

8590

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

# Supreme Court of Illinois

Primmer

---

vs.

Patton & Co.

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71641 7

Salem Marion County Ills Dec<sup>r</sup> 3<sup>rd</sup> 1862  
M. Johnston Esq  
Dear Sir

In the Case of James W. Rimmer vs  
Price S. Patton & Co in the Supreme Court from this  
County I understand that the judgment of the Circuit  
Court was affirmed. If so, please send me a certified  
Copy of the order (marking thereon your fees) and I will  
send your fees for the Copy forthwith. I wish the Copy of  
the order to file in the Circuit Court so that I can  
go on and collect the judgment.

By attending to this soon you will much oblige

Yours truly &c  
M. Schaeffer

Sitten of City of  
Appelles -

11 Dec 62

Copy sent

James W. Primm

vs

Price J. Patterson

In Clerk of the  
Supreme Court of the 1st grand  
division of the state of Illinois  
will please file record abstracts  
and Briefs

Willard W. Storer  
Att'y for P. J. in Error

John H. Patten  
vs  
Price of Patten Co  
p

~~469~~

Receipt

Filed Nov-14-1861.  
A. Schuster M

In the Supreme Court, State of Illinois.

FIRST GRAND DIVISION,

At Mount Vernon----November Term, A. D., 1861.

J. W. PRIMMER

vs.

PRICE J. PATTEN & CO.

Appeal from Marion.

BRIEF OF PLAINTIFF.

The judgment is erroneous in this: That the action is assumpsit and damages assessed at \$5 48, and Judgment entered for \$515 and \$5 48. See 1st Chit. Pleadings 746, from note 3. The Bill of Discovery should have been filed and proceedings stayed until coming in of answer. 13 Ill. 220. Yates vs. Monroe et al. Duncan vs. Ingalls & Barr, Breese 277.

The assignor of a note is not a competent witness to prove the fact of assignment, nor any other fact in a suit on the note against the maker, because if judgment be not had on note he is liable on the assignment, 1. Scam. 422, Stacey vs. Baker.

WILLARD & STOKER.

HILLIARD & STORER

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*Duncan vs. Ingalls & Barr*. Breese 577.  
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BRIEF, OF PLAINTIFF.

PRICE J. PATTEN & CO.

J. W. PRINMER

1169

1st Month Term - - - November Term

FIRST GRAND DIVISION

Filed Nov. 14-1864  
Attest                       
1864

JAMES D. PRINMER  
1169  
Price of Patten & Co  
Brief of P. J.

In the Supreme Court, State of Illinois.

# ABSTRACT OF RECORD IN CASE OF

JAMES W. PRIMMER, )

vs.

PRICE J. PATTEN & CO. }

Appeal from Circuit Court of Marion Co.

- Page 1st. Shows proceeding at March term of Court, 1861, filing of Declaration by Plff's on 25th day of February, 1861, with praicee in assumpsit against Defendant and damages \$600.
- Page 2nd. Special count of declaration on a Promissory Note, executed to S. A. Lasater by J. W. Primmer, Feb. 9th, 1858.
- Page 3rd. That said Lasater before payment of said note, to wit: on day of execution indorsed said note to Defendants, Price J. Patten & Co. Count in usual form; also commencement of common endibitatus count.
- Page 4th. Count on account stated in usual form. First Bond on behalf of Price J. Patten & Co., signed by Bryan & Shaffer.
- Page 5th. Copy of account and copy of note payable 2 years after date for \$500, it being the 3rd and last payment on lot and house bought of S. A. Lasater, in the town of Sandoval, and endorsed on back S. A. Lasater, with praicee in usual form, for summons and filing 25th July, 1861, by J. O. Chance, Clerk, and issuing of summons.
- Page 6th. The summons in usual form and attest and seal. Endorsed. Served on J. W. Primmer, March 6th, by reading. Signed by G. J. Black, Sheriff.
- Page 7th. And afterwards at March Term of said Court, to wit: On 20th March, 1861, Def't Primmer by Attorneys filed his pleas to Plff's Declaration; also first Plea of general issue in usual form, and joinder by Plff's; also commencement of 2nd Plea to 1st Count of Declaration, of failure, of consideration.
- Page 8th. Continuance of said Plea and setting out agreement of S. A. Lasater to deliver up the note sued on to J. W. Primmer.
- Page 9th. Same Plea continued, averring notice of failure of consideration to Plff's, Price J. Patten & Co., before the endorsement of said note to them by S. A. Lasater; also commencement of 3d Plea.
- Page 10th. Sets out consideration of note to be lot No. 9, in Block No. 6 in Primmer's addition to town of Sandoval, and agreement to make one payment of \$100 on 25th of December, 1858; readiness on part of Primmer to pay and offer to pay, and failure and refusal on part of Lasater to make deed.
- Page 11th. Also failure and neglect of Lasater to make deed and agreement to cancel the said contract and surrender of note by said Lasater to Primmer, and delivery of lot to Lasater by said Primmer; that the consideration of the note wholly failed, and that said S. A. Lasater endorsed said note long after it became due and payable to said Plff's, Patten & Co.; also commencement of 4th plea to 1st count of plff's declaration; plea of accord and satisfaction.
- Page 12th. Avers the accord and satisfaction to have been made on 29th day of June, 1860, before the bringing of this suit before the falling due of said note, and before the same had been endorsed, and that plff's had notice of the same on the 29th day of June, 1860; also filing of pleas.
- Page 13th. Plff's by Attorneys on 21st day of March, 1861, filed replications to def'ts pleas; also the replication to 2d pleas is general replication and joinder by def't.
- Page 14th. General replication to 3d plea and joinder on replication by def't; also general replication to 4th plea and joinder by defendant.
- Page 15th. And afterwards said Primmer on the 1st day of April, 1861, filed his bill of discovery in said cause in said Circuit Court; title of bill, caption and introductory part of bill, showing pendency of suit at law in court, aforesaid parties plff's and def't and said suit.
- Page 16th. That suit is brought on note given by Primmer to S. A. Lasater for \$500, payable two years from 9th October, 1858, setting out consideration for which note was given and failure of consideration; that was same note sued on and to which said Primmer had interposed pleas of failure of consideration.
- Page 17th. Avers agreement of Lasater to make deed on 25th Dec. 1858, on payment of \$100; that deed was to be warrantee; that Primmer was ready and willing, and offered to pay said \$100; that said Lasater was unable and unwilling to make a deed and did not make a deed, and has not yet made said deed.
- Page 18th. Avers that afterwards said Lasater and said Primmer agreed to cancel and rescind said contract, the delivery of two notes executed for the purchase money by Lasater to Primmer, and agreed to delivered up the note sued on; that said Patten & Co. had notice of the said agreement to deliver up said note and cancel said contract prior to and at the time said note was endorsed to plff's by said Lasater.
- Page 19th. Bill avers filing of 3rd plea to 1st count of Declaration; that the said town lot was consideration of the note that the contract was cancelled on account of said Lasater's inability to make a deed; Primmer's readiness and willingness, and offer to pay according to contract and take deed.
- Page 20th. Avers Lasater's refusal to make the deed; that by reason of said refusal to make deed aforesaid, said Lasater and Primmer mutually rescinded said contract, and said Lasater agreed to give up all the notes; that the consideration of said note has wholly failed; that said note was endorsed after it became due to said defendants.
- Page 21st. Sets out substantially 4th plea of accord and satisfaction of said note in 1st count and notice to def't's of the said accord and satisfaction on 29th of June, 1860; that plff's joined issue on all of said pleas, averring the endorsement of said note by S. A. Lasater to said plff's for a valuable consideration before maturity and denying notice.
- Page 22d. Substantially sets out replication of plff's; secondly replied; also substantially sets out 3d replication; also that said Primmer was informed and believes that said note was indorsed before it came due, and that said P. J. Patten & Co. knew of all the facts set up in said pleas.
- Page 23d. Avers that they had knowledge of the facts at the time and prior to the endorsement of said note to them; that said Lasater informed them at the time he indorsed said note; that the consideration of said note had failed; avers failing circumstances of said Lasater and indebtedness to P. J. Patten & Co., and that they insisted note should be indorsed, said note



