

8532

No. _____

Supreme Court of Illinois

Heckenhemper et al

vs.

J. E. sangwehrs

71641  7

At a Circuit Court began and held
 at the Court House in Carthage in and for
 the County of Clinton and state of Illinois
 on Monday the fourth day of August A.D.
 1862 Present the Hon. Elias L. Bryan
 Judge of the second judicial Circuit of the
 state of Illinois of which the said Clinton
 County forms a part, Amos Watts State
 Attorney Edward C. Deer Sheriff of said
 County and Thos S. Smith of the said
 Court officers holding said Court

When the following proceedings were had and
 orders made by said Court. to wit;

John E. Vinzobus } Plaintiff
 vs }
 Herman Heckerkamp }
 Robert Louden and } Defendants
 Philip J. Heingmann }

The said Plaintiff on
 the 26th day of June A.D. 1862 filed in
 said Court his petition in the above Cause
 in the words & figures following to wit:

State of Illinois } Clinton Circuit Court
 Clinton County } August term A.D. 1862
 John E. Vinzobus, Plaintiff
 vs }
 Herman Heckerkamp }
 Robert Louden, and } Defendants
 Philip J. Heingmann }

pg 3.

The Clerk of said Court will please issue summons in the above Cause directed to the Sheriff of said County, returnable at the next term of said Court and oblige Yours &c
W. A. J. Sparks
Atty for Plt

Upon the filing of which Summons was issued in the words and figures following to wit:

State of Illinois $\frac{3}{p}$ The People of the State of
Clinton County $\frac{3}{p}$ Illinois

To the Sheriff of said County - Greeting:

We Command You that you Summon Herman Heckenkamp Robert Cordew & Philip J. Reizingman if they shall be found in your County, personally to be and appear before the Circuit Court of said Clinton County on the first day of the next term thereof to be holden at the Court House in Carle in said Clinton County on the first Monday of August 1862 to answer unto John E. Dirigo who in a plea of Debt for Eleven Hundred and thirty ⁴⁰ /100 dollars to the damage of said Plaintiff as he says in the sum of five Hundred Dollars -

And You have then and there this writ with an indorsement thereon in what manner you shall have executed the same

Witness J. S. Smith Clerk of our
 said Court and the seal thereof at Carthage
 aforesaid this 26th day of June A.D. 1862
 J. S. Smith Clerk

And afterwards on the fifth day
 of July A.D. 1862 the said Plaintiff
 filed in said Court his declaration in
 this cause in the words & figures following
 to wit:

State of Illinois, Clinton County Circuit
 Clinton County, } Court August term A.D. 1862
 John E. Wingwher plaintiff

vs } Debt \$1130⁰⁰ in damages \$500⁰⁰

Herman Beckenkamper
 Robert London and } Defendants
 Philip J. Heingman }

John E. Wingwher the plaintiff
 in this suit by W. A. J. Sparks his attorney
 complains of Herman Beckenkamper
 Robert London and Philip J. Heingman
 the defendants in this suit of a plea that
 that the said defendants render to the said
 plaintiff the sum of Eleven hundred and
 thirty ⁰⁰/₁₀₀ dollars which they owe to and
 unjustly detain from him -

For that whereas the said defendants
 heretofore to wit on the 29th day of April A.D.

1861 as the County of Clinton aforesaid by their
 Attornies re of Herman Herckin Kasper
 Robert London and Ph. J. Heinyman made their
 Certain Note in writing obligatory sealed with
 their seals and now her to the Court shown
 the date whereof is a certain day and year
 therein mentioned to wit the day and year
 aforesaid and there and there delivered the said
 Note to the said plaintiff by which said note
 they the said plaintiff by which said note they
 the said defendants then and there promised to
 pay twelve Months after the date thereof to the
 order of the said plaintiff, by the style of
 "John E. Wingubus Com. to sell the real
 estate of John Nordhouse etc.", the sum of
 Eleven hundred and thirty, ⁰⁰/₁₀₀ dollars for
 value received negotiable and payable without
 deduction or discount with interest after
 due at the rate of ten per cent per annum
 and there and there delivered the said note
 to the said plaintiff by means whereof and
 by force of the statute in such Case made
 and provided the said defendants then
 and there become liable to pay to the said
 plaintiff the said sum of money in the
 said Note specified according to the tenor
 and effect thereof; and although the said
 sum of money in said note specified hath

