

11812

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

Supreme Court of Illinois

Lake

vs.

Morse, et al

71641  7

46  
William A. Lake  
vs  
D. W. Morse et al. pro.

21811

1850

Prepared

United States of America  
State of Illinois.

Now before the Hon. Isaac L. Wilson  
Judge of the thirteenth Judicial Circuit  
and presiding Judge of Kane County Circuit  
Court. at a term of Kane County Circuit  
Court. begun and holden at the Court  
House in Seneca in said County on the  
Eight day of November in the year of our  
Lord, one thousand eight hundred and  
Fifty Two.

Present Hon Isaac L. Wilson Judge  
Amos B. Cook State Attorney.  
Suther Dearborn. Sheriff  
Attest Charles B. Wells Clerk

It is remembered that on the fourth day Decem-  
ber A. D. 1852 the same being one of the days of said November  
Term came Franklin C. Cook by Augustus M. Herrington his  
attorney and filed in the office of the Clerk of this Court a de-  
claration of which the following to wit: is a copy:

"State of Illinois

"Kane County) Of the November Term in the year  
one thousand eight hundred and fifty

"Franklin C. Cook Plaintiff in this suit by  
Herrington attorney complains of William A. Lake Defendant  
in this suit who has been summoned in a plea of Trespass on the  
case upon promises:

"That whereas the said Defendant heretofore  
to wit: on the 25<sup>th</sup> day of July in the year of our Lord One  
thousand eight hundred and forty nine at St Charles in the County of  
Kane made and signed his certain promisory note in writing and  
then and there delivered the same bearing date the same day and year  
aforesaid to Franklin C. Cook in and by which said note said defendant  
by the same title and description of William A. Lake promised  
to pay Cook said plaintiff two hundred and seventy dollars <sup>interest</sup> within

" By and whereof, and by force of the Statute in such case made  
" and provided the said Defendant became liable to pay said Plaintiff said  
" sum of money mentioned in said note, and being so liable in consid-  
" -eration thereof they and they undertook and promised to pay the  
" same to said Plaintiff according to the tenor and effect intent and  
" meaning of said note to wit: at the place aforesaid.

" And whereas also the said Defendant afterwards to wit: on  
" the twenty fifth day of July in the year of our Lord one thousand  
" eight hundred and fifty nine to wit: at St Charles in the said County  
" became indebted unto the Plaintiff in a large sum of money to wit:  
" four hundred dollars for money before that time lent and advanced  
" to and paid, laid out and expended for said Defendant: by said  
" Plaintiff at said Defendants request: and for money before that  
" time had and received by said Defendant to and for the use of  
" said Plaintiff: and also in the like sum for goods wares and mer-  
" -chandise, before that time sold and delivered by said Plaintiff to  
" said Defendant at like special instance and request: and also in  
" the like sum for the labor, care and diligence of said Plaintiff before  
" that time done and performed by said Plaintiff for said Defendant  
" & at the like instance and request of said Defendant, and also in  
" the like sum for money found to be due from the Defendant to the  
" Plaintiff on an account then and there stated between them and  
" being so indebted said Defendant in consideration thereof they and  
" they undertook and promised to pay said Plaintiff said last mentioned  
" sum of money when they were afterwards requested.

" Not the said Defendant not regarding his said  
" promises and undertakings but contriving so although often re-  
" -quested so to do. has not paid said Plaintiff either of said sums  
" of money or any part thereof but so to do has hitherto wholly neg-  
" -lected and refused and still do neglect and refuse to the damage  
" of said Plaintiff of five hundred dollars and therefore he brings  
" suit &c.

A. M. Herington Atty for Plaintiff.

Whereupon on the same day came William D Barry and filed  
in the office of the clerk of this Court a note and warrant of  
attorney of which the following are copies to wit:

\$290.00

July 25<sup>th</sup> 1849.

