No. 11856

Supreme Court of Illinois

Hamlin, Admr.

vs.

Kingsley.

71641 7

Peoria

John Hamlin admr &c

vs

Francis P. Kingsley

38

1851

11856

Preserved

John Hamlin
Administrator of
Wm H. Fessenden
v
Francis P. Kimpsey

Supreme Court
June Term 1857
Error to Peoria

And the said plaintiff in Error comes and says there is manifest Error in the Record of the proceedings and the rendition of the judgment of the said Circuit Court herein this to wit

1 The Court below erred in giving the instruction prayed for by defendants Counsel

2. The Court erred in overruling the motion for a new trial

For these and other manifest Errors in the record and proceedings aforesaid and the Judgment aforesaid the said plaintiff prays that the said judgment may be set aside Annulled ~~and~~ reversed and wholly for naught estimated

A. O. Marmaduke
Atty for Pltff

And the said Deft. in Error says that in the record & proceedings aforesaid, & in the rendition of the judgment aforesaid there is no such error as the Pltff. in Error hath above alleged - & he therefore prays that the said judgment of the circuit court may be in all things affirmed &c. By Gustavus Peters

[11856-1]

Be it remembered that heretofore to wit, on the twenty sixth day of February in the year of our Lord one thousand eight hundred and forty eight, there was filed in the office of the clerk of the circuit court in and for the county of Peoria in the State of Illinois a Precipe in the words and figures following, to wit.

Precipe = "William H. Fessenden } Peoria circuit court
vs } May Term AD. 1848.
Francis P. Kingsley } assumpsit, damages $500.00

The clerk of said court will please issue summons in the above entitled cause, directed to sheriff of said county to execute - action trespass on the case on promises damages $500.00 -

H. O. & A. L. Merriman
attys for pltff -"

J. Gale, clk -

Whereupon the clerk of said court issued a summons in said cause under the seal of said court to the Sheriff of Peoria county, which with the return of said sheriff as endorsed thereon is in the words and figures following, to wit.

Summons = "The People of the State of Illinois, To the Sheriff of Peoria county, Greeting: We command you to summon Francis P. Kingsley, if he may be found in your county, to appear before our circuit court on the first day of the term thereof, to be held at Peoria within and for the said county of Peoria on the fifth Monday of May next then and there, in our said court, to answer unto William H. Fessenden of a plea of trespass on the case on promises, to his damage five hundred dollars as he says, and make return of this writ, with an endorsement of the time and manner of serving the same, on or before the first day of the term of the said court to be held as aforesaid - Witness Jacob Gale clerk of our said court, and the seal thereof at Peoria this twenty sixth day of February in the year of our Lord one thousand eight hundred and forty eight -

Jacob Gale, clerk.

[endorsed]

"State of Illinois, Peoria county ss: Served the within Summons by reading the same to the within named Francis P. Kingsley, March 1st 1848 -

William Compher, Shff P. Co,
By Clark Cleaveland Deputy"

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And afterwards on the first day of March A.D. 1848 there was filed in the office of the said clerk a declaration in said cause and a copy of the note and account sued on in the words and figures following, to wit.

" Of the Peoria County circuit Court
of the May term A.D. 1848

State of Illinois } ss. Francis P Ringsley was summoned
Peoria County } to answer unto William A Fessenden the plaintiff in this suit of a plea of Trespass on the case on promises, and thereupon said plaintiff by H O & A D Merriman complaines For that whereas heretofore to wit on the 2nd day of June in the year of our Lord one Thousand eight Hundred and Forty three at Peoria, that is to say at the county of Peoria aforesaid, said defendant Made and executed his certain note in Writing commonly called a promissory note bearing date the day and year aforesaid, and thereby then and there promised to pay to one George O. Ringsley (by the name of Geo. O. Ringsley) or bearer the sum of one Hundred and Sixty dollars and Seventy Seven Cents three Years from the date thereof, to draw twelve per cent interest after maturity (with interest at the rate of Twelve per centum per annum after the said three years meaning) for value received and said defendants then and there delivered said note to said George O Ringsley and in consideration thereof said defendant then and there undertook and faithfully promised to pay to said George O. Ringsley the said sum of Money and interest according to the tenor and effect of said note and said plaintiff further avers that afterwards to wit on the day of the date of said note in the county of Peoria aforesaid, said George O Ringsley by his endorsement on the back of said note by the name of George O Ringsley endorsed and then and there delivered said note to said plaintiff by the name of Wm H. Fessenden whereby said plaintiff has become the owner and bearer of said note - And said plaintiff further in fact says that the time specified in said note for the payment thereof has long since elapsed yet the said defendant although often requested so to do has not as yet paid the said sum of Money nor any part thereof to said plaintiff but to pay the same has hitherto wholly neglected and refused and still does neglect and refuse. 2. And also for that whereas the said defendant

