No. 8665

Supreme Court of Illinois

John W. Corgan

vs.

Aaron A. Trew

71641 7

1.

State of Illinois
Perry County

At a regular Term of the Circuit Court in and for the said County of Perry begun and held at the Court House in the town of Pinckneyville in said County of Perry on Wednesday the twentieth day of September in the year of our Lord one thousand Eight hundred and Sixty Five being the Wednesday next after the third Monday in said Month.

Present. The Honorable John H Mulkey Judge
James M Brown Clerk
William G. Leslie Sheriff

Attest James M Brown Clerk

In the Matter of

Aaron A Frew assignee &c
vs
John. W. Corgan assignee &c

Trespass on the Case on promises Damages $1000 &c

Be it Remembered that heretofore, to wit: on the 25th day of February A D 1865 Aaron. A. Frew assignee &c the Plaintiff in the above Styled Cause filed in the Office of the Clerk of said Perry County Circuit Court his precipe for Summons against said John W Corgan assignee &c Defendant above named in the words and figures following, to wit:

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State of Illinois } April Term Perry Circuit Court A.D. 1865
Perry County }

Aaron A Frew assignee &c
vs
John W Corgan assignee &c } Trespass on the Case on promises Damages $1000.00

The Clerk please issue Summons in this case in Assumpsit to Pffs Damages $1000.00 pursuant to law

Yours
B B Smith atty
for Pfff

And upon the back of said Precipe is the following, to wit:

Filed Feb. 12th 1864
E B Rushing Clk

Re Filed Feb. 25th 1865
James M. Brown Clerk

Whereupon to wit upon the 25th day of February A.D. 1865 Summons issued in said Cause against said Defendant in the words and figures following, to wit:

State of Illinois } ss. The People of the State of Illinois
Perry County } To the Sheriff of Perry County Greeting.

We Command You to Summon John W Corgan assignee &c if to be found in your County, to appear before the Circuit Court of Perry County on the first day of the next term thereof, to be holden at the Court House in Pinckneyville, on the 4th Monday in the Month of April next to answer Aaron A Frew assignee &c of a plea of trespass on the case, on promises, to the damage of him the said plaintiff of One thousand ($1000.00) Dollars

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" as he saith, and have you then and there this writ, and
" hereof make due return to our said Court as the law directs
" Witness James M Brown Clerk of our said Circuit
" [L.S.] Court and the Judicial Seal thereof, at Pinckneyville,
" this 25th day of February A D 1865
" 50 cts Internal Revenue Stamp + James, M, Brown Clerk
cancelled J. M. B. Feb. 25. 1865

And afterwards, to wit, upon 10th day of March said Summons was returned into the Clerks office of said Perry circuit Court with the following endorsement thereon, to wit:

" Executed by reading the within Summons to the within
" named John W. Corgan this March the 9th 1865
" Wm G. Leslie Sheriff of
" Perry Co Ill.

Filed March 10th A D 1865. James M Brown Clerk

And afterwards to wit, on the 25th day of February A D 1865 said Plaintiff by Messrs Omelveny & Smith filed in the Office of the Clerk of said Perry County Circuit Court a Declaration in said Cause which is in the words and figures following to wit:

" State of Illinois } ss. In the Circuit Court of Perry County
" Perry County } April Term A D 1865

" Aaron A Frew
" vs } Trespass on the Case on promises
" John W Corgan } Damages $1000 00

[21105-J]

" Aaron A Frew the plaintiff in this suit by H. K. S
" O'Melveny his atty complains of John W Corgan Deft in this
" suit of a plea of Trespass on the case on promises.
" For that Whereas one Mason F Wood, heretofore, to wit: on
" the 6th day of December A D 1861. at Waverly to wit: at the
" County of Perry and State of Illinois, made his certain promis-
" ory note in writing bearing date the day and year aforesaid,
" and thereby then and there promised to pay on or before the 20th
" day of next May (to wit: the 20th day of May A D 1862) to one
" C. P. Christian, or his order the sum of Five hundred Dollars
" for Value Received, with ten percent interest after due until
" paid: and then and there delivered the said promissory note
" to the sd C. P. Christian, and the said C. P. Christian
" to whom or to whose order the payment of the said sum of
" money in the said promissory note specified, was to be
" made, after the making of the said promissory note and
" before the payment of said sum of money therein Specified
" to wit: on the day and year aforesaid at County aforesaid
" indorsed the said promissory note by which said endor-
" -sement he the said C P Christian thereby then and there
" ordered and appointed the said Sum of money in the said
" promissory note specified to be paid to one John W. Corgan,
" and then and there delivered the said promissory note so
" indorsed to the sd John W Corgan; and the sd John W Corgan
" to whom or to whose order the payment of the sd sum
" of money in the said promissory note specified was to be
" made after the making of the said promissory note, and
" before the payment of the said sum of money therein
" specified to wit: on the day and year last aforesaid

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" at the County aforesaid, endorsed the said promissory note:
" by which said last mentioned endorsement he the said
" John W Corgan then and there ordered and appointed
" the said sum of money to be paid to the said plaintiff
" describing the said pltff by the initials of his christian name
" thus A A Frew, and then and there delivered the said promiss-
" ory note so endorsed as last aforesaid to the said Plaintiff.
" And the said plaintiff avers that at the said
" time of the said endorsement by the sd Deft of the said prom-
" issory note, and of the delivery thereof to the said plaintiff
" the said note was endorsed and delivered by sd Deft, as
" and for a note for payment of $500. and was then and there
" received and accepted as a promise to pay $500.—
" And the said plaintiff further avers, that at the time the
" sd sum of money in the said promissory note specified
" become due and payable, to wit on the 20th day of May
" A D 1862. the institution of a suit against the sd Mason
" F Woods would have been unavailing for the payment of sd sum
" of money in the sd promissory note specified.
" And the sd plf further avers that at the time of the mat-
" urity of sd note to wit: on the 20th day of May 1862. and
" from thence forth hitherto the sd Mason F Woods was so
" insolvent that by due process of law the sd sum of
" money in the said promissory note specified could
" not be made by the institution and prosecution of a
" suit against him in the state of Illinois, for the
" recovery of the money in sd note mentioned out of any
" property of the sd Mason F Woods liable to execution
" under the laws of the state of Illinois.: By reason whereof

3 Blue 5

" and by force of the Statute in such case made and provided
" the sd Deft at the County of Perry and State of Illinois on the
" day and Year aforesaid, became liable to pay to the sd
" plaintiff the said sum of five hundred Dollars, in the
" said promissory note specified, and interest after due,
" thereon at the rate of ten per cent per annum, according
" to the tenor effect and true intent of the said promissory
" note; and being so liable he the sd Deft, in consideration
" thereof afterwards to wit on the day and Year last aforesaid
" at the county and State aforesaid, undertook and then and
" there faithfully promissed to pay to the sd plf the sd sum
" of money, in the sd promissory note specified accor-
" ding to the tenor and effect & true intent and meaning
" thereof.