195

been long since due and payable according to the tenor and effect of said note yet the said plaintiff in fact saith that the said defendants (although after requested so to do) did not nor would pay the said sum of Eleven hundred and thirty $\frac{40}{100}$ dollars in said note specified or any part thereof to the said plaintiff in manner aforesaid or otherwise howsoever, but have hitherto wholly neglected and refused so to do whereby an action hath accrued to the said plaintiff to demand and have of and from the said defendants the said sum of eleven hundred and thirty $\frac{40}{100}$ dollars in said note specified above demanded

Yet the said defendants (although often requested so to do) have not as yet paid the said sum of eleven hundred and thirty $\frac{40}{100}$ dollars above demanded or any part thereof to the said plaintiff. But they to do this hitherto wholly refused and still do upon to the damage of the said plaintiff of the sum of five hundred dollars and therefore he brings his suit

W. A. J. Sparks

Atty for pty

Copy of note or writing obligatory above admitted
in ff.

April the 29 1861.

Twelve Months after date we promise
 to pay to the order of John E. Hoig who is
 Com. to sell the real Estate of John
 Stordhouse the sum of Eleven hundred
 and thirty ⁴⁰/₁₀₀ in dollars for value received
 negotiable and payable without deduction
 or discount, with interest after due at
 the rate of ten per cent per Annum
 due

Herman Heckenkamp *[Signature]*
 Robert Lunden *[Signature]*
 Ph. J. Heitzmann *[Signature]*

Whereupon at the August term of
 the said Court 1862 the following order
 was made by the Court in this cause and
 entered of record that is to say:

It is ordered by the Court that this
 Cause be continued generally

And afterwards to wit at the
 March term of said Court A/D 1863 to wit
 on the fifth day of March the said defend-
 ants file in said Court their pleas in this
 Cause in the words and figures following
 that is to say:

State of Illinois ³/₄ March term Clinton
 Clinton County ³/₄ Cicis's Case 1863
 Herman Heckenkamp ³/₄
 Robert Lunden and ³/₄

Philip J. Hinzman³

at 3 East

John E. Dingerhus³

197
Gentl^{me}

And the said defendants by his
attorneys Buxton & White Comes and defends
the wrong and injury where and say they
do not owe the said sum of money as
demanded or any part thereof in manner
and form as the said plaintiff hath above
thereof complained against them and of this
they put themselves upon the Country &c

Buxton & White atty^{for} ^{of}

And the said plaintiff doth etc like

Sparks & Ormelony for the P^{ty}

And for a further plea in this behalf
the said defendants say actio non because
they say that heretofore to wit on the 15th
day of May AND 1861 at &c aforesaid and
before the Commencement of this suit the
said plaintiff agreed with Herman
Heckenkamp one of the defendants in
this suit that if the said Heckenkamp
would establish a certain account which
the said Heckenkamp then and there
claimed to have against the heirs of Herman
Nordhouse deceased as their former guardian
in the County Court of Clatsop County
aforesaid and said Court would allow the

the same to the said plaintiff then that said plaintiff would give said Heckenkamp credit for the amount so established and allowed in said County Court on the note described in plaintiffs declaration, and said defendants aver that the said Heckenkamp did afterwards to wit at the August term 1861 of said County Court establish said account in said County Court to the amount of three hundred and thirty five dollars and said County Court did then and there to wit on the day and year last aforesaid allow the same to said plaintiff said plaintiff then and there being the guardian of said heirs, which said sum of money so established by said Heckenkamp and allowed to said plaintiff as aforesaid the said defendants are ready and willing ~~and~~ hereby offer to set off and allow to the said plaintiff according to the form of the statute in such case made and provided and this the said defendants are ready to verify wherefore the said defendants pray judgment &c

Burton & White atty for defdts

Whereupon the Plaintiff files his demurrer thereto in the words and

pg 9.

figures following that is to say
And the said plaintiff Comes and
defends &c and says that the said defendants
plea, 2nd above pleaded in this behalf is
not sufficient in law and for Cause of
Demurrer sets out that 1st said plea
sets off an individual demand against
all the plaintiffs second that it states a
Contract which is without consideration
a nudum pactum and because said
plea is otherwise insufficient &c
Sparks & Ombresny
for Plaintiff

And afterwards at the March term of
said Court 1863. the following order was
made by the Court and entered of record
that is to say