hereto fore. to wit. on the second day of June in the year of our Lord one thousand Eight Hundred and forty three at Peoria that is to say at the county of Peoria aforesaid by his certain promissary note, by him duly executed bearing date the day and year last aforesaid promised for value received three Years from the date thereof to pay to Geo C Ringsley (George. C. Ringsley meaning) or bearer the sum of One Hundred and sixty Dollars and seventy seven cents to draw twelve per cent interest after maturity (with interest after due at the rate of twelve per centum per annum meaning. and then and there delivered said note to said George. C. Ringsley and afterwards to wit on the day of the date of said note, said defendant in consideration thereof undertook and faithfully promised the said George C. Ringsley to pay him or bearer the said sum of money according to the tenor & effect of said note - And said plaintiff further avers that afterwards to wit on the day of the date of said note, to wit. at the county of Peoria aforesaid said George. C. Ringsley by the name of Geo. C. Ringsley endorsed said note to said plaintiff. by the name of Wm. H. Pressenden and then & there delivered said note so endorsed to said plaintiff. whereby and by force of the statute in such case made & provided said plaintiff has become and is the bearer of said note. and authorized to receive the said sum of money and interest according to the tenor and effect of said note. Yet although said note has long since been due and payable according to the tenor and effect of said note, and although said defendant has often been requested so to do has not as yet paid the same or any part thereof to said plaintiffs. but to pay the same said defendant has hitherto wholly neglected and refused. and still does neglect and refuse. And also for that whereas the defendant on the first day of February Eighteen hundred and forty eight in the county aforesaid. was indebted to the plaintiff in the sum of five Hundred Dollars. for the price and value of work then and there done, and materials provided. by the plaintiff for the defendant at his request; and in the sum of five Hundred Dollars. for the price and value of Goods Chattles, wares, and merchandise. then and there sold and delivered. by the plaintiff to the defendant at his request. and in the sum of five Hundred Dollars. for money then and there lent

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by the plaintiff to the defendant at his request: and in the sum of five Hundred Dollars, for Money then and there paid by the plaintiff for the use of the defendant at his request: and in the sum of five Hundred Dollars, then and there received by the defendant for the use of the plaint-iff: and in the sum of five Hundred Dollars, for interest due from said defendant to the plaintiff for and in respect of the plaintiff having forborne and given day of payment of money due from the defendant to the plaintiff at the requ-est of the defendant for a long time then elapsed: and in the sum of five Hundred Dollars, for money found to be due from the defendant to the plaintiff on an account then and there stated between them. And whereas the defendant afterwar-ds, to wit, on the day and year last aforesaid, in consideration of the premises respectively, promised to pay the said several sums of Monies respectively to the plaintiff on request: yet he has disregarded said promises and has not paid any of the said monies, or any part thereof, to the damage of the plaintiff of five Hundred Dollars, and thereupon he brings his suit &c

H O & E Merriman
Attorneys for Plaintiff

Copy of Note sued on

$160.77

Peoria June 2nd 1843 For Value received I promise to pay three years from date to Geo. A. Kingsley or bearer the sum of One Hundred and sixty dollars & seventy seven cents to draw twelve per cent interest after Maturity

Witness
John Kingsley — Francis P. Kingsley

Endorsed Pay the within to W. H. Rexenden June 2 1843 without recourse Geo. A. Kingsley

Copy of Account

To	Work & Labor	$100.00
	Money had & received	$100.00
	account Stated	$500.00
	Interest	$100.00
	Money lent	$100.00

And afterwards, to wit, on the thirty first day of May in the year last aforesaid there was filed in the clerks office aforesaid the following pleas, to wit,