" Yet the sd Deft has not paid the same or any
" part thereof to the sd plaintiff &c

" And whereas also the said Defendant was indebted to
" the said plaintiff on the 20th day of January A D 1864,
" at the County of Perry in the State of Illinois in the further
" sum of five hundred Dollars for divers other sums of
" money before that time paid to the said Defendant for
" the use of the said plaintiff, for the Lumber of the
" sd plaintiff sold by the said Deft whereof the sd
" Deft accounted to and with the sd plff, and upon such
" accounting the sd Deft was then and there found in
" arrear and indebted to the sd plff the the said sum
" of $500.00 in this count before mentioned and being
" so found in arrear and indebted he the sd Deft
" in consideration thereof indorsed and then and there

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" delivered the promissory note of one Mason F. Woods to the
" said plaintiff which said note is in the words and
" figures; that is to say:
" $500.- Waverly December 6th 1861.
" On or before the 20th of next May I promise to pay C.P.
" Christian or his order five hundred = for Value received
" of him (with ten per cent interest after due) Signed
" M. F. Woods
" Which said note was endorsed by the said C.P. Christian
" to the said Deft, and by the said Deft to the said plaintiff
" in the words and figures following, to wit. "Pay to John
" W. Morgan - C. P. Christian"
" Pay to A. A. Frew"
" J. W. Morgan "
" And the said pltff avers that at the time
" of the said endorsement of the sd promissory note by the
" sd Deft. to the sd Pltff the said note was endorsed
" and delivered to the said plaintiff in consideration of
" the sum of five hundred Dollars due from the sd
" Deft to the sd pltff for money had and received by
" the sd Deft for the use of the sd pltff, for Lumber of
" the sd Pltff before that time sold by the sd Deft
" and due and unpaid by sd Deft to the sd pltff -
" And the sd pltff avers further that at the time of
" the maturity of sd note to wit. on the 20th day of May
" 1862 and from thence hitherto the said Mason F. Woods
" was so insolvent that by due process of law the sd
" sum of money in the said promissory note specified
" to wit. $500 could not be made by the institution

" and prosecution of a suit against him in the State of
" Illinois for the recovery of the money to wit $500. out
" of any property of the said Mason H Woods liable to execution
" under the laws of the State of Illinois. By means whereof
" and by force of the Statute in such case made and prov-
" ided the said Deft at the County of Perry in the State of
" Illinois become liable to pay to the said pltff the sd
" sum of five hundred Dollars, and the interest on
" said $500. at the rate of ten per cent per annum after
" due until paid, And being so liable he the sd Deft
" in consideration thereof afterwards to wit on the day
" and year last aforesaid at the County of Perry aforesaid
" undertook and then & there faithfully promised to pay
" to the sd pltff the sd sum of $500. Yet the sd Deft
" has not paid the same nor hath any one paid the same
" or any part thereof to the said plaintiff.
" And whereas also the sd Deft was indebted to the sd
" pltf on the 20th day of January A D 1866 in the further
" sum of six hundred Dollars for so much money before
" that time paid to the sd defendant for the use of
" the sd plaintiff for the lumber of the sd pltff before
" that time sold by the sd Deft, and converted into
" money - and being so indebted he the said defendant
" in consideration thereof at the County of Perry in the
" State of Illinois, on the day and year last aforesaid
" undertook and then and there faithfully promised the
" said plaintiff to pay to him the said last mentioned
" sum of six hundred Dollars, when he the said
" Deft should be thereunto afterwards requested

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" Yet the sd Deft althoug often requested so to do hath
" not paid the said several sums of money in the first
" second and third counts of this declaration mentioned
" or either or any part thereof nor hath any one paid the
" same or any part thereof but to pay the same he the sd
" Deft has hereunto wholly neglected and refused and
" still does neglect and refuse, to the Damage of the
" sd plaintiff one thousand Dollars & therefore the
" sd plaintiff brings his suit &c

" H K S O'Melveny Ally
" for Plff

" Copy of instrument sued on

" $500. Waverly December 6th 1861.

" On or before the 20th of next May I promise to pay
" C. P. Christian or his order five hundred — for
" Value Received of him (with ten percent after due)

" Signed M H Woods

" On the back of which note is the following indorsements
" to wit, Pay to John W Corgan

" Signed) C. P. Christian

" Pay to A A Frew

" Signed) J. W. Corgan

" John W Corgan To Aaron A Frew Dr.

To Lumber	$1000.00
" To money paid to Deft for Plff	$1000.00
" To Money had and received for Plff	$1000.00

" Re filed Feb. 25th A D 1865 —

" James M Brown Clk

[8115-9]

And afterwards to wit on the 27th day of April A D 1865 Said Defendant by his Counsel filed in the office of said Perry County Circuit Court his Demmurrer to said Plaintiff Declaration in the words and figures following to wit:

" Aaron A Frew
" vs } Assumpsit
" John W Corgan

" And said Deft by his atty comes &
" defends &c and as to said declaration and each and
" every Count therein contained seperately and severally
" says that the same and each of said Counts taken
" seperately are not sufficient in law. Wherefore the
" said Deft prays the judgment of the Court upon the
" said declaration and each of said Counts &c

" Geo. W. Wall for Deft."

And again on the day last aforesaid said Defendant by his Counsel filed in said Clerks office his plea in said Cause which said plea is in the words & figures following, to wit:

Aaron A Frew
vs } Assumpsit
John W Corgan } The said Deft by his Atty Comes & defends the wrong and injury when &c and says that he did not undertake & promise in manner & form as said Pltff hath in his said declaration alleged against him and of this he puts himself upon the Country

Wall for Deft

And Pltff Doth the like
B B Smith

[8LCS-10]

And upon the day last aforesaid to wit on the 27th day of April AD 1865 at the April Term of said Circuit Court AD 1865 the following proceedings were had and entered of Record in said Cause to wit:

"Aaron A. Frew assignee

No 25 " vs Assumpsit

" John W Corgan assignee Thursday April 27th AD 1865

" Comes this day the plaintiff by his Attorney, as also said defendant by Geo W Hall his attorney and demurs to all the counts in the declaration, and the second count is abandoned, and said demurrer overruled as to the first & third counts, and leave is given to plead. And now again comes the defendant by Geo W Hall his attorney and enters a motion to suppress the depositions of Edward Scott which motion after argument heard is overruled by the Court (and exceptions taken to the overruling of the same) and by consent of parties the Depositions of Edward Scott are suppressed, and leave given to take further Depositions, and cause continued"

And Afterwards to wit on the 22d day of September AD 1865 at the September Term of said Perry County Circuit Court 1865 the following proceedings were had and entered of record in said Cause, to wit:

Aaron A Frew assignee &c

vs Assumpsit

John W Corgan assignee &c Friday September 22nd AD 1865.