On or before the 25<sup>th</sup> of July eighteen hundred and fifty for value received I William A. Lake promise to pay Franklin C. Cook or order the sum of two hundred Ninety dollars with Interest W. A. Lake

I know all men by these presents that the subscribed William A. Lake am fully indebted unto Franklin C. Cook upon a certain promissory note bearing even date herewith for the sum of two hundred and ninety dollars and cents made payable to said F. C. Cook or order and due on the 25<sup>th</sup> day of July 1850

Now therefore in consideration of the premises I do hereby make constitute and appoint Wm D. Barry or any attorney in any Court of Record to be my true and lawful attorney, <sup>inexpofable</sup> for me and in my name, place and stead to appear in any Court of Record, in term time, or in vacation, in any of the States or Territories of the United States at any time after the said note becomes due, to waive service of process and confer judgement in favor of said F. C. Cook or his assignee or assignees, upon the said note for the above sum, or for as much as appears to be due according to the tenor and effect of said note with interest thereon, together with costs: also to file a Cognovit for the amount that may be so due, with an agreement therein, that no writ of error or appeal shall be prosecuted upon the said judgement entered by virtue hereof, nor any bill in equity filed to interfere in any manner with the operation of said judgement and to release all errors that may intervene in the entering up of said judgement or in its execution thereon. Merely ratifying and confirming all that my said attorney may do by virtue hereof

Witness my hand and seal this 25<sup>th</sup> day of July A. D. 1849  
In presence of W. A. Lake Seal  
A. M. Harrington J.

And thereupon on the said fourth day of December the said W. D. Barry filed in the office of the clerk of this Court a Cognovit of which the following is a copy to wit:

"Franklin C. Cook

"William A. Lake

"Haw County Circuit Court

"November Term A.D. 1852

"And the said Defendant by William  
"D. Barry his attorney in this behalf duly authorized comes  
"and defends the wrong and injury when he and says that he  
"cannot deny that he did undertake and promise the said Plaintiff  
"in manner and form as the said Plaintiff hath above thereof in his  
"said declaration complained against him. Now but that he hath  
"sustained damage by reason of the non-performance of the same  
"to the sum of three hundred and seventy dollars, \$370.00, and  
"the said defendant confers judgement for that sum besides  
"costs and waives service of process, and all errors which  
"may intervene in the entering up of said judgement or in  
"the issuing of any execution thereon "

"W. D. Barry Attorney for Defendant."

Whereupon and on the same day the following  
proceedings were had, and judgement entered thereon, in the  
words and figures following to wit:

"Franklin C. Cook

"William A. Lake

"Assumpsit"

"This day comes the plaintiff by  
"Wharrington his attorney and files his declaration against the  
"Defendant, thereupon comes William D. Barry a licensed attorney  
"of this Court and presents to the Court a power of attorney, from  
"the Defendant the execution of which is duly proven by which  
"he waives service of process and waives all errors that may  
"intervene in entering up of said judgement or issuing the execution  
"thereon, and confers that he did promise and undertake in  
"manner and form as said plaintiff hath thereof complained against  
"him and hath sustained damage by reason of the non-performance  
"of said promises and undertakings to the amount of Three  
"hundred and seventy dollars. It is therefore considered by

"the Court that the Plaintiff have and recover from the Defendant  
"the sum of three hundred and seventy dollars and his costs  
"in this suit expended and have execution therefor."

And afterwards to wit: on the fifth day of  
March A<sup>D</sup> 1853 it being one of the days of the February Term of  
said Court the following among other proceedings were had.

"F. L. Cook

" "

"William A. Lake

"No to set aside Judgt of last Term"

This day comes the Defendant by Farnsworth  
"and Ferguson attorneys and moves the Court to set aside Judgt of  
"last Term, and on motion of Worthington for Plaintiff, the  
"same is continued, Plaintiff stipulating to take no steps to collect  
"his Judgement till next Term."

And afterwards to wit on the 13<sup>th</sup> day of May  
1853 it being one of the days of the May Term of said Court  
for the year A<sup>D</sup> 1853. the following among other proceedings were  
had.

"Franklin L. Cook

" "

"William A. Lake

"No to set aside Judgt."

This day comes on to be heard the Defendants  
motion heretofore entered herein to set aside the Judgt of the Court at  
the last November Term the Court being fully advised overrules  
the motion and the Defendant excepts.

Whereupon and on the 24<sup>th</sup> day of May A<sup>D</sup> 1853  
the same being one of the days of the said last mentioned May  
Term of said Court. the said William A. Lake by his attorney  
aforesaid. filed with the Clerk of this Court his certain bill  
of exceptions, signed and sealed by the <sup>Judge</sup> Hon Isaac S  
Willow, of which the following is a copy to wit:

Franklin L. Cook

Kane Circuit Court.