Now at this time to wit the 9th day of
March Comes the said Plaintiff by Sparks &
Ombresny his attorney and the said Defen-
dants by Burton & White their attorney and
the Plaintiff presents to the Court his
Demurrer to the Defendants plea secondly
above pleaded which Demurrer is sustained by
the Court Whereupon Defendants elect to stand
by their plea, Whereupon this Cause is
submitted to the Court for trial upon the

general issue, Whereupon the Court does order and adjudge that the Plaintiff recover of the Defendants Eleven Hundred and thirty ⁴⁹/₁₀₀ Dollars debt and Ninety seven ³⁴/₁₀₀ dollars Damages and Costs of suit, Whereupon the Defendants move the Court for new trial which motion is overruled by the Court Whereupon the Defendants move the Court to arrest the judgment herein which motion is overruled by the Court and it is ordered by the Court that the Plaintiff have execution for his debt Damages & Costs as aforesaid

State of Illinois 2
 Clinton County 3^d

I Tho S. Smith Clerk of the Circuit Court in and for the County of Clinton aforesaid do hereby Certify that the above is a true copy of the record in the above Cause as the same appears to me by the files and record thereof now in my said office -

In witness whereof I have hereunto set my hand and affixed the Seal of said Court at my office in Clarke this first day of July A.D. 1863
 Tho S. Smith Clerk



State of Illinois } Supreme Court. Nov Term AD 1863
 Jefferson county } 3 First Grand Division

And the said defendants, plaintiffs in Error
 Hermann Hechtmeier, Robert Souden & Philip J. Hengmann, by
 Buxton & White their attorneys, say there is manifest error in the
 record and proceedings hereinbefore set forth, appearing in the foregoing
 cause, and for the averring thereof the said plaintiffs in error do set
 down and show the following errors therein, to wit:—

1st The Court below erred in sustaining the demurrer to the
 plffs in error second plea.— defts below—

2d The court erred in not sustaining sd demurrer
 to the declaration,

3d The Court erred in rendering judgment for plff
 below for \$1130⁴⁰ debt & \$97³⁴ damages

5th The Court erred in overruling def motion by
 defts below for new trial.

6th The Court erred in overruling motion by
 defts below in arrest of judgment.

Whereupon and by reason of all which sd
 plffs in error pray that the judgment of the Circuit Court
 in rendering sd judgment may be reversed and as
 in duty bound &c & that supersedeas may issue &c

Buxton & White

Joined in Error:

Attys for plffs in error

Qillaleny T. Spaully

attys for Deft in Error,

Record

John E. Dingwells
vs

Herman Heckenrupper
Robert Louden and
Philip F. Heingmann

Clinton Circuit Court
March Term 1863
Debt \$1130.40
Damages 97.34

14

Filed Sept. 3. 1863.

N. Johnston Clk

Paid by Boston \$11.50

Act of Writ - The writ of error in this
Case will be made a supersedeas on the
part in favor of the County's claim in the
County Court for five hundred dollars
with three dollars and fifty cents as
damages. Certified according to
law. Entered Sep 11. 1863
Wm. H. May, Clerk

State of Illinois }
Clinton County }
Harvey P. Burtow being duly sworn

deposes and says that Anton Hubert and Philip Conrad are worth more than twenty five hundred dollars, after the payment of all their debts and liabilities, and excluding all property exempt by law from execution, and by the homestead laws of this state, and further deponent saith not.

H. P. Burtow

Subscribed and sworn to before me
this 10th day of July A.D. 1863 }
Thos. Smith Clerk }

Supreme Court
First Grand Division

Herman Treckenbauer
Robert Souden and
Philip J. Hingmann
Plffs. in Error
vs
John E. Dignehrs
Def. in Error.

Affidavit of solvency
of Anton Hubert and
Philip Conrad propound
securities for plffs in error

14


Filed Sept 3 - 1863.
N. Johnston Cky


[Faint, illegible handwritten text, likely bleed-through from the reverse side of the page.]


Know all men by these presents that we, Herman Heckenkemper, Robert Louden, Philip J. Heringmann, Anton Hubert and Philip Conrad are held and firmly bound unto John E. Dingwells in the penal sum of twenty five hundred dollars, current money of the United States, for the payment of which well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly, severally and firmly by these presents. Witness our hands and seals this 11th day of July A.D. 1863.