And now on this day comes

the said plaintiff by Messrs. Omelvey & Smith his attorneys as also the said Defendant by Geo W Wall Esq. his attorney and issue being joined herein therefore let a Jury come and thereupon came a Jury of good and lawful men, to wit: Jas. McKelvey, Hugh Campbell, Edmund Dry, Benj. F Guittea Thos. Brown, Robert Richmond J.J. Swanwick John D Nelson James Cheets Samuel Phillips A.J. McMillan & James Simmons who being elected tried and sworn well and truly to try said cause having heard the proofs and evidence adduced in said cause as well on part of Plaintiff as said Defendant and also the argument of Counsel for plaintiff and defendant retired to consider of their Verdict and the Jurors aforesaid upon their oaths aforesaid returned into open court here the following Verdict to wit "We the Jury find for the plaintiff and assess his damages at six hundred and sixty six Dollars and sixty six cents ($666.66) Whereupon the said Deft. by his Atty. then and there entered a motion herein for a new trial which motion the court takes time &c:

And afterward to wit on the 23rd day of Sept. A.D. 1865. at said Sept. Term of said Court the following proceedings were had and entered of Record in said Cause, to wit:

Cann & Frew Assignees &c

vs

John W Corgan Assignee &c

Assumpsit

Saturday September 23rd A.D. 1865

And now again on this day comes the

" said plaintiff by B. B. Smith Esq. his Atty. as also said
" Defendant George W. Wall Esq. his attorney and said Cause
" being now called for argument upon the motion
" heretofore entered herein for new trial and the Court
" having heard the argument of Counsel on part of
" said Plaintiff and defendant and being now fully
" and sufficiently advised in the premises doth Order
" and adjudge that said Motion for new trial herein be
" and the same is hereby overruled. Whereupon it is
" Considered and ordered by the Court that said plaintiff
" do have and recover of and from the said Defendant
" John W. Corgan the said Sum of Six hundred and
" Sixty Six Dollars and sixty six Cents damages afore-
" said by the Jury aforesaid assessed together with his
" proper costs and Charges by him the said plaintiff
" about his said suit in this behalf expended. and
" may hereof have execution therefor against the said
" John W Corgan &c And upon the rendition of
" said Judgment the said defendant by his Counsel
" enters a motion herein and prays an appeal to
" the Supreme Court in said Cause which motion is
" allowed by the Court upon Condition that said Def-
" endant enter into Bond in the sum of One thousand
" Dollars within thirty days from the date hereof conditioned
" as required by law with such security as may be app
" roved by the Clerk of this Court &c "

" And now again on Friday Sept. 29th A.D. 1865
" Comes the said Defendant by George W Wall Esq. his
" Attorney and files herein his bill of exceptions, which said
" Bill of exceptions is in the words and figures following to-wit:

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Aaron A Frew

vs

John W Corgan

Assumpsit

Be it remembered that on the trial of this cause the plaintiff offered in evidence the following instrument to wit:

$500 Waverly December 6th 1861

On or before the 20th of Next May I promise to pay C. L. Christian or his order five hundred ---for Value received of him (with 10 per cent after due

M. F. Woods

Upon the back of the same are the following endorsements to wit:

Pay to John W Corgan
C. L. Christian
Pay to A A Frew
July 29/62. J W Corgan

to the introduction of which said instrument the deft. by his atty then and there objected - but the Court overruled the objection and permitted said instrument - and the indorsements thereon to be read in evidence to the Jury to which ruling of the Court the defendant by his Counsel then and there at the time excepted - The plaintiff then offered in evidence the following instrument the same being attached to and made a part of the deposition of Mason F. Woods hereinafter refered to - to wit -

State of Illinois } SS.: Be it remembered that on
Morgan County } the 24th day of March 1863 Aaron
A. Frew by his attorneys D. A. & J. W. Smith produce,
proved and filed in the Circuit Court of said
County a power of Attorney in the words and figures
following, to wit: At Waverly on the 6th of December
1861 I made my note for payment on or before the
20th of the next following May of five hundred Dollars
($500.00) with ten per cent interest after due to C.
P. Christian or order endorsed by him to John W. Morgan
and by him to Aaron A. Frew. In as for as anything
may be due on this note at the next term of the
Circuit Court of Morgan County, State of Illinois. I
irrevocably authorize James Berdan Esquire, or any
other practicing Attorney of said Court for me and
in my name & stead to receive this as Declaration,
enter my Appearance and Confess Judgment in favor of
said Aaron A. Frew or assigns for what may be then
due on said note and costs of suit. Given under
my hand & Seal at Waverly December 2nd 1862

M. F. Woods (Seal)

Said attorneys paid $1.00 the Docket fee in said
Case. thereupon on the same day a Judgment was
entered in the premises by said Court in the words
& figures following, to wit:

Aaron A. Frew }
vs } Assumpsit
Mason F. Woods } This day came the Plaintiff by his

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[8LLS-13]

Attornies D. A & J W Smith and produced proved and filed a power of Attorney executed by the said defendant Authorizing James Berdan Esquire. to Confess Judgment in favor of the plaintiff in this Cause - Thereupon the said James Berdan appeared in Court and Confessed that the said Defendant is indebted to the said plaintiff on the note described in said power of Attorney the Sum of five hundred and forty two 11/100 Dollars ($542.11 Cts) It is therefore considered by the Court that the said plaintiff have and recover of the said defendant said Sum of Money and his Costs in this Cause, and that he said Plaintiff have his fi fa therefor" Afterwards on the 27th day of April 1863 a Writ of fieri facias was issued on said Judgment in the words and figures following, to wit:

State of Illinois } ss. The People of the State of
Morgan County } Illinois To the Sheriff of said County Greeting:

We Command You that of the Lands & tenements Goods & Chattles of Mason & Woods, defendant, in Your County You Cause to be made the sum of Five hundred and forty two Dollars and Eleven Cents which plaintiff Aaron A Frew lately in the Circuit Court of said County, at the term thereof begun and held at Jacksonville in said County on the 4th Monday of March A D 1863 recovered against the said defendant And which by the Judgment said Court was adjudged to the said Plaintiff for damages by him in this behalf Sustained and also the further sum of four

" dollars and fifty Cents which were adjudged to the said
" plaintiff for his Costs & Charges in that behalf expended
" whereof the said defendant Stands Convected as appears
" to us of Record, and have you these moneys ready
" to render to the said plaintiff for Damages and Costs
" aforesaid and make return of this writ with an endorse-
" ment thereon in what manner you shall have executed
" the Same in ninety days from the date hereof. Witness
" Stephen Sutton Clerk of our said Court
" (L S) and the Seal thereof at office in Jacksonville
" in said County this 27th day of April
" A D 1863 Stephen Sutton Clerk

" On which is endorsed the following return
" I return this execution wholly unsatisfied, no property
" found in my County whereon to levy the Same July
" 28th 1863 Fees .10 A. J. Bradshaw Sheriff M. C.

" State of Illinois ss
" Morgan County I Stephen Sutton Clerk of the
" Circuit Court within and for the County aforesaid do
" hereby certify that the foregoing pages contain a
" true and correct copy of the Record and proceedings
" had in the Case of Aaron A Frew Assignee &c
" vs Mason F Woods as fully and completely as
" the Same appears of Record and on file in my
" Office Witness my hand & the Seal of said Court
" this 24 day of August A D 1863.
" (L S) Stephen Sutton Clerk
" (5 cts Revenue Stp Canceled)

The plaintiff then offered in evedence the following deposition of Mason F. Woods to which before any part had been read the defendant by his Counsel objected but the Court Overruled the objection and allowed the same to be read to which the deft. by his atty then and there at the time excepted.