William H. Fessenden
vs
Francis P. Ringsley

Peoria Circuit Court May Term 1848

1 And the said defendant comes & defends &c and says, that the plaintiff his action aforesaid, ought not to have & maintain because he says, that the several supposed causes of action in the several counts of the plaintiffs declaration mentioned are one & the same, and not other or differant = and the said defendant further says, that in the year 1837-8 said defendant, at the request of the said George O. Ringsley borrowed of one Cynthia Ringsley of the town of Brattleborough in the state of Vermont, the sum of three hundred & twenty dollars = to secure the payment whereof said defendant made executed & delivered to the said Cynthia his promissory note therefor and afterwards, to wit, in the year aforesaid, the said deft. delivered to the said George O. Ringsley one half to wit: one hundred & fifty dollars part of said of three hundred & twenty dollars, the same being being so delivered, in pursuance & fulfilment of a verbal agreement between said deft. & Geo. O. said deft. having made the said loan for himself & the said George O. and the said George O. then & there agreed that he would sign the said note to the said Cynthia, so as to become equally liable & responsible with deft. to said Cynthia for the payment of said note, & said borrowed money: and afterwards there were various dealings & transactions between the deft. & the said George O. and all matters in differance & dealings between them were fully settled & adjusted except for the one half of the money delivered to said George O. as aforesaid to wit on the second day of June A.D. 1843 and the said George O. then & there agreed with the said deft. that if he the said deft. would give him the note in the first & second count in the declaration mentioned, he, the said George O. would within a reasonable time thereafter obtain a release & discharge, from the said Cynthia, to deft. of one half of the said note whether or would sign the same note so as to make himself liable for one half thereof = and in consideration of said agreement & undertaking of the said George O. said deft. made, executed & delivered the note in the declaration mentioned, & for no other consideration whatsoever = and deft further avers, that though a reasonable time

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has long since elapsed & though said George O. has been often requested so to do. yet he has utterly neglected & refused, & still doth neglect & refuse to obtain a release & discharge. from said Synthia to deft. of one half of the said note to her & to sign the said note to said Synthia so as to make himself, the said George O. liable for one half thereof = and the deft. avers, that the said note in the declaration mentioned was transfered & assigned to the plaintiff after the same become due & payable: & at the time of the said transfer said Pltff. had notice that the said deft. had a good & good & valid defence to said note & this the said deft. is ready to verify = wherefore deft. prays judgt. &c and for further plea in this behalf said deft. says, actio non because he says that the said note in the

2 declaration mentioned was given without any good or valuable consideration whatsoever therefor = & the same was transfered & assigned to the said plaintiff after the same became due & payable. & this he, deft. is ready to verify wherefore he prays judgt. &c

3 and for further plea, said deft. says actio. non. because he says that the said note in first count of the declaration mentioned, is the same supposed cause of action mentioned in the other counts of the declaration mentioned & deft. avers that said note was given without any good or valid consideration whatsoever of which the said plaintiff at the time of the assignment of said note had notice - & this the deft. is ready to verify & therefore prays judgment &c

4 and for further plea, said deft. says actio. non, because he says that he fully paid and satisfied the said note to the said George O. Pingsley before the same was assigned & transfered to the said Pltff. & the same was transfered to Pltff after the same was due & payable & this deft. is ready to verify - wherefore &c —

5 and for further plea said, deft. says actio non because he says, that before the said note was transfered & assigned to the Pltff. deft. fully paid & satisfied the said note in the declaration mentioned, to the said George O. and at the time of the assignment thereof to the Pltff. he had full knowledge of the payment aforesaid & this deft. is ready to verify wherefore &c.

6 and for further plea, said deft. says actio non because he says, that at the time of the transfer & assignment of the note in the declaration mentioned, the said George O. Pingsley was indebted to the deft. in the sum of three hundred dollars as well for so much money before that time lent & advanced by the deft. to the said George O at his request = & for other money before then by the said George O

had & received for the use of Deft = & for other money before that time paid laid out & expended by the Deft for the use of said George O. at his like request & for other money found due from said George O. to the said Deft. upon the settlement & adjustment of all accounts & dealings between the Deft & the said George O. & being so indebted the said George O promised Deft. to pay him said last mentioned sum on demand yet tho requested said George O never paid said last mentioned sum of money - of which Pltff at the time of the assignment of said note had notice & this Deft is ready to verify = wherefore &c

Onslow Peters Atty for Deft

and for further plea said deft says that he never promised in manner and form as the said Pltff hath in the declaration alleged & of this he puts himself upon the country By his atty

Onslow Peters

And afterwards on the sixth day of June in the year of our Lord one thousand eight hundred and forty eight before the said Circuit Court then sitting at Peoria within and for the county of Peoria came the defendant by Peters his attorney and on his motion a rule is entered on the plaintiff to reply to the pleas filed herein by to-morrow morning.