The condition of the above obligation is such that whereas the said John E. Dingwells did at the March term A.D. 1863 of the circuit court in and for the County of Clinton and state of Illinois, recover a judgment against the above-bound Herman Heckenkemper, Robert Louden and Philip J. Heringmann for the sum of eleven hundred and thirty $\frac{40}{100}$ dollars debt, and ninety seven $\frac{34}{100}$ dollars damages, from which judgment the said Heckenkemper, Louden and Heringmann have sued out a writ of error from the supreme Court of the state of Illinois.

Now if the said Heckenkemper, Louden and Heringmann shall prosecute their said writ of error with effect, and pay whatever judgment may be rendered against them by said Supreme Court, upon dismissal or trial of said writ of error, then the above obligation to be void, otherwise to remain in full force and effect.

Hermann Heckenkemper _____ 

Robert Louden _____ 

Ph. J. Heringmann _____ 

A. Hubert _____ 

Philipp Conrad _____ 

Bond

Heckenkemper & Co

^{no}
Dingwehrs

14 ..

Julius Sept. 3-1863.

H. J. J. J. J. J.

State of Illinois, }
CLERKS OFFICE OF THE SUPREME COURT, } SS
First Grand Division. }

I hereby certify that a writ of error hath issued from this Office for the reversal of a judgment obtained by John E. Dingwachs Against Herman Heckenkuper & others in the Circuit Court of Clinton County at the March Term, in the year of our Lord one thousand eight hundred and sixty three in a certain action of Debt which writ of error is to operate as a Supersedeas, and as such is to be obeyed by all concerned.

Given under my hand, and the seal of the said Supreme Court, at MOUNT VERNON, this three day of September in the year of our Lord one thousand eight hundred and sixty three.

Noah Scrutton
Clerk of the Supreme Court.

State of Illinois, }
SUPREME COURT, } SS
First Grand Division. }

The People of the State of Illinois,

To the Clerk of the Circuit Court for the County of Clinton Greeting:

Because, In the record and proceedings, as also in the rendition of, the judgment of a plea which was in the Circuit Court of Clinton county, before the Judge thereof between

John E. Dirigwehrs plaintiff and Herman Heckenkempfer, Robert Soudan and Philip J. Heingman

defendants it is said manifest error hath intervened to the injury of the aforesaid Heckenkempfer, Soudan and Heingman, as we are informed by their complaint, and we being willing that error, if any there be, should be corrected in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly without delay send to our Justices of our Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Mount Vernon, in the County of Jefferson, on the 1st Sunday after the 2^d Monday in November next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

WITNESS, the Hon: John D. Cator Chief Justice of the Supreme Court and the seal thereof, at MOUNT VERNON, this Third day of September in the year of our Lord one thousand eight hundred and Sixty-three -

Wm. Johnston Clerk of the Supreme Court

SUPRE COURT.
First Grand Division.

H. Hec Meinkemper *et al*

Plaintiffs in Error,

vs.

J. E. Dingueck

Defendant in Error.

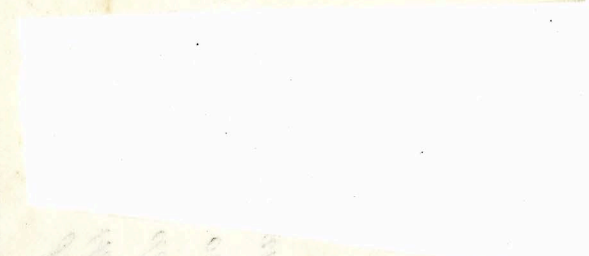
WRIT OF ERROR.

Issued - Sealed - Stamped -
made Superseded

and FILED. Sept 3.
1863 -

N. Johnston *et al*

This writ of Error is made a Superseded, and
is to be obeyed accordingly - Sept 3. 1863 -
North Johnston *et al*



A vertical handwritten mark or signature on the right edge of the page.

State of Illinois,
SUPREME COURT,
First Grand Division.

} SS

The People of the State of Illinois,
To the Sheriff of Clinton County.

Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Circuit Court of Clinton county, before the Judge thereof between

John E. Dingwicks plaintiff and Herman Heckenkemper, Robert Souden and Philip J. Hingman

defendants it is said that manifests error hath intervened to the injury of said Heckenkemper, Souden and Hingman as we are informed by their complaint, the record and proceedings of which said judgment, we have caused to be brought into our Supreme Court of the State of Illinois, at Mount Vernon, before the justices thereof; to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said John E. Dingwicks

that he be and appear before the justices of our said Supreme Court; at the ~~next~~ term of said Court, to be holden at **MOUNT VERNON**, in said State, on the first Tuesday after the second Monday in November next, to hear the records and proceedings aforesaid, and the errors assigned, if he shall think fit; and further to do and receive what the said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said John E. Dingwicks notice together with this writ.

WITNESS, the Hon. John D. Coates Chief Justice of the Supreme Court and the seal thereof, at MOUNT VERNON, this thir day of September in the year of our Lord one thousand eight hundred and Sixty-three.

Noah Johnston
of the Supreme Court.

State of Illinois }
Bellevue County, ss } I have served the within writ by reading
the same to W. A. J. Charles, the attorney for the court
named John E. Dingwohler this 14th day of October 1863.
John E. Dingwohler, not found in any County this 4th
day of September 1863.

R. McDermott Sheriff
By Jm S Taylor Deputy

Shuffles Les Am ca 50
Mila q 5
Pahora 10
- 65

SUPREME COURT.
First Grand Division.

Heckman v. ... et al

Plaintiff in Error,

vs.

J. E. Dingwohler

Defendant in Error.

SCIRE FACIAS.

FILED.

1863

The writ of error issued and filed in this
Cause, is made a Supersedeas, and as
such, is to be obeyed by all concerned -
September 3. 1863. Wash Johnston cly

[Faint, mostly illegible handwritten text and a circular stamp on the right side of the page.]

In the Supreme Court, State of Illinois,
FIRST GRAND DIVISION, AT MT. VERNON.
NOVEMBER TERM, A. D. 1863.

HECKEN KEMPER, et al. }
vs. } Defendant's Brief.
DINGWEHLS, Com' &c. }

1.] The plea is bad because one of three Def'ts. who made the note seeks to set off his individual claims against the joint contract. —Breese's Rep. 143, 11th Illinois 28. 11th Illinois, 645. 4th Gilman, 136.

2.] The note ^{was} due to Dingwehls, as a trustee, only, and no consideration passed on the agreement set out in the plea to him.

Breese's Rep 59. 1108

3. Dingwehls was acting under the appointment of the Circuit Court as a Trustee or Commissioner to sell lands, as a Agent for that special purpose only, and had no power to make the agreement as alledged in said plea.

SPARKS & O'MELVENY, for Def't

March Term Clinton Circuit Court 1863
John E. Dingwells, pff below, deft in error

v } Debt

Herman Heckenkamp } Defts below &
Robert Souden and } pffs in error
Philip J. Heingmann }

The Clerk of the supreme
court will please issue subpoenas
and scis fa. directed to Clinton Co.
and oblige.

Buxton & White
Atty, for pffs in error.

Hertenkampen etc
 Dingscher -
 Prager
 Jule Sept. 3 - 1863 -
 A. Schuster etc

(Faint mirrored handwriting, likely bleed-through from the reverse side of the page)

In the Supreme Court, State of Illinois,
FIRST GRAND DIVISION, AT MT. VERNON.
NOVEMBER TERM, A. D. 1863.

HECKEN KEMPER, et al. } Defendant's Brief.
vs. }
DINGWEHLS, Com' &c. }

1.] The plea is bad because one of three Def'ts. who made the note seeks to set off his individual claims against the joint contract. —Breese's Rep. 143, 11th Illinois 28. 11th Illinois, 645. 4th Gilman, 136.

2.] The note ^{was} due to Dingwehls, as a trustee, only, and no consideration passed on the agreement set out in the plea to him.

Breese Ref 59 + 105

3. Dingwehls was acting under the appointment of the Circuit Court as a Trustee or Commissioner to sell lands, as a Agent for that special purpose only, and had no power to make the agreement as alleged in said plea.

15 Dec 71

SPARKS & O'MELVENY, for Def't

14

Hecker Kempter

24

Dingwells

2-20-1883

Hecker Kempter

filed in said plea.

3. Dingwells was acting under the appointment of the Circuit Court as a Trustee or Commissioner to sell lands, as a Agent for that

action based on the agreement set out in the plea to him.

5.] The note due to Dingwells, as a trustee, only, and no contract.

Illness a Rep. 143. 11th Illinois 38. 11th Illinois, 646. 4th Ill.

