any other quantity. And these Defendants jointly and severally further answering, deny that they have combined and confederated together, or with the said William A Hinman or any other person or persons for the purpose of defrauding the said complainant in the premises. And these Defendants further jointly and severally answering deny, that they, or either of them, or the said William A Hinman, according to their information and belief, have ever refused to deliver the said note to the said complainant, but on the contrary these Defendants deny that the said complainant ever requested or demanded the delivery of said note by these Defendants <sup>to him the said complainant</sup>. And these Defendants further jointly and severally answering charge the facts to be that the said complainant never pretended, alledged or even hinted to these Defendants or either of them that he claimed a credit upon said note on account of said prairie breaking, or that he was entitled to any credit whatever on said note, or that he had any defence, discount or sett off against said note until about the time these Defendants instituted the suit upon said note as alledged

in said bill of complaint, but on the contrary the said complainant in all conversations with these defendants or either of them always said he would pay said note, and made promise upon promise to these defendants as to the time when he would pay off said note, and some of those promises were made to the said defendant Thomas Munroe since the commencement of the said action at law. And these defendants further jointly and severally answering, deny that they, or either of them, were instigated by the said William A Hinman in instituting a suit upon said note against the said complainant on the common law side of this court, but they admit that they have instituted and were prosecuting a suit in said court against said complainant on said note, at the time of the filing of the bill herein for the express and no other purpose of compelling the said complainant to pay the said note so given by him as aforesaid, but these defendants deny, that the institution and prosecution of said suit was, is or will be contrary to equity and good conscience, on the contrary they insist that their conduct in the institution and prosecution of said suit upon said note, is strictly in accordance with equity and good conscience, the note is of almost ten years standing, it remains wholly unpaid, the complainant has no legal or equitable defence to the same, and these defendants relying upon the repeated

and most solemn promises of the complainant made on different occasions to these defendants, have indulged him from time to time, until they lost all confidence in the integrity of the complainant, it was under these circumstances they instituted their suit against the said complainant, and it is for this reasons they prosecute it and expect to prosecute it until "equity and good conscience" compels the complainant to pay his honest dues. And these defendants further answering admit that the apprehensions of the said complainant are well grounded, and that these defendants may under the circumstances obtain a verdict in said action upon said note unless the facts in said bill are proven as therein stated. And these defendants further jointly and severally answer say, that they admit the allegation in said bill to be true, "that unless the said defendants set forth and discover the several matters and particulars of which the discovery is hereby prayed your orator will be unable to prove said allegation to be true". And these defendants charge the fact to be that the said allegations in said bill contained are wholly untrue, and that the facts relative to the promissory note in the said bill mentioned are herein before fully and particularly set forth according to the best knowledge, information and belief of these defendants. And these defendants

further jointly and severally answering cannot admit or deny that the said complainant has any witness in California by whom he can prove the false statements contained in his said bill nor can they admit or deny that said complainant can find such witnesses in Utah (Misnamed "Deseret" in said bill), but these defendants insist, that if such witnesses can be procured by the said complainant in said State & Territory, this honorable court has no power to stay these defendants in the prosecution of their suit at law on said note, but the said complainant has ample remedy at law by an application for a continuance for the purpose of procuring the deposition of said witness, a remedy of which the said complainant has already availed himself in said action at law. And these defendants further answering admit that they were at the time of the filing of said bill prosecuting said action with proper and becoming vigor and diligence, they deny that they have threatened to proceed in the said action, if by the term threaten these defendants are to understand the complainant to charge them by menace with endeavouring to terrify the complainant and extort money from him, but if the said complainant means merely to alledge that these defendants have declared it to be their purpose to enforce the collection of the monies due them on said note by the vigorous prosecution of their



said suit at law, then these defendants admit that they have threatened and intend to proceed in their said action to final judgment and execution. And these defendants further answering deny that they ever refused to discover the truth touching the matters and things alledged in said bill, on the contrary they charge the fact to be that they never were called upon for a discovery at all, but these defendants further answering say, that if they had been called upon, "To discover the matters aforesaid or any of them" (i.e. the matters alledged in said bill) these defendants would have refused to make any such discovery as those matters are false in fact. And these defendants further answering say, they admit, that if the statements in said bill contained were true, the "actings, doings, pretences and refusals" charged in said bill upon these defendants, would have been contrary to "equity and good conscience", but in as much as said statements and charges are false, these defendants repudiate the charge that they have acted in the premises, "contrary to equity and good conscience". And these defendants further jointly and severally answering, deny all and all manner of unlawful combination and confederancy wherewith they or either of them are charged in said bill, without this, that there is any other matter, cause or thing in the said complainants bill of complaint contained,

material or necessary for these defendants  
or either of them, to make answer unto,  
and not herein and hereby well and suffi-  
ciently answered, confessed, traversed, and  
avoided or denied, is true to the knowledge  
or belief of these defendants; all which mat-  
ters and things these defendants are ready  
and willing to aver maintain and prove,  
as this honorable court shall direct; and hum-  
bly pray to be hence dismissed with their  
reasonable costs and charges in their behalf  
most wrongfully sustained.

R. S. Blackwell  
Solicitor for the  
said Defendants

Thomas Munroe  
Annis Munroe.

State of Illinois  
Schuyler County

August 11th 1854.

This day personally appeared  
before me the above named Thomas Munroe  
and Annis Munroe who being severally sworn,  
deposed that the several matters & things which  
are stated in the foregoing answer as far as  
they are stated upon their own knowledge  
are true, and as far as said statements are  
made upon the information of others they  
believe them to be true.

Joseph Montgomery Clk.