Rule to reply =

And afterwards, to wit, on the day and year last aforesaid the said plaintiff filed in the clerks office aforesaid the following demurrer, Replication and special causes of demurrer, to wit,

Demurrer =

William H. Fessenden
vs
Francis P. Ringsley

Peoria Circuit Court May Term AD 1848

And said plaintiff as to the said pleas of said defendant firstly & secondly & thirdly above pleaded severally and not jointly said plaintiff says that they are not sufficient in law to bar or preclude him said plaintiff in having or maintaining his aforesaid action against defendant & this he is ready to verify wherefore he prays judgment &c

A.O. & A.G. Merriman Attys for Pltff

And as to the said pleas fourth & fifth & sixthly above pleaded by said defendant said plaintiff says precludi non because he says he the said defendant did not pay and satisfy either said plaintiff or said George O Ringsley previous to the assignment of said note

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in said plea mentioned - nor was the same transfered after it became due nor had said plaintiff any notice of any indebtedness of said George O Kingsley to said defendant at the time of the assignment of said note as aforesaid - and of this he puts himself upon the Country

H. O. & A. L. Merriman
Pltffs Attys

1 And for further special cause of demurrer to said 1st 2nd & 3rd pleas Pltff - says that the said pleas severally profess to answer the whole declaration by refering to the several counts as one and the same which is an insufficient answer to the whole declaration

2 said defendant has attempted to answer the several causes of action in the declaration are one & the same which is an insufficient answer to said plaintiffs cause of action

H. O. & A. L. Merriman
for pltff

leave to reply double

And afterwards on the eighth day of June in the year last aforesaid before the said court came the plaintiff by his attorney and on his application leave is given him to reply double to the pleas of the defendant herein.

leave to file additional pleas

And afterwards on the 24th day of October A.D. 1848 before the said circuit court came the defendant by Peters his attorney and on his motion leave is given him to file a plea of the general issue and another additional plea -

suggestion of death of pltff.

And afterwards on the twenty ninth day of May in the year of the Lord 1849 before said court came John Hamlin by H. O. Merriman his attorney and suggests and proved to the satisfaction of the court that the said William H. Fessenden has since the last term of this court departed this life and that the said John Hamlin has been duly appointed administrator of his estate by the Probate Justice of the Peace of Peoria county. Whereupon on his motion it is ordered that the said John Hamlin administrator as aforesaid be substituted as plaintiff in this suit in place of the said William H. Fessenden deceased -

And afterwards on the twenty sixth day of October in the year of the Lord 1849 before the said Court came the Counsel for the plaintiff and on his motion leave is given to amend the declaration herein so as to prosecute this suit for the use of Alonzo Ames.

Whereupon the defendant filed a Bill of exceptions in said cause in the words and figures following, to wit.

Defts Bill of exceptions

"John Hamlin admr. &c.
vs
Francis Ringsley
Peoria C Co Oct 2. 1849

Be it remembered that on this day came the plaintiff by his attorney and moved the court to amend herein so that the suit shall be prosecuted in the name of said Hamlin, administrator &c. for the use of Alonzo Ames, which motion was opposed by Deft. The court sustained the motion and permitted the amendment to be made. & the deft excepted to the decision & prayed that this his Bill of exceptions may be allowed and signed & sealed by the Judge & made part of the Record in this cause. which is done.

J. J. Dickey"

Withdrawal dem. &c.

And afterwards on the twenty seventh day of August A.D. 1850 before the said Court came the plaintiff by Merriman his attorney and withdrew his demurrer to the defendants pleas, and on his motion leave is given him to reply double to each of the pleas of the defendant.

And afterwards on the twenty ninth day of August A.D. 1850 there was filed in said clerks Office in said cause Replications of the plaintiff in the words and figures following, to wit.

John Hamlin admr
of M. H. Resenden dec^d
vs
Francis P. Ringsley
Peoria Circuit Court
Peoria Circuit Court

1 And said plaintiff for Replication to the said defendants first plea says precludi non because he says that the consideration for which said note in said Declaration mentioned and referred to in said plea has not failed in manner and form as in and by said plea is alleged and of this said plaintiff puts himself upon the country &c

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And Deft likewise
C. Peters

H. O. & A. S. Merriman
for Plff

2 And for further replication to said first plea said plaintiff says precludi non because he says that said note in said Declaration and said plea mentioned was not assigned to said William H. Fessenden deceased after the same became due & payable according to the tenor & effect of said note. nor at the time of the transfer of said note to said Fessenden had he notice that said defendant had a good and valid defence to said note and of this the said the said plaintiff puts himself upon the Country &c

H O & A L Merriman
for plff

And Deft likewise O. Peters

3 And said plaintiff for replication to said 2nd 3d pleas of said defendant above pleaded says precludi non because he says that the said note in said Declaration mentioned was not given without any good or valuable consideration whatsoever and of this he puts himself upon the Country &c