William A. Lake

May Term AD 1853

Motion to set aside judgment  
rendered by confession at the November  
Term of this Court 1852

It is remembered that this motion (which was  
entered at the last February Term of this Court by the said Lake)  
coming in to be heard the said William A. Lake by his counsel after  
showing to the Court the note and warrant of attorney upon which  
the judgment in this case was rendered presented and read to the  
Court the following proofs and affidavits to wit:

Kane County Cir Court

William A. Lake

vs  
Franklin L. Cook } State of Illinois  
Kane County }

William A. Lake the Defendant  
in this cause being duly sworn deposes and says, that at the last  
November Term of this Court and on the 4<sup>th</sup> day of December AD 1852  
a judgment was entered in this Court in favor of the Plaintiff against  
this deponent for the sum of three hundred and seventy dollar  
damages, and costs, upon a note and warrant of attorney, in  
William A. Barry an attorney of this Court appearing and  
filing a Cognovit by which he confessed judgment for the above  
amount. And deponent says that he never gave said Barry  
any authority to appear and confess judgment upon such note  
except such as is contained in the warrant of attorney, that  
nothing was paper between this deponent and said Barry upon  
the subject.

And deponent further says that the note and  
warrant of attorney upon which said judgment above mentioned  
was entered were given without any consideration of any nature  
or matter but were fraudulently obtained by said Cook from  
deponent. And deponent had no notice whatever that said

Cook intended to enter judgement on said note & warrant  
 of attorney. & that such judgement was entered until after the  
 adjournment of this Court at said November Term. No writ or  
 execution has been issued thereon some time in the month of De-  
 cember last. This Deponent therefore prays the Court that the  
 said Cognovit, judgement and execution and all proceedings sub-  
 sequent to the declaration be set aside and he be permitted to come  
 in, plead to the declaration herein and defend the said suit.  
 Sworn to this 17<sup>th</sup> February } "W. A. Lake"  
 1853 before me L. Dearborn Clk. }  
 Filed February 17. 1853. L. Dearborn Clk.

William A. Lake } Home Circuit Court.  
 att } February Term A.D. 1853.  
 H. L. Cook } Motion to vacate judgement  
 State of Illinois  
 Home County ss:

Dorcas Lake being duly sworn and  
 deposed and say that she was present when the note (on which judgement  
 in this cause was entered up,) was given by the said Lake to said  
 Cook and saw the same, that said Cook brought the note and  
 power of attorney attached ready filled up to the Hotel which  
 said Lake was keeping, and into a room where<sup>and</sup> this affiant & the  
 said Lake and his wife, and then stated to said Lake that he,  
 (Cook) wanted the note executed by Lake in order to prevent one  
 Austin Barnum from taking away certain property from said Hotel  
 that the said Lake was opposed to signing the said note and  
 stated to Cook that he was afraid Cook would take advantage  
 of him by it but Cook assured said Lake that he would take  
 no advantage of him with said note and that he could not  
 if he wanted to; that said note was given without any con-  
 sideration whatever. That the said note was actually given  
 about, the first part of March 1851. and was dated back

Sworn to and subscribed before me } Dorcas E. Lake  
 this 15<sup>th</sup> day of March A.D. 1853 }  
 A. R. Williamson Justice of the Peace



" State of Illinois  
" Kane County:

" Mrs Sophronia Lake being duly sworn  
" doth depose and say that she was present at the giving of the  
" note mentioned in the foregoing affidavit and that the facts  
" in the said affidavit stated are true.

" Sworn to and subscribed

" Sophronia Lake

" before me this 5<sup>th</sup> day of

" March A.D. 1853

" A.P. McWayne Justice of the Peace

" Filed March 5<sup>th</sup> 1853. "L. Deaton Clerk."

" State of Illinois

" Kane County: }  
} p.m.

" Wm A Lake being duly sworn doth depose  
" and say that the matters stated in the affidavit of Porcas  
" Lake are true, and further that the said Cook antedated said  
" note to make it the same date of a note for the same amount  
" which this deponent gave said Cook which was secured by a  
" Chattel Mortgage and which had been paid by this affiant  
" and taken up before this note was given

" Sworn to and subscribed

" W. A. Lake

" before me this 5<sup>th</sup> day of

" March A.D. 1853.