And afterwards on the 28th day of April A.D. 1851  
the complainant by his solicitor filed herein  
his replication to the said defendants answer  
in the words and figures following to wit:

Christopher E Yates } In the Schuyler Circuit Court  
vs. } April Term A.D. 1851.  
Thomas Munroe }  
Annis Munroe & } In Chancery.  
William A Kinman }


This repliant saving & reserving  
unto himself all & all manner of advantage of  
exception to the manifold insufficiencies of the  
said answer for replication thereunto saith, that  
he will aver & prove, his said Bill to be true cer-  
tain and sufficient in the law to be answered  
unto, and that the said answer of the said defen-  
dants is uncertain, untrue & insufficient to  
be replied unto by this repliant. Without  
this that any other matter or thing whatso-  
ever in the said answer contained material or  
effectual in the law to be replied unto, con-  
fessed and avoided, traversed or denied is true.  
All which matters and things this repliant is  
and will be ready to aver & prove as this honora-  
ble Court shall direct and humbly prays as in &  
by his said Bill he hath already prayed.

Christ. E. Yates.

And afterwards to wit on the first day of May  
A D 1851 the following decree was made and  
entered of Record in the words and figures fol-  
lowing to wit:

Christopher E Yates { In the Schuyler Circuit  
vs { Court of the Aprilt term  
Thomas Munroe { A D 1851. On the Chan-  
Annis Munroe & { cery side thereof.  
William A Hinman. }

And on this day came came  
the said complaint and defendants by their  
solicitors and thereupon the said defendants Tho-  
mas Munroe & Annis his wife moved the court  
to dissolve the injunction herein, which said  
motion coming on for a hearing on the said  
complainants bill and the answer of the said de-  
fendants Thomas Munroe and Annis his wife,  
and being heard and agreed, it is ordered and  
decreed by the court here, that the said injunction  
be dissolved and the said defendants Thomas  
Munroe & Annis his wife have liberty to proceed  
in their suit at law mentioned & set forth in  
the said complainants bill of complaint, and  
it is further ordered that this cause be continued  
until the next term of this court.

May 1. 1851. 

And afterwards to wit on the 18th Day of September  
A D 1851 the following order was entered of  
Record in said Court in the words and figures  
following to wit:

Christopher E Yates	} Schuyler Circuit Court Amended & supplemental Bill in Chy September term A D. 1851.
vs	
Thomas Munroe	
Annis Munroe	
William A Hinman & William A Patterson	

And now comes the said complainant by his solicitors and moves the Court for leave to file his amended and supplemental bill in this cause which said Bill is now herewith exhibited and entitled as above.

Warren, Edmunds & Bagby  
sols for complainant.

And afterwards to wit on the same day to wit on  
the 18th Day of September A D 1851 at a Circuit  
Court continued and held as aforesaid the following  
order was made herein to wit:

Christopher E Yates  
vs.  
Thomas Munroe  
Annis Munroe &  
William A Hinman

Schuyler Circuit Court.  
September term AD 1851.

And now on this day the motion made herein on this day for leave to file a supplemental bill herein came on to be heard and after argument said motion was overruled and said leave refused and thereupon the said complainant tendered his bill of exceptions, which was signed and sealed by the Court. And thereupon a pro forma decree was made dismissing the original bill with a view to the prosecution of an appeal or writ of error herein. And the said complainant then prayed an appeal to the Supreme Court which prayer was granted upon condition that complainant within 30 days from the date thereof enter into an appeal bond in the penalty of \$ 250. - with Isaac S Saunders Evert L Yates and Robert W Hatt or with the said Saunders and Hatt as sureties condition according to law.

And afterwards on the 19th day of September  
AD 1851 the said complainant by his soli-  
citors filed herein his bill of exceptions  
in the words and figures following  
to wit :

Christopher E Yates } In Schuyler. Sept.  
vs } term 1851.  
Thomas Munroe etal } On Chancery side.

Be it remembered that on this day the complainant by Warren & Edmunds his solicitors came into Court & moved the Court for leave to file an amended and supplemental bill herein, which said bill is in the words and figures following, that is to say:

To the Hon. Wm. A. Minshall Judge of the fifth Judicial Circuit in the State of Illinois, in Chancery sitting in Schuyler County Illinois —

Your Orator Christopher E Yates of Nauvoo Hancock County Illinois, Humbly Complaining sheweth unto your Honor, that on or about the 1<sup>st</sup> day of January A D 1840 your Orator purchased a Horse of one William A Hinman who is made defendant to this bill and who now resides in the said County of Schuyler, and in consideration of the same to secure the payment for said Horse your Orator executed his prommissory note in writing payable to one Annis Hinman (who has since intermarried with one Thomas Monroe and who now reside in Schuyler County Illinois and are made defendant to this bill, said promissory note bearing date January 4<sup>th</sup> 1840 payable to said Annis Hinman or bearer, one year from date with twelve per cent



interest and conditioned that the said note might be discharged within six months from the date thereof by the payment of the sum of eighty five Dollars, that upon the occasion of the making said note and after the same was made it was agreed by and between said William A Hinman Annis Hinman and your Orator that your Orator might pay said note in breaking up Prairie, for the said Hinmans or one of them, which breaking was then intended to be done on a farm in Schuyler County aforesaid then understood to belonging to, & was called the property of one Benjamin Hinman that afterwards and before the said note became due, by any condition thereof your Orator was requested by said William A Hinman and also by said Annis Hinman, who was then sole and unmarried to break up Prairie in said County of Schuyler upon a farm then said to belonging to said Benjamin Hinman, in payment of said note, at a place designated by said Annis & William A — . That after & upon such request of said Annis & William A, Your Orator did at the place designated by said Annis & William A, break for the said Annis and at their said request & to apply upon & in payment of said note a large amount of Prairie, before the said note became due and about the months of May, June and July AD 1840. And while said Annis held said note, that your Orator broke up Prairie as aforesaid at the request & place & for the purpose aforesaid to an amount far above the amount of

said note and did then and there before the maturity of said note fully pay and satisfy said note by breaking Prairie for the said Annis at the request of said Annis and William A.