H. O. & A L Merriman
for plff

And Deft likewise O. Peters

4 And said plaintiff for replication to the said 4th & 5th pleas of said defendant says precludi non because he says that said defendant did not fully pay and satisfy the said note to the said George O. Kingsley in manner & form as in said pleas or either of them is alleged and of this he puts himself upon the Country &c

H O & A L. Merriman
for plff

And Deft likewise O Peters

5 And for further replication to the 2nd & 4th pleas of said defendant says precludi non because he says that the said note in said Declaration mentioned was not assigned & transferred to said Fessenden after the same became due and payable in manner & form as in the said pleas or either of them & of this the said plaintiff puts himself upon the Country &c

H O & A L Merriman
for plff

And Deft likewise O. Peters

6 And for further Replication to the 3rd & 5th & 6th pleas of said defen

-dant above pleaded. said plaintiff says precludi non becau-se he says that that at the time of the assignment of said note in said declaration mentioned to said Fessenden. he the said Fessenden had not notice of the matter alleged and set up as a defence in said plea or either of them and of this the said pltff puts himself upon the country &c

H. C. & A. L. Merriman
for pltff

And deft likewise C Peters

7 And for further replication to said sixth plea said plaintiff says precludi non because he says that at the time of the assignment & transfer of said note to said Fessenden said George C. Kingsley was not indebted to to said Francis P Kingsley in the said several sums of money in said plea mentioned or either of them or any part thereof in manner & form as in said plea is alleged And of this he puts himself upon the country &c

H C & A L Merriman
for pltff

There was also filed in said cause a plea of the general issue in the words and figures following, to wit,

John Flamin, admr. &c.
vs
F. P. Kingsley

And the said defendant comes and defends &c. when &c. & says that he never promised in manner & form as the pltff. hath in his declaration alleged against him and of this he puts himself upon the country — By his atty —
Onslow Peters.

And afterwards on the seventh day of March in the year of our Lord one thousand eight hundred and fifty before the said Circuit Court came the parties by their respective attorneys and issues being joined in this cause, It is ordered that a jury be impannelled to try the said issues, whereupon came a jury of twelve good and lawful men, to wit, Parley E. Blakeley, Luther Card, Thomas Dolan, Erasmus Richardson, Jeremiah Brown, Ezekiel A. Proctor, Josiah Swisher, Daniel Bash, James Soles, William Gilford, Joseph Racock and Thomas Hart, who being duly chosen, tried and sworn well and truly

[11852-07]

to try the issues joined and a true verdict give according to evidence; upon their oaths aforesaid do say, we of the jury do find the issues for the defendant: Therefore it is considered that the said Francis Kingsley go hence without day and have and recover of the plaintiff his costs and charges by him about his defense in this behalf expended, in due course of administration on said estate.

And afterwards to wit, on the twelfth day of March AD. 1851 before said circuit court came the plaintiff by H. O. & A. L. Merriman ~~his~~ and entered a motion to set aside the verdict of the jury herein and for a new trial for the following reasons 1st the said verdict is not sustained by the evidence in the cause. 2nd the said verdict is against law. 3rd the verdict is against the law and evidence.

And afterwards to wit, on the thirteenth day of March AD. 1851 before the said court came on to be heard the motion of the plaintiff for a new trial herein, and the court being fully advised in the premises overruled said motion.

And afterwards at the same term of said court to wit, the March Term AD. 1851, the Judge of said court signed & sealed a Bill of Exceptions in said cause, which was filed in said clerk's office and is in the words and figures following, to wit,

John Hamlin
administrator of
the Estate of Wm H.
Fessenden deceased,
vs
Francis P. Kingsley

Peoria Circuit Court

Be it remembered, that on the trial of this cause the plaintiff to maintain the issues on his part read in Evidence to the Jury a promissary note and the assignment thereof to the Said Fessenden which note and assignment are in the words and figures following to wit

$160.77

Peoria June 2nd 1843

For Value received I promise to pay Three years from date to Leo O Kingsley or bearer the sum of one hundred and sixty dollars and Seventy Seven cents to draw twelve per cent Intrest after

Materely
Witness
John Ringsley

[Endorsed]
Pay the within to Wm H Fessenden June 2 - 1843
without Recourse
Francis T. Ringsley
Geo. O. Ringsley