" A.P. McWayne Justice of the Peace.

" State of Illinois

" Kane County: }  
} p.m.

" Austin Barrum being duly sworn doth  
" depose and say that Franklin C. Cook about the 6<sup>th</sup> day of  
" February 1851 in a conversation with this affiant <sup>told this affiant</sup> that William  
" A Lake did not owe him (Cook) any thing, they had settled  
" and squared every thing all up

" Sworn to and subscribed before me this 5<sup>th</sup> day of March A.D. 1853. Austin Barrum

" day of March A.D. 1853. A.P. McWayne Justice of the Peace.

"Filed March 5<sup>th</sup> 1853. L. Dearborn Clerk."

And thereupon the said Cook by his attorney presented and read to the Court the following proofs and affidavits to wit:

Haw County Circuit Court.

William A Lake

vs

Franklin C. Cook

Of the February Term  
AD 1853.

Franklin C. Cook the above named Plaintiff being duly sworn on oath deposes and says. That it is true that he recovered a judgement against William A Lake at the last December term of this Court for the sum of three hundred and seventy dollars, and that said judgement was obtained by confession as now fully appears by reference to the proceedings had in said cause. Your affiant would further state that said judgement note upon which said judgement was entered was given for a good lawful and valid consideration. Said note was given by said Lake to your affiant for rent then due this affiant and for household property sold by this affiant to said Lake. Your affiant would also swear that said note was not obtained fraudulently or wrongfully as is stated in said Lakes affidavit. but was obtained only in the manner above stated by your affiant.

Subscribed and sworn before P. C. Cook  
on this 5<sup>th</sup> day of March 1853. L. Dearborn Clerk

"Filed May 13<sup>th</sup> 1853 L. Dearborn Clerk."

Wm A Lake

vs

F. C. Cook

Motion to set aside Judgt.

May Term 1853.

Augustus W. Werrington being sworn on oath saith he is the subscribing witness to the note upon which

judgement was entered in this cause. That book  
gave said note to this affiant stating that it was agreed  
between Lake and him that this affiant should be the  
subscribing witness to said note. Your affiant would further  
that a short time afterwards to wit within the space of two  
weeks your affiant presented said note to said Lake  
when said Lake told this affiant, that said note was all  
right, that it was the agreement between himself & book  
that your affiant should be the subscribing witness to  
said note, this affiant knows this was in the year 1830  
as to this your affiant cannot be mistaken. your  
affiant knows of his own knowledge, that said Lake  
was indebted to said book, for furniture and household  
goods, and for rent due from said Lake to said book  
at and about said time.

Subscribed & sworn to this } A. M. Worthington  
13<sup>th</sup> day of May AD 1833

Luther Dearborn, Clk.

"Filed May 24<sup>th</sup> 1833. L. Dearborn Clerk."

"And thereupon the Court overruled the said motion  
of the said Lake to set aside and vacate the said judgement  
to which ruling of the Court in overruling and refusing  
said motion the said Lake excepted at the time & prays  
that this bill of exceptions may be sealed which is done.

"Spae G. Wilson Judge. (Seal)"

And afterwards to wit on the 14<sup>th</sup> day of  
May 1833 it being one of the days of said last mentioned May  
term the following among other proceedings were had:

Franklin C. Cook

"

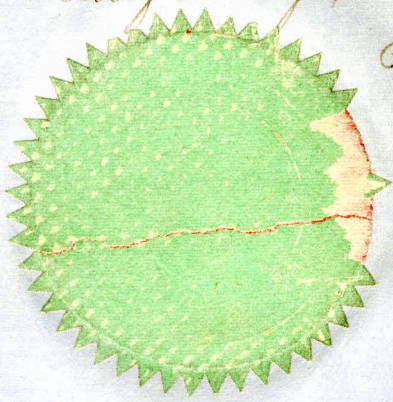
William A. Lake

} Mo to set aside judgment

This day comes the Defendant by  
James Cook & Ferguson his attorneys on in the Court for a  
rehearing of the motion Mo denied.