And after the reading the deposition the defendant by his atty. moved the Court to exclude from the Jury all that part of the said deposition of said Woods refering to the Sale of his Real Estate on the ground, that such Sale Could not be proven by parole, but Could only be proven by deed but the Court refused the motion to exclude the same from the Jury and the deft. by his Counsel then and there excepted to this ruling of the Court.

The deposition of said Mason F Woods is as follows

Int. 1 Are you acquainted with the parties in this suit or either of them.

Ans. 1 I am not

I 2 What is your age and residence

A 2 My name is Mason F Woods - aged 54 reside near Waverly Morgan Co Ill

Int. 3 State if you are the defendant in the suit of Aaron A Frew. against Mason F Woods - judgment obtained at the March Term Morgan Circuit Court 1863. of which the document marked "A" and herewith filed is a copy

A. 3. I answer Yes

Q. 4. State whether you did or did not have any personal or real property subject to execution in the State of Illinois from the 2nd day of June 1862. to the first day of February or March 1865.

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A. 4. I did not. that I have any recollection of at all-

Q. 5. State whether or not previously to the 2nd day of June 1862. you had personal or real property subject to execution. and if so. what did you do with it-

A. 5. I had personal and Real Estate subject to execution on the latter part of May 1862- I sold all of my Real Estate and apart of my personal property. and on the 2nd day of June 1862. I sold all of the balance of my personal property-

Q. 6. State if from the time of the Sale to the first of March 1865- you owned in the State of Illinois any personal or real property subject to execution

A. 6. I did not- that I now recollect of

Q. 7. State whether from the date of the sale spoken of to July 28th 1863- you were in possession of personal property and if so what kind and State to whom it belonged

A 7 There was personal property on the

(2445-19)

Farm, Cattle, Horses, Hogs, one Carriage one Buggy, two three or four Wagons, and some farming utensils. my recollection now is that they belonged to James J. Wood - they did not belong to me.

S. 8. Did you have anything to do with said property and if so in what capacity did you act.

A. 8. If I had any thing to do with it it was only as an agent or advisor -

Cross Examined by Defendant

In How much Real Estate, and how much personal property did you sell in the latter part of May 1862.

Ans. I Cant tell exactly -

I Who did you Sell to -

A I - sold to Chesnut and Dubois - My Real Estate - All of it. I Sold some Cattle about one hundred and forty head of Cattle -

I To whom did you sell the balance of your personal property

A To James Woods and W A Rice

I How much did you get for the Real Estate

A My impression is that at the time I sold to Dubois the amount was Eleven Thousand Dollars there were Mortgages on it that the parties had to pay off

I When did you give them a Deed for the Land

A I made the Deed the last of May or first of June 1862 -

[5115-28]

Q. After paying of the Mortgages how much was there
21 of the purchase money coming to you.
Ans. None from Chesnut & Dubois
Q. Was there any from any other purchasers of the Real Estate
A None—
Q. How much was the farm worth
A At the time it was sold—it sold for a
bank $1500, all it was worth there were about
Five thousand Dollars Mortgage a Mortgage
of 2500.00 or 3000.00 to John Robinson. Judgment
I was security on and a Mortgage of about
Two thousand Dollars both of them. that is all
I recollect that Chesnut & Dubois paid off—
Q What was done with the ten thousand Dollars
besides which was paid by them—
A It was due to Chesnut & Dubois and they took
the land to pay their own debt—
Q How much did they pay you for the Cattle
A The Cattle was included in the whole Sale—
it was a combined trade—
Q. State whether you ever give them possession of
the farm—
A I have never been off of it—I still live
on it—
Q On what terms have you remained on the
farm—
A There has been no special terms or
arrangement about it—they have furnished
money and I have bought Cattle for them—

Q How many acres are there on the farm

A Six hundred and forty acres— One hundred and

22 twenty of timber—

Q Has this farm been in Cultivation every year since June 1862, and if so. What Crops have been raised on it and how much—

A It has been in Cultivation, and in grass principally— A part has been rented to another man—

Q. How many Tons of Grass have been raised per year on that farm— how much was it worth per Ton—

A I dont know It has never been mowed.

Q How has it been Consumed

A It has been consumed by Cattle with the exception of thirty or forty acres—

Q What was that land worth in June 1862.

A Part was worth from three to five Dollars per acre and part from Eight to fifteen — the land is good— Some worth $3 Some $5.00 the whole farm was worth about fifteen thousand Dollars in 1862.

Q. What was the Cattle worth per head. that you sold to Chesnut & Dubois

A Cant State— We then estimated them at twenty one or two hundred Dollars.

Q. What have you been doing since June A.D. 1862.

A I have been buying Cattle as a general thing

Q Who for

A Isah Hatch. Chesnut & Dubois J. J. Wood & Stewart McC.

Chinney that is all I recollect

(Pulse 2B)

23 I On what terms have you been acting.

A As an agent.

I What pay have you received

A Mr. Cleveng never paid me anything Hatch paid me one Dollar per head - Chesnut & Dubois never settled with me -

I How many did you buy for Hatch

A Four or five Hundred Heads -

I. Is that all

A I Cant say

I Was any of your own money employed in any of these operations

A I think at one time I advanced a little money for Hatch. I bought a Small lot of Cattle for Hatch in 1862 and had his Check in my pocket and Had not got the money on it and paid for them with my own money and soon after drew money on the Check for it

I What were your services worth in buying the cattle for Chesnut & Dubois

A I dont Know

I How Much do you think you ought to have -

A I dont Know - they made this arrangement with me to go on and buy what Stock they wanted and leave the whole matter with them

I Did you put any of your money into the Stock bought in their name -

A I did not - I may have advanced as I did in

(8420-23)

the case of Hatch, dont know definitely

I What have you done with this money that you have Recd from your son

A I have been living on it

I Then you used it all up

A I think not.

I Have you ever made a settlement with Chesnut and Dubois

A I have not made a final settlement with them I talked with them this summer - and they said when this Stock was sold they would then make a final settlement.

I Did you ever have any arrangement with them as to the terms on which you should act for them as above stated

A I never did, we have spoken of arrangements what ought to be paid, but made none

I Were there any other Judgments against you at the time you Sold out to Chesnut & Dubois except those which they paid off

A I thing there was one Judgment unpaid about $2300. in this County. and might have been others.

I Was there ever a Judgment against you in favor of J.C. Curtis administrator of J. D Cunningham for the sum of Four hundred Dollars

A I think there was, and it was in this County

I Has it been paid

A It has I paid it myself

I Was there not an Execution under that Judgment

levied on property - as your property

A Dont recollect there was - dont recolect that an Execution was out.

Q Was there a Judgment in favor of one Wm. Shuff- if so how much

A Yes Sir - Some where from Four to five hundred Dollars -

Q Did you pay it -

A No other parties bought the Judgment - Chesnutt & Dubois bought it -

Q How much did they give

A They gave fifty Cents to the Dollar

Q Did you act as their agent in this matter

A I was authorized to get an agent - to get a proper man - to go and buy it -

Q Did you not pay the money yourself ?