The plaintiff here rested his case -

The defendant then called one John Ringsley as a witness. who being duly sworn deposid and testified that he was called as a witness to the note at the time the note was given, that he was called as a witness to the agreement between the original parties to the note that the note was not to be lifted by the defendant untill the payee of said note George O. Ringsley should sign a note that defendant had previously given to a sister of theirs in Brattleboro Vermont. That the note was given for an amount found due on a note or notes at the time this note was given, which George O. Ringsley then held against defendant, and which note or notes the said George O. Ringsley then gave up, That the amount of the note to Cynthia Ringsley was for as he understood it about $320, and was given about four or five years before the note in suit. said witness further testified that the defendant at the time the note in suit was given objected to paying the note or notes given up & called it a forced note & George O. Ringsley claimed that it was just and due. that it was then agreed that said Jeff would sign the note in the declaration mentioned, and that said George O should sign the note of Deft. before given to their sister said Cynthia Ringsley, by the said Francis that the note to Cynthia was given for money obtained by said Francis from her, & that said George O had one half of the money - & that at the same time, the parties agreed that the note mentioned in the declaration should not be good unless the said George O. should sign the said note to Cynthia:= that said George O had afterwards several times said to witness. That he had not signed the said note to Cynthia, that it would be time enough to do it when she wanted the money = & that said Cynthia departed this life at Brattleborough two years ago last fall:- The witness stated both that the note in the declaration was not to be good unless George O signed the note to Cynthia, & that he signed it on condition that George O would sign the note to Cynthia == He used different modes of expression. relative to the signing of the note varying somewhat according to the interrogatories propounded, on the direct or cross Examination :: And said witness sometimes stated that the note in suit

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was given for money due Cynthia Kingsley, and sometimes that it was given for amount due on old note given up - and the agreement he was called to witness was that this note was not to be good or paid till George C. Kingsley paid Cynthia Kingsley one half of the old note to her. In answer to enquiry of the deft. whether he knew what the consideration of the note in suit was. witness said it was given in consideration that George C would sign the note to Cynthia - and on inquiry of plaintiffs Attorney the witness said the note was given for the amount due on old note given up - The defendant next read the answer of said plaintiff to a Bill of discovery filed by said defendant which answer is in the words & figures following -

Francis T. Kingsley
vs
John Hamlin
adm^r of W^m H
Fessenden dec^d

Peoria Circuit Court

Nov 7. 1850

The answer of John Hamlin administrator of Wm H. Fessenden dec^d to the bill of complaint of said Kingsley complainant

This respondent saving & reserving to himself all & all manner of exception that can or may be had, or taken to the many errors. in said Bill contained, for answer thereto or unto such parts thereof as he is advised is or are material for him to answer unto. answering says. That he admits the suit at Law was commenced. is still pending. & said Fessenden is deceased as alleged in said Bill

As to the interest this respondent has or said Fessenden had in his life time to the note in suit this respondant cannot state except from Hearsay. and has no positive knowledge thereof - This respondant says that he is informed & verily believes. that said Fessenden in his life time. had & the said estate now has an interest in said note to the amount of one tenth part thereof and that said suit is prosecuted for the benefit of said Estate & George C. Kingsley (he as respondent understands being the owner of the ballance of said Note) according to their respective interests. Respondant admits that said George C. Kingsley and himself have had frequent conversations on the subject of this suit. but respondant does not recollect that he ever made the applications enquired of in said Bill. respondant

has not made any arrangements about the prosecution of the said action at law. but he is informed that said Flessenden made the arrangements with his Attorney in said Cause for the prosecution of said suit. previous to his death. Respondant does not know whether the Estate will be liable for Costs or expenses of suit or not. as respondand is not fully advised of the arrangements with the Attorneys in the Cause – Respondant is indemnified by George A. Ringsley against costs in the suit which he ~~has~~ as a matter of prudence obtained such indemnity which he was induced to do more from the representations of said Complainants counsel Auslow Peters than from any other Cause.

And now having fully answered this respondant prays to be hence dismissed with his costs

Jno. Hamlin.

A. A. & L. Merriman
Solt. for Pltiffs

State of Illinois } ss
Peoria County } John Hamlin being first duly sworn deposes & says that the foregoing answer by him subscribed is true in substance and in fact in manner and form as therein stated

Sworn to this 21st day of November A.D. 1850 before me
Jacob Gale. Clerk

The plaintiff then produced & read in Evidence a receipt of said defendant to George A. Ringsley dated the same day as the date of said note as follows "Peoria June 2d 1843
Rec'd of Geo. A. Ringsley the sum of One dollar in full of all demands of whatever name & nature Francis P. Ringsley"
This was all the material Evidence given in said cause upon the trial
On behalf of the said plaintiff the Court instructed the Jury as follows to wit.
1st That if the Note in suit was given in part or wholly for an amount found due from the defendant to the payee thereof. the Jury will find that the plea of failure of consideration is not sustained & if no other defence is proved the Jury will find for plaintiff –
2 If the Jury believe from the Evidence that at the time

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the note was given the payee George C Ringsley agreed that the note should not be paid unless George C. Ringsley paid Cynthia Ringsley certain sum this would be an invalid agreement unless in writing - unless they believe that such agreement was the consideration of the note.