State of Illinois  
Kane County p:

I Luther Dearborn Clerk of the  
Kane County Circuit Court: do hereby certify that the  
above and foregoing is a full true and correct copy and  
perfect transcript of all the proceedings and of all the  
papers pertaining to this cause as appears by the Records  
and files of said Court on file in my office.



In witness whereof I have hereunto set  
my hand and the seal of said Court  
this 3<sup>rd</sup> day of May A.D. 1853 at  
Geneva in said County  
Luther Dearborn  
Clerk

Supreme Court  
William A. Lake  
Attorney  
M. C.

Franklin & Clark  
Dist. Court  
Record cut copy

11812

Summit & Seymour  
Attys for Plaintiff

~~12278~~  
Dupaced

Filed April 4, 1854.  
L. Celand Clerk



striking out the names of S W Morse & B Connely, whom  
the same appeared & inserting in lieu thereof Simeon W  
Morse & Benjamin Connely, deft excepted the defen  
dant thereupon refused to make any further appear  
ance, whereupon the court proceeded to try the cause  
without a jury & plaintiff proved that Simeon W  
Morse & Benjamin Connely, were at ~~that~~ time of the  
date of the note aforesaid & still are partners under the  
name & style of Morse & Connely, the note was in <sup>read</sup> evidence

This was all the evidence The Court  
found for the plaintiffs of 9135 plffs remit \$1148

Def't then moves in arrest of judgment  
Motion overruled. The assignment of errors in ques  
tion, the correctness of the papers so as to substitute  
new parties plaintiffs

+ 2<sup>nd</sup> In Trying the cause after substitutions with  
out a jury, the def't not appearing,

back

Before R. S. these names <sup>of</sup> might have  
been announced but that she was  
repeated

1 May R 310

6 June 267

8 M & S 30

8 S & R 53

3 Conn 484

31 B & R 340

22 Merr 608

1 Conn. by 609

Courts will never amend by changing  
names of parties

William H Baker

vs  
JW Moore et al

Abstract

550  
3  
16500

Filed June 25, 1850.  
L. Deland Clk.

10000

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10000

20000

20000

20000

20000

20000

per account of ...  
of ...

per account of ...  
of ...



United States of America

State of Illinois  
Kane Circuit Court

Be it remembered that on the 18<sup>th</sup> day of October AD 1849 there was filed in the Clerk's Office of Kane Circuit Court a Summons and Magistrate's Manuscript of which the following are true copies to wit:

State of Illinois  
Kane County

The People of the State of Illinois to any Constable of said County, Greeting

You are hereby commanded to summon William A Lake to appear before me at my office in St Charles in said County on the Eight day of October AD 1849 at 8 O'clock in the forenoon to answer the complaint of J. W. Moore and B Connelly for the use of William Fortham for a failure to pay him a certain demand not exceeding one hundred dollars and thereof make <sup>due</sup> return as the law directs. Given under my hand and seal this 2<sup>d</sup> day of October AD 1849.

Alexander H Baird  
Justice of the Peace

subscribed as follows" Served by reading to the defendants  
Oct 14<sup>th</sup> 1849 Job S Randall Const for. 30

J. W. Moore  
B Connelly for  
the use of William Fortham  
William A Lake

Summons issued Oct  
1849 to Job S Randall  
Const returnable on the  
8<sup>th</sup> day of October 1849

at 8 o'clock A.M.; October 4<sup>th</sup> Summons  
returned duly served for 30 cts Randall Cust.;  
October 8<sup>th</sup> Inst called. Plaintiff appeared by his  
Counsel W D Bay, defendant did not appear  
and judgment was rendered on a Promissory Note  
by default for thirty dollars debt and costs of  
suit; Oct 9<sup>th</sup> execution issued in oath of W Fordham  
delivered to Job S Randall Cust.; Oct 11<sup>th</sup> 1849  
defendant took an appeal. Execution returned for  
50 cts Job S Randall Cust

State of Illinois }  
Kane County } I do hereby certify that the  
above is a true copy of the  
proceedings and trial had before me on my docket  
at Chula, October 17<sup>th</sup> 1849

Alexander C Baird  
Justice of the Peace

And afterwards to wit on the 19<sup>th</sup> day of Oct  
AD 1849 then issued out of Kane County  
Circuit Clerk's Office an appeal Summons  
of which the following is a true copy to wit.