A I did - I had their money for which I had sold them Stock. and paid it to the agent. to buy the Judgment

Q State whether you ever gave them passession of the Cattle or not -

A I Did

Q When

A I think on the 31st day of May A.D. 1862.

Q What did they do with the Cattle

A They brought them to their farm

Q What farm

A To the farm that I sold to them

Q Who brought them there

[9116-25]

A I helped do it
Q Who Else
A James Woods - no one else -
Q What was afterwards done with them
A In September or October 1862. they were shipped to New York - part of them
Q What part -
A Dont recollect - have vague recollection about it -
Q Was half of them shipped -
A I think there was -
Q Was two thirds shipped -
A Cant say - have no information might have been two thirds or three fourths or not over half -
Q Who took Care of them up to the time of shipment
A James J Woods - they ran on the Farm
Q Who Shipped them to New York
A I think J. J. Woods went with them
Q What was done with those not shipped to New York
A Chesnut & Dubois sold them I think to J. J. Woods
Q How much did you owe Chesnut & Dubois when you sold them the land -
A I think it was near Twelve Thousand Dollars dont recollect -
Q Are they Any relation to you
A Chesnut is my Wifes Brother Dubois is no relation
Q Where do they do business, and what business
A Bankers at Carlinville
Q What relation is James J Wood to you
A He is my Son

27 Q. Where does he reside.
A We live together
Q. How much property did you Sell to him
A I sold him about $104 heads cattle Several horses one or two wagons. several hogs dont Know how many
Q. What did it all amount to
A I think it was Fifty five hundred Dollars.
Q Did this property still stay on Same farm
A It did until sold
Q How did he pay you for this property
A He paid the Cash
Q Did he pay it at time of Sale
A He paid $1000.00 Dollars and then he shipped a lot of cattle and paid balance in from thirty to forty days or sixty days
Q Where did he get the $1000 to pay you
A I did not Know
Q What proportion of the cattle did it take to pay the Forty five hundred
A It took all the Cattle, and what money he had paid and the hogs in my recollection –
Q. How much property did he have left after he sold the cattle and Hogs
A It was worth about five or six hundred Dollars
Q What has become of that property.
A. The wagons. + buggys. and Carriages and three or four horses are still there. the Buggy since I recollect I did not sell to J. J. Words but to Rice and it is there –

[MCC-27]

28 Q. What did you do with the Fifty five hundred Dollars.
A. I have been living on it
Q. Has your son J J Woods been living with you since June 1862.
A. He have been living together
Q. How old is he
A. He is twenty Eight years old
Q. Has he a family
A. He has none
Q. Are ~~yo~~ not you the head of the family
A. I am.
Q. Have you not got an arrangement with some person or persons to buy up all your debts at fifty Cents on the dollar.
A. I have not
Q. Is not there some person acting with your knowledge and Consent and at your instance to buy up your debts at 50 cents on the dollar.
A. There is none
Q. Are you not endeavoring to get your debts in at 50 cents on the Dollar
A. I made one under that - I recollect that proposition
Q. Are you not trying to get all your debts in at that rate.
A. I am not.
Q. Where were those Cattle, which you Sold to Chesnut and Dubois at the time the sale was made

[9465-28]

A. They were in Christian County when I made the Sale.
Q. State to the best of your recollection what part of the
29 Cattle was sent to New York that fall
A. I think from one half to 2/3 or 3/4
Q. Did the balance Stay on the farm that winter
A. I think part went Off in December and part
Stayed over.
Q. State whether you did not retain 80 acres of land
not included in the sale to Chesnut & Dubois
A. I did not. there was a Mortgage of Sixteen
hundred Dollars which had been foreclosed. and
land Sold and they Redeemed it. and took Deed
for it. the land was not worth more than it
Cost them.
Q. Did you not retain some personal property.
A I did not except a Small amount of household
furniture and a Cow. I Sold my household furn-
A iture to Mr. Rice that I did not retain. I Sold
him. and household furniture. and a buggy and
a horse and Carriage Amounting to about Six
hundred and fifty.
Q. What did he do with it
A. He Sold it to J J Woods
Q. Did the property still Stay at the house and on the place
A. It did The Household furniture was not removed
The Buggy and horse were Sold ~~by~~ or traded off by J J.
Woods.
Q. When did he do it.
A I think in 1863.

(8115-29)

Q. Did you keep any household furniture except what
30 you sold.
A. I did keep some as I stated before.
Q. Are you and your son James not in partnership
A We are not.
Q. Does he pay you board.
A No we live in common.

Re examined by Plff.

Q. State if the personal property sold to M McRee was delivered to him at the time of sale in June 1862.
A. Yes. I gave him bill of sale of it.
Q. State if all the personal property that you say you sold in 1862. was not all delivered to the purchaser at the time of the — —
A It was
Q. State whether you have a claim on Chesnut & Dubis for buying cattle for them
A. I suppose I have.
Q. State whether you have received pay for such services
A. I have had their means in my hands all the while and have been using it more or less. we have never had a final settlement.
Q. State whether at the time you made an arrangement to buy for them it was not intended that you should be paid.
A. I expect to be well paid, but I depend upon them as to the amount.
Q. State if the entire transactions of selling your lands

[5665-38]

& personal property was not made in good faith.

A. It was

Q. Did you not make them a Warranty Deed to the land.

A. Yes, Chesnut said at one time that if I was disposed to pay him back his money I could have the land - I have no written agreements of matter of Record,

M. F. Wood

The Plaintiff here rested his case -

The deft then offered in evidence the following depositions of Wm J. Given to wit

Int 1. State your name age occupation and place of residence -

Ans W J Given 58 years of age Farmer Reside in Waverly Morgan Co Ills.

Int 2 State whether you are acquainted with Mason F Woods - if so where does he reside and how long have you known him -

Ans. I am acquainted with Mason F Woods he resides near Waverly Morgan Co Ills - have known him Twenty five years.

Int 3 State what you may know if anything as to what business said Woods has followed Since 20th May 1862.

Ans. He has carried on his farm or had it done & has been buying and selling & sending off cattle & hogs.

Int. 4. State what you may know if anything as to whether the said Mason F Woods has have any property Real or personal in his possession Since May 20

1862. and prior to July 1st 64. if you answer that he had property in his possession between those dates you will please give a description of Same - give Amounts & value and State all the facts you Know with regard to it. if you Know of his buying or selling property between those dates State the kind and Value thereof

Ans. Since 20th 1862 & prior to Jany 1st 64 I was acting as Deputy Sheriff & had in my hands an execution against Mr Mason F Woods & he gave me 80 acres of land to levy upon to Satisfy said execution. said land lies about 3½ miles West of Waverly Morgan Co is worth $10 per acre. he resides on the same farm on which he has resided for the last 15 or 20 years. I have frequently been about the farm and have always Saw Cattle, Horses & Hogs Carriage & Wagons &c on the farm to the amount of more than $1000.00 between the above dates and during the winter of 1862 & 3 I frequently passed his feed lots and saw Cattle & Hogs being fed as to the No. I Cannot tell, though I would suppose at least 50 head of Each.