That in the whole transaction in relation to the sale of said Horse & the payment of said note & breaking said Prairie said Annis pretended to be the principle and said William A. to be the agent of said Annis and that said Annis held out & represented said William A. to be her agent and to have full power to act for her. —

And your Orator states that he is informed & believes and so charges the truth to be that <sup>William A. was the principle, & that said</sup> said Annis had no real interest or at most no greater interest than said William A. that the interest of the one was the interest of the other, that said William A. was interested in & owned said Horse sold to your Orator. and that said Prairie was broken for said William A. as well as for said Annis. at the request & under the directions of both. and that said William A. really & in fact controlled the whole matter — though done in the name of said Annis. That after said Prairie was broken by your Orator as aforesaid at the request & for the purpose aforesaid and before the said note by the terms thereof would become due the said William A. Kinman & your Orator measured said Prairie so broken as aforesaid by your Orator at said request, and said Prairie breaking was then accepted and approved by said William A. and amounted to either  $35 \frac{3}{4}$  or  $37 \frac{3}{4}$  acres, and the value thereof far exceeded the amount

of said note - and it was then understood and agreed by and between said Annis & William A. & your Orator that said note was fully paid & satisfied and they the said Annis & William A. were to cancel & surrender the same to your Orator - That it was agreed by and between your Orator & said Annis & William A. that your Orator should receive & be allowed for breaking up said prairie the sum of four Dollars per acre. - And that said Annis & William A. were then & stil are indebted to your Orator for the balance of said Prairie breaking, after deducting the amount of said note, in the sum of about \_\_\_\_\_ Dollars, which they the said Annis & William A. severally agreed to allow & pay to your Orator - but which they have from than hitherto wholly refused & still refuse to do.

That at the time said Prairie which had been broken by your Orator as aforesaid, was measured & accepted as aforesaid said note was not given up but that said Annis & William A. then and for a long time afterwards fraudulently pretended that said note was mislaid or lost and could not be found to be surrendered to your orator or cancelled, that the matter rested for many years your Orator supposing said note to be lost, until a difficulty arose between your Orator and said William A. Hinman. When the said note was produced and payment thereup demanded from your Orator - that your Orator then requested all of said defendants to surrender & cancel

said note, but that the said defendants well knowing the premises aforesaid refused to deliver upon Cancel the same. — And your Orator charges the truth to be that the said note was never lost or mislaid as represented by said Annis & William A. but that they combined and confederated together to defraud your orator and represented said note to be lost or mislaid & that the same could not be found to be surrendered or cancelled, fraudulently contriving and intending to hold said note until the circumstances should be obliterated in the recollections of Witnesses and so far forgotten that your Orator could not prove the payment of said note — And since the intermarriage of said Annis and Thomas Monroe the said Annis & Thomas Monroe and said William A Hinman have combined & confederated together to defraud your Orator, and at the instigation of said William A Hinman commenced suit against your Orator in the Schuyler Circuit Court returnable to the fall or summer term of said Court A D 1849. according to your Orators best recollection, that the said term was not held as your Orator believes, but that a special term of said Court was called between that & the next succeeding regular term as your Orator recollects. That at said special term and all the time after the commencement of said suit up to the August term A D 1850 the said William A. Hinman pretended to be anxious & to be endeavoring to get said suit settled and said Cause went over said special

term 1849 & the spring term A D 1850. for the purpose of giving time to enable the parties to settle said suit, that said Hinman held out & represented to your Orator that said suit should be dismissed and pretended to have difficulty with said Monroe & Wife, about the settlement thereof and requested your Orator to deliver to him said Hinman certain receipts and papers in relation to said note. Horse & Prairie breaking to enable him to bring said Monroe & Wife to term. That at the Spring term of said Court A. D. 1850 your Orator employed Messrs Warren & Skinner of Quincy Illinois to defend said suit, that by some arrangement which is unknown to your Orator between said Wm A Hinman who was acting for said Monroe & Wife or pretended to your Orator to be, & your Orator's said counsel said cause went over the spring term of said Court A D. 1850. with a view to a settlement of said cause. that your Orator had a paper writing in relation to said Horse, Note & Prairie breaking signed by said Hinman showing that said note was cancelled — that your Orator knew of no witness by whom the fact could be proved — that said Prairie breaking was in payment of said note than by the production of said receipt & connecting the said receipt & the Horse trade & Prairie breaking together by other witnesses at the said Spring term of said Court A. D. 1850. or afterwards until after the spring term of said Court A D. 1851. — That during the said Spring term of said Court A D 1850. the said William A Hinman expressed great anxiety

to have said suit settled and said, that said suit should be dismissed, and requested your Orator to let him take said Receipt to go to said Monroe & wife, and that by using said receipt & papers in relation to said subject matter he would have the suit dismissed. That thereupon your Orator confiding in the representations of said William A Hinman delivered to said Hinman said Receipt for the purpose of effecting said settlement, and at the time in good faith supposed said Hinman would fully fairly & peaceably settle said suit, dismiss the same & surrender to your Orator & cancel said note said on and return said Receipt and papers to your Orator.

That said Hinman did not settle or dismiss said suit, cancel or surrender said note or return to your Orator the said receipt. And your Orator charges the truth to be that the said William A Hinman did not intend to settle or dismiss said suit, cancel or surrender said note or to return to your Orator said Receipt & papers but combined and confederated with said Monroe & wife, fraudulently to pretend to your Orator to be anxious to settle said suit for the purpose of getting from your Orator said Receipt and thereby as they supposed the only evidence in the power of your Orator to prove that said note had been paid or that said Prairie breaking applied upon cancelled & paid said note — and the said defendants Monroe & wife & Hinman combining and confederating together to defraud

your Orator and prevent his proper defense to said suit at law kept said Receipt and papers delivered by your Orator to said Hinman as aforesaid for the purpose of said settlement as aforesaid, or to dismiss said suit or surrender & cancel said note, but fraudulently, unjustly & contrary to equity & good conscience continued to prosecute said suit at law - that at the August term A D 1850. your Orator yet supposing said suit might be settled and arranged. And having employed said Warren & Skinner to attend to <sup>the</sup> defense of said suit - went to said terms of said Court for the purpose of having said suit closed up - that said Hinman still refused to return to your Orator said Receipt & papers and said Monroe & Wife & Hinman to dismiss said suit but insisted upon a trial of said Cause, that ~~within~~ said Warren or Skinner attended said term of said Court as they had arranged to do, and your Orator then employed John C Bagby Esqr. of Nashville to attend to said suit - that at the time your Orator knew of no witness by whom said facts in relation to said note as aforesaid could be proved. And the said William A Hinman as your Orator believes & so states the truth to be is & was the person really <sup>in</sup> interest in said suit, and the plaintiff in fact, your Orator filed a Bill in Chancery to enjoin the collection of said note for discovery in said suit and to enable your Orator to prove that said note was paid and satisfied.