State of Illinois }  
Kane County ss } The People of the State of Illinois  
to the Sheriff of said County,  
Greeting

We command you to summon S. M.  
Moore and B Connolly & Wm Fordham if to  
be found in this County. personally to be and  
appear before the Circuit Court of said County on  
the first day of the next Term thereof to be holden  
at the Court house in Geneva on the first Monday  
after the third Monday of March next to

abide by and perform the judgment of said Court in a certain Appeal at their Suit against William A Lake and make due return of their writ

Seal

Witness Charles P Mills Clerk of  
Said Court and the Seal thereof at  
Geneva this 19<sup>th</sup> day of October  
AD 1849

Chas. P. Mills Clerk  
Endorsed as follows" The within named S. M.  
Moore & P. Connolly not found in my Bailwick  
Dec 4<sup>th</sup> 1849  
R. C. Yates Sheriff  
by Geo. E. Corwin Dep.

On the 18<sup>th</sup> day of Oct 1849 an appeal  
Brought to Kane Circuit Court was filed in said  
Clerk's office of which the following is a copy:  
"Know all Men by these presents that we  
William A Lake and Seth Marvin are held and  
firmly bound unto S. M. Moore and P. Connolly  
for the use of William Fordham in the Penal  
sum of one hundred and Eighty dollars lawful  
money of the United States for the Payment of which  
well and truly to be Made, we bind ourselves our  
heirs and Administrators, jointly, severally  
and firmly by these presents. Witness our hands  
and Seals this Twelfth day of October AD 1849.

The Condition of the above obligation  
is such that whereas the said S. M. Moore and  
P. Connolly for the use of William Fordham  
did on the 8<sup>th</sup> day of October AD 1849 before  
Alexander H Baird a Justice of the Peace  
for the County of Kane receive a judgment

Against the above bounden William Blake  
for the sum of Ninety dollars and — Cents; from  
which judgment the said W. A. Lake has taken an  
appeal to the Circuit Court of the County of Kane  
aforesaid and State of Illinois. Now if the said  
William Blake shall prosecute his appeal into  
effect and shall pay whatever judgment may  
be rendered by the Court upon dismissal or trial  
of said appeal then the above obligation to be  
void, otherwise to remain in full force and  
effect.

W A Lake 1849

Wm Marvin 1849

Approved by me at my office  
in St. Charles this 11<sup>th</sup> day of  
October AD 1849

Alexander W Baird 1849

Justice of the Peace

And afterwards to wit on the 20<sup>th</sup> day  
of March AD 1850 it being one of the days of the  
March Term of Kane Circuit Court AD 1850 the  
following among other proceedings were had

12 S. W. Morrow and

W Connolly for  
William Fordham

7  
William Blake

} Appeal

This day comes  
the Plaintiff by Barry  
their Attorney, and the

defendant by Barry with his Attorney and  
were a jury and submit this cause to the Court  
for trial; then upon comes Barry attorney for plaintiff  
and moves to amend the Summons so that the plain-  
-tiff's name shall read Simon W Morse & Benjamin

Counsel for William Fordham and that  
 the suit be so entitled, which motion is  
 resisted by Farnsworths defendant Attorney;  
 the Court being fully advised sustains said motion  
 and orders the summons to be so amended, and  
 the suit to be so entitled; thereupon Farnsworth  
 Attorney for defendant refuses to answer for-  
 ther; and this cause coming on to be heard  
 after hearing the evidence the Court finds  
 for the plaintiff thirty one dollar, and thirty  
 five cents; it is therefore considered by the Court  
 that the plaintiff have and recover of the defendant  
 the sum of thirty one dollar, and thirty five cents  
 and their costs in this suit expended and that  
 they have execution therefor; and thereupon comes  
 the plaintiff by Barr and remits from the  
 judgment the sum of eleven dollars and fifty  
 eight cents; Now comes Farnsworth for  
 defendant and prays in arrest of judgment

91 35  
 11 48  
 74 67

and afterward to wit on the 23<sup>rd</sup> day of March  
 AD 1850 it being one of the days of the last session  
 March Term of said Court the following proceeding  
 was had to wit:

25	B. W. Morse and B. Connally for William Fordham	}	Appare
86	William Wake		This day comes on to be heard the defendant, Motion heretofore entered herein for arrest of judgment the Court being fully advised overrules the same; thereupon comes Farnsworth Attorney for defendant and prays in appeal to the Supreme Court

which is allowed by the Court upon Condition, that  
the defendant enter into Bond in the penal  
sum of one hundred and Fifty dollars within  
Thirty days from this date with Seth Marvin Security.