Int 5. State if you Know of any Executions having been Collected off of said Woods between the dates above mentioned. if you answer Affirmatively State in whose favor, and the Amount of Same

[8115-33]

Ans.
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I know of one in favor of J E Curtiss admr. of Thos. J Cunningham decd. for the amount of between $400. and $500.00 and that he has had in his possession for the last 3 or 4 years a Carriage worth at least $150.00 and that his furniture in the house is worth several hundred Dollars - and that the Deputy Sheriff told me this last Spring that he had levied an Execution on the personal property of Mr. Woods and in favor of a Mr. Shuff for I think $150.00 & both the Dep. Shff & the plff. in Execution told me that the debt was settled before the day of Sal, and that affiant knows of the same property being in possession of said M. F. Woods for 3 or 4 years past.

W. J. Given

The deft. then offered and was permitted to read to the Jury the following record, to wit:
At the September Term of the Circuit Court of Morgan County State of Illinois begun and held at the Court house in the Town of Jacksonville on Monday the 22nd day of September A.D. 1862.
Present the Honorable D. M. Woodson Judge -

Anthony Shuff
146 - vs Assumpsit
Mason F. Woods

This day came the Plaintiff by his attorney and the Defendant being three times Solemnly Called came not but therein failed and

made default, and the Court having heard the Cause, doth order and adjudge that the Plaintiff recover of the defendant his damages sustained by reason of the non performance of Certain promises and undertakings lately made and because those damages are unknown to the Court It is ordered that the Clerk assertain and assess the same, Who reports that said damages amount to the sum of Four hundred and twenty five dollars. It is therefore Considered and adjudged by the Court, that the Plaintiff recover of the defendant the Damages aforesaid in manner & form aforesaid and also his Costs herein expended.

And afterwards to wit on the 24th day of October 1862 An Execution was issued on the judgment aforesaid of which the following is a Copy to wit:

State of Illinois }
Morgan County } ss. The People of the State of Illinois
To the Sheriff of Said County Greeting:

We Command you that of Estate of Mason & Hood of your County you cause to be made the Sum of Four hundred and twenty five Dollars, which Anthony Shuff on the 26th day of September 1862 recovered against him in our Circuit Court of Morgan County for the amount of his Damages sustained in an action of Assumpsit & the Sum of five 20/100 Dollars for his Costs herein expended, with interest on

" the Same from date of judgment until paid.
" Whereof he Stands Convicted as appears to us of Record.
" And that you have the said Sum of money before
" the Judge of our said Court within ninety days from
" date hereof, to render unto the said Antony Shuff
" and have then and there this writ.

" Witness Charles Hardin Clerk of our said
" Ts S Court at Jacksonville, this 24th day of October
" 1862 the seal of said Court being hereunto
" affixed — Charles Hardin Clerk.

And afterwards the Execution was returned with following endorsement thereon to wit:

"Come to hand October 24th 1862 at 2 oclock P. M.

Ed Scott Sheriff M. C.

"Come to hand Dec 5th 1862. at 10 oclock A. M.

A. J. Bradshaw Sheriff
M. C."

"I return the within Execution wholly unsatisfied no property found in my County upon which to levy the same this 23rd day of January 1863 —

A. J. Bradshaw Sheriff
M. C.

Return 10."

And afterwards to wit. on the 23rd day of January A D 1864. a plurius Alias Execution was issued on the Judgment aforesaid. of which the following is a copy to wit:

State of Illinois } ss. The People of the State of Illinois
Morgan County } To the Sheriff of said County Greeting:

We again command you that of the

lands and tenements, Goods and Chattles of Mason F Woods defendant in your County, you cause to be made the sum of Four hundred and twenty five Dollars which Plaintiff Antony Shuff lately in the Circuit Court of said County at a term thereof begun and held at Jacksonville in said County on the 4th Monday of September A D 1862, recovered against the said Defendant, and which by the said Court was adjudged to the said plaintiff for Damages by him in this behalf sustained And also the further Sum of Nine 61/100 Dollars and Cent. which were adjudged to the said plaintiff for his Costs and Charges in that behalf Expended whereof the said Defendant stands Convected as appears to us of Record - and have you there moneys ready to render to the said plaintiff for Damages and Cost aforesaid and make return of this writ with an endorsement thereon in what manner you shall have Executed the same within ninety days from the date hereof

Witness D F Preston Clerk of our said Court and the seal thereof at office in Jacksonville in said County this 23rd day of January A D 1864.

(Ls)

D. F. Preston Clerk."

And the said Plurius alias Execution aforesaid was afterwards returned by A. J Bradshaw the Sheriff of Morgan County with his endorsement - and also

the receipt of the plaintiff as follows to wit:
"Recd Sept. 6th 1864. My claim in full of the within execution. A Shuff"
I return the within Execution Satisfied in full Cost paid to Clerk. this 6th day of September 1864.
A J. Bradshaw Sheriff M.C."

State of Illinois } ss.
Morgan County }
I Stephen Sutton Clerk of the Circuit Court in said County. do hereby Certify that the foregoing pages Contain a true and Correct Copy of the proceedings in the above entitled Cause as they appear to of record and on the files of our office

Given under my hand and the seal of our said Court at my office in Jacksonville this the 18th day of September A D 1865 — Stephen Sutton Clerk

5 cts Revenue Stamp

At the January Term of the County Court of Morgan --- v State of Illinois begun and held at the Court house in the Town of Jacksonville. on monday the 20th day of January 1862. it being the third Monday in the month Setting for the transaction of Judicial business.
Pres. Hon. Sidney. S. Duncan. County Judge
and on the 7th day of said Term it being Monday the 27th January 1862
Present as above. The following proceedings were had, to wit:

[8665-37]

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Theodore E. Curtis & Christiana A. Cunningham administrator & Administratrix of the Estate of Thomas J Cunningham decd.

vs

Mason F. Woods defendant.

In Assumpsit.

And now comes the plaintiffs by their attorneys D A & J H Smith. and the defendant by his attorneys Epler & Morrison. and waived the trial of this Cause by a Jury & consent that the same may be tried by the Court. After hearing the evidence and arguments of Counsel & the Court being Sufficiently advised finds the issue in the case for the pltffs and assess the Damages to the Sum of Four hundred ninety two & 59/100 Dolls. It is therefore ordered and adjudged by the Court. that the plaintiffs have and recover said Sum of Money in form aforesaid assessed and their Costs expended. in the Case of the said Defendant. and that they have Execution therefor.

State of Illinois } ss. The People of the State of Illinois
Morgan County } To the Sheriff of Morgan County Greeting:

We Command you. of the Estate of Mason F Woods of your County you cause to be made the Sum of Four hundred ninety two Dollars and fifty nine Cents. which Theodore E Curtis and Christiana Cunningham on the 27th day of January 1862, recovered against him

28115-38

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in our County Court of Morgan County and thirteen + 15/100 Dolls. Costs with interest on the same from date of the Judgment until paid - Whereof the said Mason F Woods stands Convicted as appears to us of Record - and that you have the said sum of money - before the Judge of our said Court - within ninty days from date hereof - to render unto said Theodore E Curtis & Christiana Cunningham as aforesaid and have then and there this writ -

Witness John Trabue Clerk of our said Court at Jacksonville this 4th day of February 1862, the seal of said Court being hereunto affixed

John Trabue Clerk

Said Execution is endorsed - Recd. the plaintiffs Claim in full T. E. Curtiss

I return the Execution Satisfied this 14th day of March 1863 - Ed Scott Shriff M.C.