that at the time of filing said bill your Orator supposed he could prove some facts in relation to said matter by Zachariah B Decker of the Territory of Utah & by John P Yates of California but did not know, that since that and since the last term of said Court he has ascertained that he can prove by other witnesses that said note was fully paid and satisfied and fully establish and prove by the testimony of John P Yates of Hancock County Illinois, Johannes Decker of Mc Donough County Illinois, Dr. Hall of Schuyler County Illinois, and other witnesses, that said note was given for said horse, that said Prairie was broken as aforesaid by your Orator for & at the request of said Annis & William A. in payment for said horse & upon said note. And your Orator further says that he never purchased but one horse of said Annis or William A. and that he did not leave until after the last term of said Court that he could prove said Facts by said Witnesses or any of them - that the answer to said Bill was filed at the last term of this Court, and your Orator was advised by his said counsel that said cause could not be heard at said term, that the cause could not be tried. And your Orator not being learned in the law supposed, that said cause could not be heard at said last term, left it to his said counsel to manage, in good faith believing that by the rules & practices of



said Court as represented by his said counsel  
said cause could not be heard, and went  
thence busily about endeavoring to find what  
could be proved to establish the truth of said  
bill of complaint & disprove the answer  
of said defendants. that up to the said last  
August term of said Court he had relied upon a  
settlement of said suit at Law and upon the said  
fraudulent representations of said Hinman that  
it should be settled; that when he had ascer-  
tained at the said last August term of said  
Court that said defendants had combined to-  
gether as aforesaid fraudulently to obtain judg-  
ment against your Orator upon said note -  
your Orator filed said bill & then fully suppo-  
sed & believed that the said defendants would ans-  
wer the truth & discover the facts to show the  
payment of said note as aforesaid and so supposed  
until said answer came in and he was informed  
that said answer denied the truth of said bill &  
the facts therein stated - that before that time  
he was continually tried but been unable to  
find witnesses to sustain said bill & defeat said  
suit at law by proving the facts in relation thereto,  
but could find none.

That after it was known that said defendants  
in their answer had denied the truth of the  
facts stated in bill he ascertained from  
said Hall and others that he could prove said  
facts by witnesses independent of the discovery sought  
- that he did not ascertain any of said witnesses or  
what he could prove by them until after said  
last term of said court - That it was a

matter of so long standing that he had forgotten who were cognizant of the facts and it was not until after the the great injusties done to your Orator by said dependants answer & their said combinations & confederacies to defraud him that he was able to ascertain by whom he could prove the facts. your Orator further states that he relying upon his said counsel & his said representations that nothing could be done in said cause at said last term of said Court left said Court for home ~.

That after he left said Court the Injunction which had been allowed in said cause upon the filing of said bill in Chancery was on the motion of said dependants dissolved at the said last term thereof and a judgement rendered against your Orator on said suit at Law for the amount of said note and intrest thereon at twelve percent, as your Orator is informed and verily believes, and that an execution has been issued on said judgement, and is now in the hands William A Patterson as Sherriff of Hancock County, for collection, (who is made dependant to this bill) ~

Your Orator further says, that said suit in Chancery was continued as your Orator is informed and believes — and is now pending in said Court. And so your Orator says that said judgement at Law was obtained against your Orator by means of the false fraudulent & covenious combinations & confederacies of said Monroe & wife & said Hinman, to defraud your Orator and to prevent your Orator having the

advantage of a fair trial at law in said suit.

Your Orator further says that he is advised and believes & so states the truth to be that he is now liable together with his security John McCreery upon the injunction Bond filed in said cause at the said August term A.D. 1850 upon filing the bill in Chancery aforesaid - that said Injunction was dissolved as your Orator is advised and believes, not by reason of any fault or inattention of your Orator or in consequence of his negligence, but in consequence of the inexperience of his said counsel and the false & fraudulent answer of the said defendants filed in said cause as aforesaid.

That your Orator would have filed his bill long before he did and caused the matter to have been properly investigated but for the fraudulent combinations of said Monroe & wife & Hinman aforesaid to pretend to your Orator that said Hinman was anxious to have the matter settled for the fraudulent purpose of getting into their hands said Receipt & papers the only evidences then in the power of your Orator of the payment of said note.

And your Orator states & charges that the said actings & doings of said Monroe & wife & said Hinman, in relation to said subject matter are most palpably fraudulent & unjust and contrary to equity & good conscience.

That your Orator is entirely remediless at law, and that the said Original bill filed as aforesaid and the allegations therein contained and the prayer of relief are as your Orator is advised by counsel &

verily believes wholly inadequate for your Orator  
to obtain the relief to which he is justly entitled  
according to equity & good conscience — that  
said bill was prepared by said Bagby for your  
Orator during term time and done as your Orator  
is advised by said Bagby & believes with as much  
care as he could considering the time & his ex-  
perience — that said bill had to be prepared  
in a great hurry in consequence of the said  
false & covenious combination of said defendants  
Monroe & wife & said Kinman to hold <sup>out</sup> to  
your Orator prospects of settlement until your  
Orator should be in such a position that he  
could not make his defense at law, and then  
in the absence of your Orators counsel urging  
a hearing in said cause, that your Orator  
provided the best counsel he could at the time &  
made the best efforts at defense he could un-  
der the circumstances —

Your Orator therefore prays that this bill  
may be filed as an amended & supplemental  
bill in said cause in Chancery, that the peoples  
writ of Injunction may issue herein enjoin-  
ing the said defendants Monroe & wife or  
Kinman their agents, attorneys or assigns  
from proceeding by issuing execution or  
otherwise to collect said Judgement at Law, in  
favor of said Monroe & wife against your  
Orator, and also from proceeding at law or  
otherwise upon said Injunction bond to col-  
lect the amount of said Judgement or costs,  
and also injoining said Patterson from exe-  
cuting said writ of execution issued on said

Judgement & now in his hands as aforesaid.