On the 22<sup>d</sup> day of March the defendant  
filed his Motion in arrest of judgment of which  
the following is a copy

Morse and Connolly  
for N. Dordham

William Blake

New Circuit Court  
March Term A.D. 1850

And now comes the said  
defendant by Jarvis with his Attorney & moves  
the Court to arrest the said judgment herein  
for the reasons

1<sup>st</sup> That the defendant was sued to  
answer into defendant Parties Plaintiff from those  
in whose favor judgment is rendered.

2<sup>d</sup> The Court erred in allowing the  
amendment of the record by substituting  
the name of Morse for that of Moore

3<sup>d</sup> the judgment is in favor of Parties by  
their initials and not by their names, therefore  
the Parties are uncertain.

4<sup>th</sup> There being no appearance for  
defendant (appellant) the Court cannot  
not try the cause &c

J. D. Jarvis with  
Attorney for Def.

And afterwards, to wit on the 15<sup>th</sup> day of April  
AD 1850 the defendant filed in the Clerk's Office  
an Appeal Bond to the Supreme Court of which  
the following is a true copy to wit:

Know all men by these presents  
that we William A Lake and Seth Marvin  
of Kane County and State of Illinois, are held  
and firmly bound unto S. W. Morse & Bannell,  
for William Fordham in the Penal Sum of one  
hundred <sup>and</sup> Fifty Dollars to be paid unto  
the said S. W. Morse and Bannell, for William  
Fordham to which payment well and truly to be  
made we bind ourselves our heirs, executors,  
Administrators or Assignes, jointly severally and  
jointly by these presents. Witness our hands and  
Seals this 15<sup>th</sup> day of April AD 1850

The Condition of the above obligation  
is such, that whereas the said S. W. Morse and  
Bannell for William Fordham did on the  
20<sup>th</sup> day of March AD 1850 recover in the  
Kane County Circuit Court in the State of Illinois  
a Judgment against the said William A Lake  
for the sum of Seventy Nine Dollars and Eighty Seven  
Cents together with their Costs and Charges, from which  
Judgment the said Lake immediately prayed an  
Appeal to the Supreme Court - which the Judge of said  
Court allowed on Condition that the said Lake enter  
into Bond with the above named Seth Marvin as  
his Security in the Penal Sum of one hundred  
and Fifty Dollars conditioned as the Law directs  
within Thirty days

Now if the said William A  
Lake shall pay the said Judgment, Costs, interest,

and Damages in case the said judgment shall be affirmed and shall duly prosecute his said appeal there this obligation to be void otherwise to remain in full force and effect

W A Lake 267

Seth Marwin 35

And Afterward, to Wit on the 16<sup>th</sup> day of April AD 1850 the defendant filed in said Clarks Office a Bill of exceptions of which the following is a copy to Wit

State of Illinois

Kalamazoo Circuit Court  
March Term AD 1850

J. M. Moore and  
P. D. Connelly, for the  
use of W. Farnsworth

Appeal for Justice

William A. Lake

Be it remembered  
that the above entitled

Cause came on to be tried at said Term of said Court, and when the cause was submitted to the Court for trial a jury being waived by Plaintiff and defendant; the Plaintiff offered in evidence a note of which the following is a copy to Wit:

\$87.00

July 8<sup>th</sup> 1849.

Thirty days from date I promise to pay  
Morse and Connelly, or Bearer Eight Seven Dollars,  
and Interest at 6 Six Per Cent for Value Received.