to secure said indebtedness to, them, and that said parties colluded together and said endorsement was made as collateral security. Also avers that

Page 24th.

Def't. has no witness by whom he can prove the facts set up in said pleas, except the said Lasater and said Plff's., that the facts are necessary to def't's defence. That said Lasater is absent and his whereabouts unknown to def't, and has been since the suit at law was instituted, and that said Lasater is an interested witness in said suit, and that def't. cannot proceed to trial in said cause without a discovery from said Price J. Patten & Co. of the facts in this petition with prayer for answer of Patten & Co., and that proceeding be stayed until answer be filed in usual form.

Page 25th.

Prays summons to issue to Sheriff of Marion County, returnable to August Term, 1861; also the affidavit of J. W. Primmer, affidavit to truth of facts set forth in bill.

Page 26th.

Order of Court made 1st day of April, 1861, def't's filed pleas, plff's reply thereto; def't by Attorney moves Court for leave to file bill of discovery and for injunction, which motion the Court overrules, and def't excepts to ruling of the Court and cause is called for trial; parties consent to trial by Court without jury; Court gives verdict for plff's for amount of note and interest with costs and the damages being unknown to the Court, ordered that Clerk assess and report same; Clerk reports damages and costs at \$5,48, which report is approved and ordered and adjudged by Court; that plff's recover of and from def't said sum of \$515 damages, together with \$5,48, his costs expended and may have execution.

Page 27th.

And def't prays an appeal, and it is granted on def't's entering into bond of \$700 in 30 days with security to be approved by Clerk.

Page 28th.

Defendant on 22d April, 1861, filed bond; also appeal bond.

Page 29th.

Approved by Clerk 22d day of April, 1861, by J. O. Chance, Clerk, and filed; also certificate of Clerk to true copy of Record.

#### ASSIGNMENT OF ERRORS BY PLAINTIFF.

- 1st. The Court erred in giving a judgment for \$515 on a five hundred dollar note, when the damages and costs together as reported by the Clerk, only amounted to the sum of \$5,48.— Judgment should have been for \$500 and \$5,48 costs, according to report of Clerk.
- 2nd. The Court erred in overruling the motion of said J. W. Primmer's Att'y. to file bill of discovery. The pleas setting up a good defence and def't. Primmer having no witness save the parties to prove the facts by.
- 3rd. And for these and many other errors, this cause should be reversed.

WILLARD & STOKER, for Plff.

James W. Burman  
(2)

Price of Patterson

Abstract of Pth

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Filed Apr-14-1866-

W. J. Burman

ABSTRACT OF ERRORS BY THE COURT

WILLIAMS & BLACK

*[Faint, mostly illegible text from the reverse side of the page, including fragments of legal or financial records.]*

In the Supreme Court, State of Illinois.

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At Mount Vernon ---- November Term, A. D., 1861.

J. W. PRIMMER

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PRICE J. PATTEN & CO.

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Appointed

At Mount Vernon . . . . . November Term

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FIRST GRAND DIVISION

Filed Nov 14 - 1864

H. J. Johnston Clerk

<sup>46</sup>  
James W. Primmer  
17  
Price J. Patten & Co  
vs  
Primmer J. W.

In the Supreme Court, State of Illinois.

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