That the said defendant Annis Monroe & Thomas Monroe and William A Hinman be required to answer this amended & supplemental bill and each & every allegation therein as fully as if here again fully & particularly interrogated thereto hereby expressly waving said answers being on oath.

And that upon a final hearing herein that the said injunction be made perpetual — that said note be decreed to have been fully paid and satisfied before by the terms thereof the same became due, that said judgement at Law be set aside and forever held for naught, that the said note be surrendered to your Orator & be cancelled — that said Injunction bond be cancelled — and that upon said Hearing the answer to said original bill as to any allegation in this bill be taken as of no more force & effect than is if not on oath — and for such other & further relief in the premises as to the Court may appear just & equitable, and your Orator as in duty bound will ever pray &c.

Warren, Edmunds & Bagby } C. E. Yates.  
Solicitors for Compt.

State of Illinois, Schuyler County ss:

Christopher E Yates the Complainant in the foregoing bill being duly sworn doth depose & say that said bill & the matters therein contained so far as stated on his own knowledge are true & so far as stated on information & belief he believes them to be true. — Witness my hand at Rushville

this 18th day of September A. D. 1851. C. E. Yates.

Subscribed and sworn to before me this 18th day of September A. D. 1851. J. Montgomery Clk. by Lusk. Dep. Clk.

which motion being heard and considered by the Court it is ordered that said motion be overruled and leave refused to said complainant to file said supplemental bill, to which opinion & decision of the Court in overruling said motion & refusing said leave the said complainant by his solicitors aforesaid excepts and pray that this his bill of exceptions be signed, sealed & made a part of the record herein, which is done accordingly.

September 19th 1851 Wm. A. Minshall

State of Illinois }  
Schuyler County } ss.

I Joseph Montgomery Clerk of the Circuit Court in and for said County do hereby certify that the foregoing transcript is a true, perfect and complete copy from the Records in my office of all the orders judgements and proceedings in the case of Christopher E Yates against Thomas Munroe, Annis Munroe & William A Hinman in as full, perfect and complete manner as the same remains of Record in said Court.

In Witness whereof I have hereunto set my hand and affixed the seal of said Court at Rushville this 1st day of December A.D. 1851.

Joseph Montgomery  
Clerk



State of Illinois, }  
SUPREME COURT. } ss.

The People of the State of Illinois.

To the Sheriff of *Schuyler* County.

BECAUSE in the record and proceedings, and also in the rendition of the judgment, of a plea which was in the Circuit Court of *Schuyler* County, before the Judge thereof, between *Christopher E. Yates*

and vs.

*Thomas Monroe, Annis Monroe*  
and *William H. Homan*

defendant it is said that manifest error hath intervened to the injury of the said *Yates*

as we are informed by *his* complaint, the record and proceedings of which said judgment, we have caused to be brought into our Supreme Court of the State of Illinois, at Springfield, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said

*Thomas Monroe, Annis*  
*Monroe, and William Homan*

that *They* be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Springfield, in said State, on the *2* Monday in *December* next, to hear the records and proceedings aforesaid, and the errors assigned, if *They* shall think fit; and further to do and receive what the said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said *defendants* notice, together with this writ.

*James N. Heat*

WITNESS, the Hon. ~~Wm. H. Wason~~, Chief Justice of our said Court, and the seal thereof, at Springfield, this *25<sup>th</sup>* day *November* in the year of our Lord, one thousand eight hundred and ~~forty~~ *forty-five*

*one.*

*W. B. Warner*  
Clerk of the Supreme Court.



OFFICE OF THE CLERK OF THE SUPREME COURT

The People of the State of Illinois

To the Clerk of

THE SUPREME COURT OF ILLINOIS

Supreme Court.

*C. Yates* Plaintiff in error,  
vs.  
*The Missouri Etal* Defendant in error.

Scire Facias.

*Southern*

Filed. 2<sup>o</sup> Dec 57  
W B Mann  
clerk

Sheriff's Fees:  
Serving upon 3 pts. 1.50  
Return of sci fa Postage 10  
Total amt \$1.60  
Lewis S. Erwin, Shff Schuyler Co. Ill.

Summons  
John Lee &  
Richard Lee

by *Frank Green*  
his deputy  
Sherriff of Schuyler  
County Missouri

Deems & Son

Where this day served the within writ of scire facias upon the within named Thomas Thomas and Lewis Thomas by reading the same to each and all of them in Schuyler County Missouri on the 28<sup>th</sup> day of November 1857

State of Illinois, }  
SUPREME COURT. } ss.

The People of the State of Illinois,

To the Clerk of the Circuit Court for the County of *Schuyler* 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 *Schuyler* county, before the Judge thereof, between

*Christopher E. Yates*

plaintiff and *Thomas Monroe*

*Amos Monroe and William Heman*

defendant it is said manifest error hath intervened to the injury of the aforesaid *Yates*

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 Springfield in the county of Sangamon, on the *2nd* *Monday* in *December* 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. *Samuel H. Dent* Chief

Justice of the Supreme Court, and the seal thereof, at Springfield, this *25th* day of *November* in the year of our Lord, one thousand eight hundred and

*fifty one*

*W. B. Warren*

Clerk of the Supreme Court.

Supreme Court.

8606

*C. Yates* Plaintiff in error

vs.

*J. Monroe et al* Defendant in error,

Writ of error,

---

Filed 25 Nov. 1851.

W. B. Vance  
CLK

C. E. Yates,  
vs.

Error to Schuyler, In chancery.

Tho's Monroe Etals.