3. That the note is the best evidence of the agreement between the parties to pay the same and it is incompetent to add conditions thereto by parol -

4th Unless the defendant has proved that the consideration was as stated in the plea, and has failed as alleged, and also that Flessenden had notice of the defence, or took the note after due - the Jury will find the issue on 1st plea for pltff. And on the part of the defendant the court instructed the Jury as follows.

1. If the jury believe from the evidence, that the contract set up by the defendant in one of his pleas that George C Ringsley should sign the note to Cynthia Ringsley or procure a discharge thereof & that he has wholly neglected to perform that contract & that the note was transfered to Flessenden after it became due or that he received it under such circumstances as should have reasonably excited his suspicion the jury will find a verdict for the Defendant. —

2 If the Jury believe from the evidence that George C. Ringsley received from Francis P. Ringsley a sum of money, that is, one half of the money obtained of him that he borrowed upon his own note to Cynthia Ringsley, & that the said George C has not paid & settled by the said George C & that Flessendon received it under the circumstances mentioned in the last instruction that will be a good off set to the amt proved.

3. The contract set up in the plea was a good consideration for the note. & a failure to perform that contract on the part of George C is a failure of consideration of the note & the proving of the contract was competent, & this is not changing the terms of the note by parol. —

The Jury found a verdict for the defendant The plaintiff moved the court for a new trial, and to set aside said verdict and assigned the following reasons as follows.

John Hamlin admr
of Wm H. Flessenden
vs
Francis P Ringsley } pltff moves the Court to set aside

the verdict of the Jury herein, and for a new trial for following reasons.

1st The said verdict is not sustained by the evidence in the Cause –

2nd The said verdict is against law

3d The verdict is against the Laws & Evidence

H. O. & A. L. Merriman
for plff

The court overruled said motion to which decision of said Court in overruling said motion the plaintiff then and there excepted

The Court then rendered judgement upon said verdict to which the plaintiff then & there excepted – and, the said plaintiff prays the Court to sign seal & make of record this his Bill of exceptions which is done

Wm Kellogg (Seal)

State of Illinois
Peoria county ss: I Jacob Gale clerk of the Circuit Court within and for the county of Peoria in said State do hereby certify that the foregoing is a full, true and complete transcript of of all the proceedings in the said Circuit Court in a certain cause therein in which John Hamlin administrator of the estate of William H. Bessunder deceased is plaintiff and and Francis P. Kingsley is defendant as the same remains of Record and on file in my office –

Witness Jacob Gale clerk of the said court and the seal thereof at Peoria this third day of May in the year of our Lord one thousand eight hundred and fifty one –

Jacob Gale, clerk.

Fees of clerk: for transcript $7.00
Certificate & seal .25 } $7.25

[1852-10]

John Hamtie Trozia
Administrator of H Jensenden
v
Francis P. Kipsky

Error to Provin

Record

Filed July 3d 1851.
L. Leland Clk.

Hamlin, Administrator of Fessenden
vs.
Francis P. Kingsley =

As this was a question of failure of the consideration of the note declared on, it was proper to admit evidence of the agreement of the parties & their conversations, ~~not to~~ ~~vary~~ & simultaneous with the execution of the note, not to contradict the note, but to show what its consideration was. —
No exception can therefore be taken to the instructions of the court. —

The evidence of John Kingsley was confused, & perhaps contradictory as it appears upon the record: = These incongruities, were very proper to be urged upon the consideration of the jury as going to the credibility of the testimony. — It was for the jury to determine what the evidence proved, and how much was to be deducted from the credit of his testimony, by reason of any confusion in his statements on the cross-examination. —
The jury & the circuit court could much better judge of the force & credit of the testimony of this witness by seeing & hearing him give his testimony, than this court can possibly do by a mere report of the testimony. —
And the jury having ~~found~~ passed upon the

the evidence, & that evidence being satisfactory to the circuit court, this court ought not to disturb the verdict on this ground.—

There is however another error that is decisive of the case.—

There is a plea of set off, charging an indebtedness against George O. Kingsley to payee of the note.—

The ~~bill of discovery~~ answer to the bill of discovery filed against Hamlin, shows that George O. was, so far as it appears, always had been the owner of some tenths of the note.— This was conclusive, or certainly sufficient, to authorize the jury to infer that the assignment of the note to Sestondon was not bona fide; & to let in the set-off as a defense.— The evidence shows that Dept. obtained money of Cynthia Kingsley

as his own note, & that George C. had part of it.=

I see no ground of objection to the reception of this evidence, or to the finding of the jury upon it. The money received by George C. of Deft., with interest, would exceed the amount of the note at the time of its date.—

This money, so received by George C., carried interest as money lent, or money paid & received, &c.