W. A. Lake

To the reception of which Note in evidence the Deft  
by Farnsworth his Attorney objected for the



reasons that the said Note was not evidence of indebtedness to the said Plaintiff, and shew'd to the Court that the original Summ<sup>o</sup> in this Cause was as follows (see Copy of Summons in the Commencement of this Record.) And the Transcript sent up by the Justice in this Cause was in the words and figures (see Transcript in the Commencement of this Record), whereupon the Court on Motion of the Plaintiff, the defendant objecting: order'd the papers in this Cause to be amended by inserting in the Summons - Transcript and the Records in this Court the Names, "Simon N Morse and Benjamin Connelly" in lieu of S. N. Moore & B. Connelly, whereon the same are found to which Order allowing said Amendment defendant by his Attorney excepted; and defendant thereupon Attorney thereupon said to the Court, I withdraw my Appearance and will take no further part in this Proceeding - Whereupon the Amendment being made as order'd, the Court proceed'd to try the Cause without Jury, and Plaintiffs proved that Simon N Morse & Benjamin Connelly at the time of making said Note were and ever since have been Partners, doing business under the name and style of Morse and Connelly - and then read said Note in evidence. This was all the evidence in the Cause, and the Court found for the Plffs.

Be it also remembered that the said defendant filed herein his Motion in arrest of Judgment which Motion is in the Words and figures following to wit

Morse and Connelly  
for W Bondham  
vs  
William ~~Bondham~~ <sup>Asake</sup>

Hann Circuit-Court  
March Term AD 1850

And now Comes the  
said defendant by Bondham Jarnsworth his  
Attorney and moves the Court to arrest the said  
Judgment herein for the reason that the defendant  
was sued to answer unto different parties ~~pleas~~  
from those in whose favor judgment is rendered.

1 The Court ruled in allowing the amendment  
of the plead by substituting the name of Morse  
for that of ~~Connelly~~ Moore

2 The judgment is in favor of Parties by  
their initials, and not by their names, therefore  
the Parties are uncertain.

4<sup>th</sup> There being no appearance for defendant  
(appellant) the Court could not try the cause nor  
disperse with a Jury &c

J F Jarnsworth

Attorney for defendant

which motion was overruled by the Court, to which  
ruling of the Court in overruling said motion the  
defendant by his Counsel excepts, and prays  
that this his bill of exceptions may be sealed  
which is done

Theophilus S. Dickerson  
Judge &c.

State of Illinois  
Hann County ss

J Charles B Mills  
Clerk of Hann Circuit

Court do hereby Certify that the foregoing is  
a true Copy of the Original Summons and

Manuscript issued by the Justice of the Peace,  
Appeal Bond and Appeal Summons to  
this Court, the defendants Motion Reasons for  
a new trial, Appeal Bond to the  
Supreme Court & Bill of Exceptions on file  
in my Office; Also a true Copy of the judg-  
ment of Court as appears of Record.

Witness my Hand and Seal  
of said Court at Geneva in  
said County this 3<sup>rd</sup> day of  
June A.D. 1850

Charles D. Wells,  
Clk.

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William C. Lake  
vs  
S. W. Elmore et al. for ce.

Record

Filed June 11, 1850.  
Isolau Clk.

William A. Wake - plaintiff  
 vs  
 Squire M. More &  
 Benjamin Councilly Defendants

Supreme Court  
 June Term 1850

Appeal from Peace.  
 The said Plaintiff now comes  
 and signs for error herein

First

The Court erred in making and allowing  
 the amendments thereby changing the  
 names of the parties Plaintiff from S. M.  
 More & B. Councilly to Squire M. More  
 & Benjamin Councilly upon the record  
 the summons, the transcript & Bond &c -

Second

The Court erred in rendering judgment  
 in favor of different parties Plaintiff  
 from those who sued.

Third

The Court where there was no appearance  
 for defendant below, erred in trying  
 the cause, without a jury.

Fourth

The Court erred in refusing to arrest  
 the judgment and in not requiring costs to be  
 paid by plaintiffs below as a condition  
 of amendment, at all events -

Fifth

The Court erred in giving judgment for plaintiffs -  
 J. H. Hansworth  
 his atty

George Connolly depts in error }  
for who de.  
adrs  
Wm Leland depts in error }

And now come the  
said defendants in error by Loop &  
Leland their attorneys, and say, that there  
is no error in the record, proceedings or  
judgment of the said Circuit Court of Hand, in  
this cause, & pray that the judgment of  
said Court may be in all things affirmed &c.

Loop & Leland  
attys for depts &c.

Supreme Court

Wm A Lake

vs  
Horse County

Errors & Juries

46

Filed June 20 1850  
C. Leland Clerk

Wm A Lake

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71-518/15

2<sup>d</sup>. Scam. 7.