1.] The plea is bad because one of three Deft's who made the

DINGWELLS, Com. &c. } Defendant's Plea.

NOVEMBER TERM, A. D. 1883.

FIRST GRAND DIVISION. AT MT. VERNON.
In the Supreme Court, State of Illinois.

Hickin Thompson
or
Dunbar

Evon to Clinton

The error assumed
that the demeror should have been
run back to the declaration.

Not abandoned, before argument
& therefore not decreed. On other
line.

Duxton & White
for 1/2
Sparks & O'Leary
for 1/2

Agreement

1847

for

of the

of the

of the

of the

Office of Buxton & White,

Attorneys at Law,

Carlyle, Ill., Aug 25th 1863

Noah Johnson Esq
Clerk Supreme Court
Mt Vernon Ill

Dear sir: We enclose to you herewith record
and bond, and order for supersedeas in case
of Hockenklumper et al vs Dingwells,
which you will please issue upon &
send to sheriff of this county.

Please also write and let us
know the amount of fees that must
be advanced and we will send
them to you by return mail.

The Printing we will get
done here, all that is required.

Yours truly

Buxton & White

Wash Johnston Dr

find \$26 ²⁵/₁₀₀ cost against Dingman
in the case of Heekin camp & Dingman
Please apply and acknowledge receipt

Central City La
June 11th 1864

Truly
Yours
A R S O'Melveny
by Moore

Money in my
pocket - lol

November Term Sup. Court 1863.

Heckerhempfer et al }
 14 24 } Errors & Omissions
 Deughlsh }
 Pliffs Costs

1863- To filing transcripts 20 - docketing cause 12 32
 " " ~~Papers~~ Bond & other papers 1.00
 " Mtg of Err. made a Supremacy & Stamp 1.50
 " Sci fa. #1 - Certifying of Supremacy & Stamp 55 1.55
 " Abstracts - (500 words each) 7.00
 " Entering motion & replies 1.00
 " " Opinion of Court 1.60
 " Certified copy of final order & opinion & Stamp 2.55
 " Certified Entering same 37.
 " Execution 50. Postage 21. 71.

Am Pliff in error, when collected
 Paid by Boston 11-50
 Abstracts furnished 1-07
 \$12.50

~~17.60~~
 6.00
 \$ 23.60
 Circuit Clerk for Tho. S. Smith for transcripts - 2.20
 Shff R. S. McDerm. fees in Sci fa. ^{certifying of} Supremacy 1.25
 \$ 27.05

Write O'Keefe May 12. 64 - that Costs
 are \$ 26.55 - & Records ready to be sent down

June 11-1864, Recd. of defts in error by hand of
 Judge O'Keefe by mail \$ 26.25 - Costs
 in this case. and send N. Johnston Clerk
 to the judge a receipt therefor -
 date June 13 - 1864, also send him copy of order & Op.

14 - 6

Leathic

Entered on Page
573 - Paid and
Receipt sent to
Major Ormelumy
13th June 64

Nov Term 1863

SUPREME COURT OF ILLINOIS.

First Grand Division—November Term, 1863.

—o—

BRIEF OF PLAINTIFFS IN ERROR.

HERMAN HECKENKEMPER, *et al.*,
Plaintiffs in Error. }
vs. } Error to Clinton.
JOHN E. DINGWEHRS, Defendant
in Error. }

I.—THE SET-OFF.

At common law, and independent of the statute of set-off, a defendant is entitled to retain, by way of *deduction*, all just demands accruing to him in respect of the *same transaction*, which forms the ground of the action, although not a *set-off* in the strict legal sense of the term, but constitutes a *deduction or recoupment*. I. Chitty Pl. 568.

So where demands, originally cross, have, by *express agreement*, been stipulated to be deducted or set off against each other, only the *balance* can be recovered; and it is only necessary to plead such *special agreement* when the action is on a specialty. Ibid, 568.

The rule is, that a demand of one defendant, in a suit against several, cannot be set off, *except in cases of an express agreement* to that effect, and where there is such an agreement, the rule does not apply. Ibid., 571; Chitty on Con., 848; *Kimberly v. Hossack*, 2 Taunt., 170; *Walker v. Chovin*, 16 Ill., 489.

In Pennsylvania, one of two defendants may set off a debt due him from the plaintiff. *Stewart v. Coulter*, 12 Serg. & Rawle, 252; and *Crist v. Brindley*, 2 Rawle, 121.