On the 15th day of August, 1850, C. E. Yates, filed his bill in chancery against Thomas Monroe, Annis Monroe his wife, and William A. Hinman, in substance. That about Jan. 1st, 1840, said YATES purchased of said HINMAN, a horse, for which he executed his note to ANNIS HINMAN, (SAID ANNIS MONROE) dated 4th Jan. 1840 payable to said ANNIS or bearer, one year from date with 12 percent interest, conditions: "that said note might be discharged within six months from the date thereof, by the sum of eighty five dollars." That it was then understood and agreed that said note might be discharged by \$75 prairie breaking on the farm of one BENJ. HINMAN, in the county of Schuyler, at \$4 per acre. That YATES did in the months of May, June and July 1840.

and prairie 35 $\frac{1}{2}$  or 37 $\frac{1}{2}$  acres, in pursuance of said agreement. That Afterwards and in October 1840, said prairie breaking was measured and accepted by said Wm. A. Hinman, which more than discharged said note. That said MONROE's and HINMAN, have refused to deliver said note to YATES, and MONROE and wife, at the instigation of said Hinman, have instituted suit against YATES, in Schuyler Circuit Court, upon said note, contrary to equity and good conscience, YATES fears judgment may be rendered against him in said cause, unless the said MONROE's and HINMAN, are required to set forth and discover said matters. That some of your orators, witnesses reside in Utah and California; that until their evidence shall be obtained it will be unsafe for your orator to proceed to a trial of the said action, and injunction ought to issue, and the defendant restrained from any further proceeding in the said action at law commensed as aforesaid; Prayer of injunction, also summons, and defendants required to answer on oath the matters in said bill, signed, sworn to and filed.

Injunction ordered—Bond \$350.

Aug. 26 '50. Bond filed and Injunction issued. 1851, April 28. Demurrer of Wm. A. HINMAN, to said bill. Feb. 11th 1851. Answer of Thomas and Annis Monroe filed—Joint and several states—

Admit the purchase of the Horse as stated by YATES, but deny that said Horse was the property of said HINMAN, and say that said Horse, at said sale was the property of said ANNIS, that said HINMAN, in said sale and taking said note acted as the agent of said ANNIS, and not otherwise; that said HINMAN had no power other than to sell said Horse for cash or on credit, admit the making of note as states in bill, but deny that at the sale of said Horse and taking said note, it was understood and agreed between said YATES, HINMAN and said ANNIS, that said note might be discharged by YATES for \$75, or any other sum in breaking prairie, at any price; and say that if any such agreement was made, it is void, at Law and in Equity, because not contained in said note, and is inconsistent with it, and is not admissible in evidence at Law or in Equity, to contradict said note; that said note was to be paid in Money; deny all knowledge or belief of such agreement as stated in said bill, and say they have been informed and believe no such agreement was ever made between said YATES and HINMAN, and that if any such agreement was made, it was without authority of said ANNIS, and without her knowledge or subsequent ratification, and disclaim said agreement, and insert upon their legal rights.

Admit that Yates did break prairie on farm of B. HINMAN, but when, how many acres, at what price or how much it was worth, they have no knowledge and cannot answer, but deny that said prairie breaking was done in pursuance of said agreement, set out in said bill or any other between said Yates, and said HINMAN as the agent of said ANNIS; deny that said breaking was done in discharge of said note, or that YATES is entitled to credit on said note by reason thereof, or on any other score; know nothing of the measurement of said prairie breaking mentioned in said bill; deny that they have combined and confederated with said HINMAN or any other person to defraud said YATES in the premises; deny that they have refused to deliver said note, or that said YATES ever requested or demands the delivery of said note to him, and say, YATES never pretended, alleged or hinted

to them, or either of them that he claimed a credit on said note, on account of said prairie breaking, or that he was entitled to any credit on said note until about the time they commenced suit upon said note as alledges in said bill of complaint, but always said he would pay said note, and made promises as to the time when he would pay said note, and some of those promises were made to said THOMAS since the commencement of said suit at Law.

Deny they were instigated by said HINMAN to commence said suit. But admit they have instituted and were and are prosecuting suit on said note, to collect the sum as stated in said bill; deny that it is contrary to equity, but is thoroughly in accordance with equity. That the note is of almost ten years standing, and remains wholly unpaid; and deny that YATES has any legal or equitable defence to said note; and say that the allegations in said bill contained are wholly untrue; deny that the Court have proven to stay the proceedings in said suit at law, to obtain the testimony of witnesses from Utah and California; that YATES has ample remedy at law; deny that they can refused to discover the truth touching the matters in said bill, that they never were called upon for such discovery; deny all unlawful combinations, and confederacies wherewith they are charged.

Signed and sworn to.

1851, April 28th. Replecation of YATES filed to said answer.

May 1st. Decree dissolving Injunction, show that the parties by their solicitors appeared; that said THOMAS and ANNIS MONROE moved the court to dissolve said Injunction; said motion coming on to be heard on bill and answer, it is ordered and decreed, that said Injunction be dissolved, and said ANNIS and THOMAS MONROE, liberty to proceed said suit at law. It is further ordered that this cause be continued to the next term of their court.

1851, September 18th. YATES, by his counsel, moved the court for leave to fill his amended and supplemental bill in this cause, which was exhibited, sworn to by said Yates, and was entitled Christopher E. Yates vs. Thomas Monroe, Annis Monroe, W. A. Hinman and William A. Paterson.

Whereupon it was ordered by the Court.

"And now on this day, the motion made herein on this day, for leave to file a supplemental bill herein, came on to be heard, and after agreement said motion was overruled, and said leave refused. Thereupon the said YATES, tendered this bill of exceptions which was signed and sealed by the Court. Thereupon a profound decree was made dismissing the original bill, with a view to the prosecution of an appeal, or writ of error herein."