State of Illinois } ss I John Trabue Clerk of the County
Morgan County } Court in & for said County do Certify that the foregoing is a true Copy of a Judgment rendered against Mason F Woods - in the County Court of said County of Morgan and also of the Execution issued in said Case, and the endorsement & return thereon as appears to me from the records & files in this office

In Witness Whereof I have hereunto set my hand & Seal of said Court at my office in Jacksonville this the 18th day of September 1865 - John Trabue Clerk

(5 cts Revenue Stamp) [8115-29]

The deft. here rested his case.

This was all the evidence offered in this case by either party. The Court then gave to the Jury the following instructions for the Plaintiff No. 1. 2. & 3.

1. That when the testimony of a witness is fair not unreasonable and consistent with its self and the witness has not been impeach by any of the modes recognized by the law a Jury has no right to disregard the testimony of such witness.

Given

2. The Court instructs the Jury for the plaintiff that if they believe from the evidence that the deft. assigned the note described in the declaration to the pltff. and that when the note fell due the Maker of the note was insolvent and remained insolvent up to the time of the commencement of the suit and that the amount of the note could not have been made out of the maker by a judgment and Execution they will find for the plaintiff

Given.

3. That the presumption of law is that any Sale of Property is made in good faith and that unless the defendant in this Case has proved by Sufficient Evidence or it otherwise appears from the testimony that the Sale of the property of Woods was fraudulent and that Woods was the owner of property real or personal Subject to execution out of which the note in this case could have been made they must find for Plaintiff

Given

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To the giving of which several instructions the deft. by his Counsel objected at the time, but the Court overruled said objections and gave the said instructions to the Jury to which the deft. by his Atty. then & there at the time excepted—

The Court then gave to the Jury the following instructions numbered 1. 2. 3. 4. 5 & 6. that is to say—

1 That although the Jury may believe from the evidence that Woods sold to Chesnut & Dubois the 140 head of cattle in June 1862. and that the Cattle at that time were at a different point and that Woods never actually delivered the possession of them to Chesnut & Dubois. then the sale of these Cattle would in law be fraudulent and Void as against the Execution Creditors of Woods—

Given

2. If the Jury believe from the evidence that Mason & Woods had property in his possession Subject to Execution at any time after the pltff. might have obtained a Judgment and before the Commencement of this Suit sufficient in Value to have paid the debt in question— then the Verdict of the Jury Should be for the Defendant.

Given

3 The Court instructs the Jury that when one Sells personal property to another and does not deliver him the possession of the property but retains the property in his own possession then the property would be Subject to levy under an Execution against the Seller of the property— as long as it remains in his

[8665-47]

possession. such sale being in law fraudulent as against subsequent purchasers. and Execution creditors

Given

4. The Court instructs the Jury that the possession of Personal property is prima facie evidence of ownership and in this case if you believe from the evidence that Woods was in the possession of Personal property sufficient to have paid this debt then it was the duty of the plaintiff to have levied upon this property and made an effort to collect his debt out of the property and though the said Woods might have asserted that it was not his property it would have still been the duty of the plaintiff to levy upon it and test the question of ownership. and if the evidence shows that plaintiff neglected to do so in this case and has failed to remove or overcome the presumption arising from Woods possession by counter testimony. the law is with the defendant — and your Verdict should be accordingly

Given

5. The Court instructs the Jury that while they may believe that there was a contract between Woods & Chesnut & Dubois to sell them the 140 head of Cattle — yet if the Jury believe that the sale was a mean sham for the purpose of covering up and concealing property from the creditors of Woods then the property would be subject to levy and sale under Execution against Woods — and in settling the question as

to the sale to Chesnut & Dubois. was a Sham or not. the facts if proven that Woods has gone on doing business without making any settlement. or without any defenite arrangements as to the times of the transaction for three years. and that he has remained on the farm Cultivating. it are fair subjects for your Consideration in arriving at your Verdict. Given.

6. The Court instructs the Jury that in all Sales of personal property a visible and actual possession of the property sold is necessary to the validity of the Sale. and that until the possession is actually Changed from the seller to the buyer the property may be levied upon under an Execution against the Seller and in this Case. though you may believe that Woods Sold his personal property to Chesnut & Dubois or to his Son James G Woods and that the property remained in the possession of Woods until a time when the plaintiff might have obtained Judgment and an Execution thereon against Woods. then it was the duty of the plaintiff to have levied upon the property. and if he did not do So and if the Jury believe the property was Sufficient in Value to have paid the debt in question then the Jury Should find for the defendant Given

The Jury then retired and afterwards returned into Court. the following Verdict. We the Jury find for the plaintiff and Assess the Damage at $666.66/100

The Defendant Entered his motion for a

New trial. and filed the following to wit:
The deft. moves that a new trial be granted in this Case. and shows to the Court the following reasons therefor.

1st The Verdict was Contrary to law.
2. The Verdict is Contrary to Evidence
3. The Court admitted improper evidence for the Pltff.
4. The Verdict is against the law and the Evidence
5 The Verdict is excessive
6. The Court gave improper instructions for the Pltff.
To wit. No. 1. 2. & 3.
For these and other good and sufficient reasons &c
Wall for Deft.

But the Court refused to grant said new trial and did then and there overrule the motion for a new trial.
The Defendant then Entered his motion in arrest of Judgment and moved that the Judgment in this Case may be arrested. but the Court overruled said motion in arrest of Judgment and gave a Judgment upon the Verdict for the plaintiff for the sum of $666.66 to which several Rulings of the Court in overruling said Motion for a new trial in overruling said Motion in arrest of Judgment ~~for the~~ and in rendering Judgment for the plaintiff. the defendant by his Counsel then and there at the time excepted and brings this bill of exceptions which he asks may be signed Sealed and made a part of the record

which is done

John H Mulkey (Seal) Judge
of the 3rd Jud. Circuit of Illinois

And afterwards to wit on the 13th day of Oct. A.D. 1865 the Defendant John W. Corgan by his atty. Geo W Wall filed in the office of the Perry County Circuit Court his Appeal Bond in said Cause which said Bond is in the words and figures following, to wit:

Know all men by these presents that We John W. Corgan and . . . . are held and firmly bound unto Aaron A. Frew in the Penal Sum of One thousand Dollars for the payment of which well and truly to be made We bind ourselves our heirs executors & administrators jointly severally & firmly by these presents. Witness our hands and Seals this 9th October 1865 –

The Condition of the Above Obligation is such that whereas the said Aaron A. Frew did at the September Term A.D. 1865 — of the Circuit Court of Perry County Illinois recover a Judgment against the above bounden John W Corgan in an action of Assumpsit for Six hundred and Sixty Six 66/100 Dollars and Costs of suit from which Judgment the said John W. Corgan has taken an appeal to the Supreme Court of the State of Illinois. Now if the above bounden John W Corgan shall duly prosecute his appeal and shall pay said Judgment Costs and interest and Damages in Case said Judgment shall be affirmed then