In New York, one of several defendants, may set off a separate debt, in a suit brought on a joint and several undertaking. Under our statute, all joint obligations shall be taken, and held to be joint and several obligations. Scates Stat., 290; *Parsons v. Nash*, 8 Howard, 454.

II.—THE CONSIDERATION.

Any act required to be done, even of the most trifling description, is sufficient to support a promise; but in this case, the consideration was not only that the plaintiffs in error would establish the account in question in the county court, but that the county court would allow the same to the defendant in error, which is alleged in the plea to have been done; so that the defendant in error actually gets the benefit of the whole account sought to be set off. Chitty on Contracts, 32; *Cabet v. Haskins*, 3 Pick., 83.

Any act, not unlawful, which is for the benefit of one party, or to the prejudice of another, is a good consideration for a promise; as, where a woman promised a creditor of her deceased husband that, if he would *prove* the indebtedness, she would pay it; and where the promise was in consideration that the creditor would *swear* to his claim, were held to be sufficient considerations to support the promises. Chitty on Contracts, 33; *Brooks v. Ball*, 18 Johns. 337; *Underhill v. Gibson*, 2 N. Hamp. 352; *Sampson v. Swift*, 11 Vt., 315; *Doyle v. Knapp*, 3 Scam. 334.

III.—THE DECLARATION.

The description of the instrument sued on in this case, in the declaration of the plaintiff below, as a *promissory note or writing obligatory*, being in the disjunctive, is uncertain. 1 Chitty's Pl., 243.

An averment that the note sued on was "lost or destroyed," was held to be bad for uncertainty. *Rogers v. Miller*, 4 Scammon, 334.

The doctrine laid down in the case of *Wilson v. Myrick*, 26 Ill. R., 34, that we cannot plead and demur to the declaration at the same time, may apply in this case; but that other doctrine applies as well, that "those who live in glass houses should not throw stones." *Reeves v. Foreman*, 26 Ill. R., 313.

BUXTON & WHITE,
Attorneys for Plaintiffs in Error.

1863-2-27

Plaintiffs Brief
 H. Heckenkemper et al
 vs
 John E. Dingwehrs

14

SUPREME COURT OF ILLINOIS
 JOHN E. DINGWEHRS, Defendant
 vs
 HERMAN H. KEMMERER, et al,
 Plaintiffs in Error.
 BRIEF OF APPLICANTS IN ERROR.
 Filed Sept. 3-1863,
 St. Louis Mo.

It is respectfully submitted that the law of the State of Illinois, in relation to the liability of a partner in a firm, is not in conformity with the principles of justice and equity, and that it is necessary to amend the same so as to conform to the same. The law now in force in this State, in relation to the liability of a partner in a firm, is contained in the following sections of the Code of 1852, to-wit: Sec. 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100.

It is respectfully submitted that the law of the State of Illinois, in relation to the liability of a partner in a firm, is not in conformity with the principles of justice and equity, and that it is necessary to amend the same so as to conform to the same. The law now in force in this State, in relation to the liability of a partner in a firm, is contained in the following sections of the Code of 1852, to-wit: Sec. 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100.

In the Supreme Court, State of Illinois,
FIRST GRAND DIVISION, AT MT. VERNON.
NOVEMBER TERM, A. D. 1863.

HECKEN KEMPER, et al. }
vs. } Defendant's Brief.
DINGWEHIS, Com'. &c. }

1.] The plea is bad because one of three Def'ts. who made the note seeks to set off his individual claims against the joint contract.—Breese's Rep. 143, 11th Illinois 28. 11th Illinois, 645. 4th Gilman, 136.

2.] The note due to Dingwehis, as a trustee, only, and no consideration passed on the agreement set out in the plea to him.

Breese. Rep. 59.

3. Dingwehis was acting under the appointment of the Circuit Court as a Trustee or Commissioner to sell lands, as a Agent for that special purpose only, and had no power to make the agreement as alleged in said plea..

15th. Dec. Rep. P. 71.

SPARKS & O'MELVENY, for Def't

Orlony - If the act was an infirmity not then
then was no consideration for the promise.
of a trustee

SPARKS & O'MALLEY, for Def.

Case Dec. 1st 1863

alleged in said plea.

... and had no power to make the agreement as
Court as a Trustee or Commissioner to sell lands, as a Agent for that

3. Dingwells was acting under the appointment of the Circuit

The note, due to Dingwells, as a trustee, only, and no consid-

... 136.