#### BILL OF EXCEPTIONS.

YATES moved the Court for leave to file an amended, and supplemental bill herein, as follows;

That on the 1st day of January, A. D., 1840, said YATES purchased of said Wm. A. HINMAN a horse, and to secure the purchase money for said horse, said YATES executed his promissory note, in writing, payable to one ANNIS HINMAN or bearer, (who has since intermarried with and is now the wife of Thomas Monroe) said note dated 4th January, 1840, payable one year from date with twelve per cent interest, and conditioned that said note might be discharged within six months from the date thereof, by the payment of \$85; that upon the occasion of making said note, and after the same was made, it was agreed by and between Wm. A. & ANNIS and said YATES, that YATES might pay said note in breaking prairie for said Hinman, which breaking was then intended to be done on a farm in Schuyler county, then understood to belong to and was called the property of one Benj. Hinman; that afterwards, and before said note became due by any condition thereof, said Yates was requested by said William A. and Annis, (said Annis being then sole and unmarried) to break prairie in said county of Schuyler, on a farm then said to belong to said B. Hinman, in payment of said note, at a place designated by said Annis and Wm. A.; that upon such request said Yates did at the place designated by said Annis and Wm. A., break for said Annis, at their request, to apply on said note, a large amount of PRAIRIE,

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before said note became due, about the months of May, June and July, 1840, and while said Annis held said note; that said Yates broke said prairie as aforesaid, at the request and place and for the purpose aforesaid to an amount far above the amount of said note, and did then and there, before the maturity of said note fully pay and satisfy said note by breaking prairie as aforesaid

That in the whole of said transaction, said Wm. A. and Annis pretended that said Annis was the principal, and said Wm. A. her agent with full power to act for her.

States on information and belief that said Wm. A. was principal, and said Annis had no interest, or at most had no greater than said Wm. A.; That said Annis and Wm. A. was the same; that said Wm. A. was interested in and owned said horse, and that said prairie was broken for said Wm. A. as well as for said Annis, at the request and by direction of both that Wm. A. had the matter, although done in the name of Annis, and said prairie was broken by said Yates as aforesaid, and before said note became due, said breaking was measured by said Yates and Wm. A., and accepted and approved by said Wm. A. and amounted to 35 $\frac{1}{2}$  or 37 $\frac{1}{2}$  acres, and the value thereof far exceeded the amount of said note, and that it was there agreed by and between Annis and Wm. A. and said Yates, that said note was fully paid and satisfied and said Annis and Wm. A., were to surrender and cancel said note; that by agreement between said Yates and said Annis and Wm. A. said Yates was to be allowed \$4 per acre for breaking said prairie.

That said Annis and Wm. A. are still indebted to your orator for the balance of said prairie breaking, after deducting said note, in the sum of \$ which they agreed to pay to said Yates, but which they have wholly refused and still refuse to do; That at the time said prairie breaking was measured said note was not given up, but said Annis and Wm. A. then, and for a long time afterwards, fraudulently that said note was mislaid or lost; that the matter rested for many years, Yates supposing said note was lost, until a difficulty arose between said Yates and said Wm. A., when said note was produced and payment thereof demanded from Yates; said Yates then requested all of said defendants to surrender and cancel said note; that they refused to cancel and cancel the same.

Charges that said note was never lost, but that said defendants combined and confederated together to defraud Yates and represented said note to be lost or mislaid and could not be found, fraudulently contriving and intending to hold said note until the circumstances should be obliterated in the recollection of witnesses, and so far forgotten that Yates could not prove the payment of said note.

That said defendants, Thomas and Annis Monroe, intending to defraud your orator at the instigation of said Wm. A. commences suit against Yates, returnable to the fall or summer term of the Schuyler Court A. D. 1849, upon said note; that term was not held, but a special term, and all the time after the commencement of said suit up to the August term A. D. 1850, said Wm. A. pretended to be anxious, and to be endeavoring to get said suit settled, and cause meet over said special term '49, and the Spring term 1850, for the purpose of giving time to enable the parties to settle; that said Hinman held out and represented Yates, that said suit should be discussed and pretended to have difficulty with said Monroe and wife, about the settlement thereof, and requested Yates to deliver to said Wm. A. certain papers and receipts relating to said Note, Horse and Prairie breaking, to enable him to bring said Monroe and wife to terms; that at the Spring term of said Court 1850, Yates employed Messrs Warren and Skinner to defend said suit, that by some arrangement unknown to Yates, between said W. and S., and Hinman, who acted as attorney of Monroe and wife, said cause meet over said term with a view to a settlement; that he Yates had a paper writing relating to said Horse, note and prairie breaking, showing that said note was cancelled; that your orator knew of no witness by whom the facts could be proved, than by production of said receipt and connecting the said receipt, the Horse trade, and prairie breaking to gether by witnesses, until after the Spring term of said Court A. D. 1851.

That during the Spring term of said Court A. D. 1850, the

said Wm. A. Hinman expressed great anxiety to have said suit settled, and said that said suit should be dismissed, and requested said Yates to let him take said receipt, to go to said Monroe and wife, that by using the same he would have the suit dismissed.

That thereupon said Yates confiding in said Hinman, delivered to said Hinman said receipt, for the purpose of effecting said settlement, and at the time in good faith supposed said Hinman would fully, fairly and frankly settle said suit, dismiss the same, and surrender to your orator, and cancel said note and return said receipt and papers to your orator.

That said Hinman did not dismiss said receipt, cancel or surrender said note, or return to your orator said receipt.

Charges that said Wm. A. did not intend to do so—but that he combined and confederated with said Monroe and wife fraudulently to pretend to be anxious to settle said suit, for the purpose of getting from your orator said receipt, and thereby they supposed the only evidence in the power of your orator to prove said note paid, and combining and confederating together, to defraud your orator, and prevent his proper defence to said suit at law; kept said receipt and papers delivered by your orator to said Hinman as aforesaid, and refused to dismiss said suit, surrender or cancel said note, but fraudulently and unjustly contrary to Equity and good conscience, continued to prosecute said suit at law.

That at the Aug. Term 1850, Yates supposed said suit would be settled, and having employed said Warren and Skinner to defend said suit, went to said Court for the purpose of having said suit cleared up.

That said Hinman refused to return to your orator said receipt and papers, and said Monroe and wife, and Hinman refused to dismiss said suit, but insisted upon a trial of said cause.

That neither said Warren or Skinner attended said Term of said Court as they had agreed to do—and your orator then employed John C. Bagby Esq., an attorney at Schuyler Co. Ill., to attend said suit.

That, at that time your orator knew of no witness by whom said facts, relating to said note could be proved.

That Yates believes and so states the truth to be, that said Hinman, is and was the person really interested in said suit.

That your orator filed a bill in chancery, to enjoin the collection of said note, and for discovery in said suit, to enable your orator to prove said note testified.