Rev. St. 294 §. 2 Tit. "Interest"

And in this case, when Francis P. borrowed the money, and gave his note, bearing interest, it is unquestionable that interest should be allowed on the money so received.—

For an authority as to propriety of set off, as well as enquiring into the consideration see Sargent vs. Kellogg et al. 5 Cit. R. 273=

The counsel for the plff., since writing the above, suggests that the receipt read in evidence, is evidence to bar the set off—

The receipt bears even date with the note= It was part of the same transaction= and it is immaterial to the Deft. whether the defense to the note is admitted, or he be permitted to rely upon the set off.=

The evidence of Gaber Kingsley shows, the receipt of the money, to a settlement embracing this very transaction= There is

no evidence

of any other settlement of the money received by George C. of Deft. which was borrowed of Lyons then, apart that at the time of the gaining of the note. =

The question was fully & fairly submitted to the jury, and there is nothing in that finding that ought to disturb the verdict. =

When the whole case is considered, it is most manifest that it is a controversy between George C. & Francis P. Kingsley, & that for some reason George C. seeks thro' the intervention of a third person as Pltff. to recover this note of Francis P., when he knew that he would ~~[illegible]~~ be prevented from doing so by a suit directly in his own name. =

Charles Peters

I have not seen the brief or argument of Mr. Johnson for Pltff. & can not therefore directly reply to it, but nearly anticipate what views he may present. — C. P. —

Hamilton vs Kingsley
C Peters Brief
for Defendt

John Hamlin admr
vs
Francis P Kingsly

The court below erred in overruling the motion for new trial because the verdict was against the law and evidence in the case

Pltff made out a case by offering the note and assignment in evidence, and was entitled to a verdict unless his case was disproved by Deft — as it stood Pltffs testator was a bona fide endorsee of note before it became due — and his rights were not subject to be affected by any right of offsett — or indebtedness between the original parties to the note.

The fact that note was endorsed before due was not attempted to be disproved. The partial admission of Hamlin does not weaken this position — he is acting in autre droit — and only admits what he had heard from other sources — not from testator — not from any source entitled to be considered as evidence — We insist that such admission of an administrator shall not be permitted to defeat the rights of heirs or creditors of the estate —

But that admission only goes to a part of the amount — having a legal right to recover the whole and an equitable right to a part of the amount which may be collected on the note — The only effect of such admission if it were proof — and fact would be to give George E Kingsly a mere beneficial interest in a part of the note

But laying this out of the case for the arguments sake - Deft has not shaken the case - when George C Kingsly Pltff - The burden of proof was on Deft and to be entitled to a verdict he must prove affirmatively sufficient to overcome the Plaintiffs case - which he did not do. There was no evidence but the testimony of John Kingsly - which is so contradictory - contradicts itself - and can make nothing for deft - A part of it taken by itself might support the defence - another part of it sustains the contrary - and as a matter of law and fact the jury should have disregarded it

2 Nob Dig page 938 No 583 Fredells Rep

The witness was impeached by self contradiction

1 Greenleaf Evi Sec 462

The testimony taken all together amounts to a neutral - and proves nothing but the incapacity and worthlessness of witness

The plea of failure or want of consideration is clearly not sustained but is on the contrary disproved -

Parol evidence to prove a time of payment different or manner of payment different from that contained in the note - was clearly inadmissable - and should have been excluded

This is all the testimony of John Kingsly amounts to if sifted - and that part of nothing for Deft allowed as credible -

The receipt disposes of all previous indebtedness up to the time of the giving of the note - and of

by competent evidence which was not done in this case.

In revising a motion for a new trial it is competent for this court to weigh the credibility as well as the effect of the evidence, to revise the action of the jury upon matters of fact as well as of the court below upon matters of law. else the revisory jurisdiction of this court over a motion for a new trial of this kind in the circuit is a mere farce

In this case the only way to right the wrong which has been done by the mistake of the jury is to grant a new trial.

Merriman & Johnson
for Hamlin

Hamlin Adm

vs

From P Kingsley

Brief