[8115.45]

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" Then the above obligation shall be void - Otherwise to
" remain in full force & effect -

" 50 Cents Internal Revenue Stamp
" and Canceled

John W Corgan (Seal)
C H McCarver (Seal)

" Approved by me this 13th day of
" October AD 1865 James M Brown Clk. "

State of Illinois } S.S.
Perry County }

I James M Brown Clerk of the Circuit Court in and for said County do Certify that the foregoing contains a true correct and complete Copy of Precipe, Summons, Declaration, Demurrer, Plea, all Orders of Court entered in said Cause including Judgment &c Bill of exceptions and Appeal Bond, in case of Aaron A Frew vs John W Corgan as the same appears of Record and on file in my said Office

In Witness Whereof I have hereunto set my hand and affixed the Judicial Seal of said Court at my office in Pinckneyville this 27th day of October A D 1865 James M. Brown Clerk

[2615-417]

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And the said John M Corgan by his attorney comes and shows to the Court that there is error apparent in the Record & proceedings of this cause and he makes the following special assignment thereof

1 The Court erred in permitting the deposition of Moses in 7 words to be read to the jury

2 The Court erred in permitting the Plaintiff to prove by the parol testimony of Mason T Woods that he had conveyed his real estate

3 The Court erred in giving to the jury for the pltff instructions 1, 2, & 3

4 The Court erred in refusing to grant the deft a new trial

5 The Court erred in overruling the motion in arrest of judgment

For these and divers other errors the appellant asks that the judgment

May be argued &c

Geo H Hall
for appellant

Joinder in Error

Orrel Very & Smith
for appellees

[Pecs-47]

38

John W. Lorgan
Appellant
vs

Aaron A. Freer
appellee

Appeal from Perry

Record.

Filed Nov. 7. 1865
N. Johnston Cl
" "
Paid by Wall $5.00

IN THE SUPREME COURT,

First Grand Division,---State of Illinois.

NOVEMBER TERM, A. D., 1865.

JOHN W. CORGAN, *Appellant*,
vs.
AARGN A. TREW, *Appellee*.

POINTS AND AUTHORITIES FOR APPELLEE.

1st. The evidence of Wood, maker of the note is admissable, as between assignor and assignee. He has no interest in the event of the suit that would disqualify him. 1st Greenleaf, sec 384, page 485; sec 389, sec 390. If interested at all his interest is equal on both sides and he is competent. Ibid sec 420; Phillips Evidence 1 vol page 87.

2d. Porol evidence is admissible to prove the fact of sale and conveyance of real estate, and if the good faith of the sale is questioned, the burden of proof is on the party questioning it.

3d. First instruction is correctly given. 28th Ills. 161, Robertson vs Dodge,

Second instruction is correct. Sec 7, Rev. Stat. 1845, page 385.

Third instruction is correct.

4th. The question of good faith in this case is a question of fact of which the jury are the sole judges. 1 Gil. 84.

B. B. SMITH, *Att'y for Appellee.*

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John W Corgan
appellant
vs
A A Force
appellee

Deft's Brief

Filed Nov. 10. 1865
N. Johnston Clk

JOHN W. CORGAN,
vs.
AARON A. FREW.

Appeal from Perry.

Brief for Appellant.

The note offered in evidence did not support the declaration, the words "with ten per cent. after due," do not import *interest* at ten per cent. per annum

The instrument was not a note and is void for uncertainty Norwich Bank vs Hyde 13 Conn 282 – 1 Parsons on Notes 28

It was upon the plff. to prove that Woods had no real estate. It was admitted by Woods that he had formerly owned some, (and the deft. proved by Given that he had been in possession of the farm for fifteen years), but it proposed to prove by Woods that he had executed a valid conveyance to Chesnut & Dubois; of this fact the best evidence should have been offered. Was the deed valid? was it admitted to Record? Was the conveyance such as would have prevented the plff. from making the debt? These facts it was necessary for the plff. to prove. He alleged the insolvency of Woods.

1 Gr Ev 32 – Chalmers vs Moore 22 Ills 362

Plaintiff's first instruction was calculated to mislead; It is the peculiar province of the Jury to give the witness such credit as they may think him entitled to.

Plaintiff's third instruction misled the Jury; A change of possession is a necessary element of every sale, and this instruction would shift the burden of proof from plff. to deft. This instruction assumed that there was a sale proven

The Jury calculated interest at ten per cent. from the maturity of the note up to the trial. The plff. had merged the note into judgment on the 24th March. 1863, and should only recover six per cent. on that amount. He should not require the deft. to pay him any more than the deft. could get from the maker.

The verdict is manifestly against the evidence. There never was a change of possession of the 140 head of cattle sold to Chesnut & Dubois, and at least one fourth of them remained in Woods' possession during the winter of '62–3. Some five hundred dollars worth sold to J. J. Woods remained on the farm all winter—and the $650 worth sold to Rice remained in the possession of Woods.

The whole transaction was clearly fraudulent and void as against the execution creditors.

GEO. W. WALL, for Appellant.

[8665-52]

Corcoran
v
Ryan

Ep pr appellant

Filed Nov. 7 1865
A. Johnston Cl

IN THE SUPREME COURT,

First Grand Division,---State of Illinois.

NOVEMBER TERM, A. D., 1865.

JOHN W. CORGAN, *Appellant*,
vs.
AARGN A. TREW, *Appellee*.

POINTS AND AUTHORITIES FOR APPELLEE.

1st. The evidence of Wood, maker of the note is admissable, as between assignor and assignee. He has no interest in the event of the suit that would disqualify him. 1st Greenleaf, sec 384, page 485; sec 389, sec 390. If interested at all his interest is equal on both sides and he is competent. Ibid sec 420; Phillips Evidence 1 vol page 87.

2d. Porol evidence is admissible to prove the fact of sale and conveyance of real estate, and if the good faith of the sale is questioned, the burden of proof is on the party questioning it.

3d. First instruction is correctly given. 28th Ills. 161, Robertson vs Dodge,

Second instruction is correct. Sec 7, Rev. Stat. 1845, page 385.

Third instruction is correct.

4th. The question of good faith in this case is a question of fact of which the jury are the sole judges. 1 Gil. 84.

B. B. SMITH, *Att'y for Appellee.*

[Dec 5-65]

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John W Cooper
appellant
vs
A A Frue

Appellees
Points & Authorities

Filed Nov. 10. 1865
N. Johnston Clk

IN THE SUPREME COURT,

First Grand Division,---State of Illinois.

NOVEMBER TERM, A. D., 1865.

JOHN W. CORGAN, *Appellant*,
vs.
AARGN A. TREW, *Appellee*.

POINTS AND AUTHORITIES FOR APPELLEE.

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B. B. SMITH, *Att'y for Appellee.*

When there is a question of doubt as to the amount of a note the court may refer to the figures in the margin to ascertain it. Riley v Dickens, 19 Ill 29 Page

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Corgan
vs
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Appeal from
Perry.

Opinion - Reed J.
Diff. Obs. & Bis
Opinion Bis, 8 6.

W.
Nov. 5. 1865.
Reported

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