That your orator then supposed he could prove some facts by one Decker and Yates then of California or Utah, but did not know.

That since the last term of said Court, he has ascertained, that he can prove by other witnesses that said note was fully paid and satisfied, by the testimony of J. P. Yates, J. Decker Dr. Hall and others of Illinois; and that said note was given for said Horse; that said Prairie was broken as aforesaid by your orator for and at the request of said Wm. A. and Annis in payment for said Horse and upon said note.

That your orator never purchased but one horse, of said Annis or Wm. A.

That your orator did not learn until after the last term of said court, that he could prove said facts by said witnesses, any of them.

That the answer to said bill was filed at the last term of said court, and he was advised by his counsel that said cause could not be heard, and not being bound in the law, supposed said cause could not be heard at said term, left it to his counsel to manage in good faith, believing that by the rules and practice of said court, as represented by his said counsel, said cause could be heard, and went then busily about endeavoring to find what could be proved to establish the truth of said bill, disprove said answer.

That up to the last August term of said Court he had relied upon a settlement of said suit at law, and upon the said fraudulent representations of said Hinman.

That he then filed said bill, and there and until said answer came in denying the truth thereof as aforesaid, supposed and believed said defendants would answer the truth, and discover the said facts to prove payment of said note.

That before that time he had continually tried, but had been unable to find witnesses to sustain said bill, and defeat

Blackwell

3 Gilman 541

The filing sup. bill is matter of discretion & leave of court must be obtained & the refusal cannot be assigned for error

Story Eq R 397 = In this case no sup. bill could be filed at the time - a sup. bill must state new facts discovered which have occurred since original bill was filed - or of new facts discovered which will make new issues but not of new evidence to prove old issues

Story Eq R §311-12 } bill of discovery must show  
2 A K M 323 } that the facts can't otherwise be  
Mcconn 364 } proved

3 Babb 303 } the ans to bill of discovery can't  
1 u 253 } be disputed by a deposition

4 u 184  
1 A K M 464  
3 Conn 140  
Harram 346  
6 B Monroe 540

3 Story R 310-11 & 12

3 Gilman 2 } He shows it out what new  
evidence is

Story Eq R § 887-8  
3 Seam 290  
Merr 60 126-149-193  
2 Deorn 420-2  
2 Gilman 385

3 u 031  
4 u 569  
3 Deorn 131  
2 Kelly 275  
6 J R 479  
13 Alabama 510  
1 John Case 422  
128 K 465

1st Lefroy 201  
The party must be without fault or negligence

said suit at law, by proving the facts.

That after it was known that said defendants in their said answer had denied the truth of the facts stated in said bill, he ascertained from said Hall and others, that he could prove said facts by witnesses independent of discovery sought; that he did not ascertain any of said witnesses, or what he what he could prove by them until after said last term of said Court; that it was a matter of so long standing, that he had forgotten who were cognizant of the facts, and it was not until after the great injustice done to your orator by said defendants answer, and their said combinations and confederacies to defraud Yates, that he was able to ascertain by whom he could prove the facts.

That after he left said Court at said last term, said injunction was dissolved, a judgment rendered against your orator suit at law, amount of said note and interest.

That said judgment at law is now in the hands of Wm. A. Patterson, Sheriff of Hancock county for collection.

That said suit in chancery was continued, and is now proceeding—that said judgment at law was obtained against your orator by means of the false fraudulent and corinuous combinations and confederacies of said Monroe and wife, and Hinman, to defraud your orator, and prevent his having a fair trial at law in said suit.

That your orator and his securities are liable on said injunction Bond—that said Injunction was dissolved, not by reason of any fault or inattention of his, but in consequence of the inexperience of his Counsel, and false, and fraudulent answer of said defendants file therein.

That your orator would have filed his bill long before he did, and caused the matter to be investigated, but for the fraudulent continuation of said Monroe and wife, and Hinman aforesaid.

Charges the actings and doings of Monroe and wife, and Hinman in relation to said subject, matter are fraudulent and are contrary to equity and good conscience.

That your orator is entirely remediless at law, and that said original bill, allegations and prayer of Relief, are wholly inadequate for your orator to obtain the relief of which he is entitled.

That said bill was prepared by said Bagby, during Term time, and done as he is advised by said Bagby, and believes with as much care as he could considering the time and his experience; that said bill had to be prepared in a great hurry, in consequence of the said false and erroneous combi-

nations of said Monroe and wife, and Hinman, to hold out prospects of settlement to your orator as aforesaid, until your orator should be in such a position that he could not make his defuse at law; and then in absence of your Orator Counsel urging a hearing in said cause.

That he provided the best counsel he could at the time, and made the best efforts at defuse, he could under the circumstances, prayer that said bill may be filed as an amended and supplemental bill, also an injunction restraining the collection of said judgment at law, also from proceeding to prosecute upon said Injunction Bond, also said Patterson from levying and collecting said Execution.

That Monroe and wife, and Hinman, be required to answer the amended and supplemental bill—oath made.

That the Injunction be made perpetual—said note be decreed to be fully paid before by the terms thereof the same became due.

That said judgment at law be set aside, note be surrendered and cancelled, said injunction Bond be cancelled, and that upon the hearing the answer to said original bill, as to any allegation in this bill be taken as of do more form and effect than as if not on oath.

Sworn to 18th Sept, 1851.

Court overruled motion, and leave referred to said Yates, to file said supplemental and amended bill; ruling of Court excepted to.

#### ERRORS ASSIGNED.

1st. That the Court erred in dissolving the Injunction granted herein.

2d. The Court erred in not continuing motion to dissolve on the application of complainant.

3d. The Court erred in refusing to permit the complainant to file his amended supplemental bill herein.

4th. The Court erred in refusing to permit the complainant to file his supplemental bill herein, and in overruling his motion for leave to file the amended and supplemental bill.

5th. The Court erred in dismissing said complainants said bill of complaint.

6th. The Court erred in refusing to grant an Injunction upon the said amended and supplemental bill, and refusing to file the same, and in dismissing said bill.

WARREN & EDMUNDS,  
For Plff in Error.

3 Samuel 151