... 11th Illinois 32, 11th Illinois, 645. 4th Ill.

The trust had because one of three Defs. who made the

... Co. & Co.

HECKER KAMPER, et al. } Defendant's Brief.

JOHNSEN TERM, A. D. 1863.

FIRST GRAND DIVISION, AT MT. VERNON.

In the Supreme Court, State of Illinois.

143

Hecker Kamper et al

vs

Dingwells

Def's Brief

Filed Apr. 12 - 63
A. Johnson Clk



ABSTRACT OF THE RECORD.

HERMAN HECKENKEMPER, *et al.*,
Plaintiffs in Error.
vs.
JOHN E. DINGWEHRS, Defendant
in Error.

Error to Clinton.

- R. 6 This was an action of debt brought by the defendant in error vs. the plaintiffs in error, upon a promissory note, under seal, payable to the defendant in error, as "commissioner to sell the real estate of John Nordhouse, deceased," for the sum of \$1130 40, dated April 29th, 1861, due twelve months after date, drawing ten per cent. interest after due.
- R. 3 The declaration is in the usual form in such cases, except that the instrument sued on is therein described as "a promissory note or writing obligatory."
- R. 7 At the March term, 1863, the plaintiffs in error filed their plea of the general issue, and a special plea, setting out that, on the 15th day of May, 1861, the defendant in error agreed with Herman Heckenkemper, one of the defendants below, that if said H. would establish in the Clinton county court a certain account which H. claimed to have against the heirs of John Nordhouse, deceased, as their former guardian, and said court would allow the same to Dingwehrs, then that D. would give H. credit, for the amount so established and allowed, on the note sued on in this case; and plea avers that H. did, at the August term, 1861, of said county court, establish said account in said county court to the amount of \$335 00, and that said county court did, then and there, allow the same to said D., he then being the guardian of said heirs; which sum so established and allowed, the plea asked to be set off and allowed as credit on the note sued on, as per agreement between Dingwehrs and Heckenkemper, and concludes with a verification.
- R. 8 Defendant in error joined issue on the first plea of the plaintiffs in error, and filed a special demurrer to their second plea, setting down the following causes: 1. That said plea sought offset of an individual demand. 2. That it stated a contract without consideration, a *nudum pactum*. 3. That said plea was otherwise insufficient.
- R. 9 The circuit court sustained the demurrer to the second plea, and the plaintiffs in error elected to stand by the plea.
- R. 10 The cause was tried by the court, upon the general issue, who rendered judgment for the defendant below for \$1130 40 debt and \$97 34 damages and cost of suit. Defendants below entered a motion for new trial and in arrest of judgment, which motions were overruled by the court and execution ordered on the judgment.
- R. 11 ERRORS ASSIGNED.
1. The court below erred in sustaining the demurrer to the second plea of the plaintiffs in error.
2. The court below erred in not sustaining said demurrer to the declaration of the plaintiff below.
3. The court below erred in rendering judgment for the plaintiff below for \$1130 40 debt and \$97 34 damages and cost of suit.
4. The court below erred in overruling the motions by the plaintiffs in error for a new trial and in arrest of judgment.

BUNTON & WHITE,

Attorneys for Plaintiffs in Error.

First Grand Jurisdiction - January Term 1863

ABSTRACT OF THE RECORD

JOHN E. DINGWELER, Defendant
vs
HERMAN F. HENNINGER, Plaintiff

Error to Circuit

Appears in action of the plaintiff for the defendant in error as the

defendant in error as commissioner to sell the real estate in error

as the defendant in error as a promisor's note or writing

of the defendant in error as a promisor's note or writing

of the defendant in error as a promisor's note or writing

of the defendant in error as a promisor's note or writing

of the defendant in error as a promisor's note or writing

of the defendant in error as a promisor's note or writing

Abstract of Record
N. Heckenkamp et al
vs
John E. Dingwelter

14

Officer

Filed Sept. 3-1863-
St. Louis Mo

WILLIAM P. WELLS

SUPREME COURT OF ILLINOIS.

First Grand Division—November Term, 1863.

BRIEF OF PLAINTIFFS IN ERROR.

HERMAN HECKENKEMPER, *et al.*,
Plaintiffs in Error. }
vs. } Error to Clinton.
JOHN E. DINGWEHRS, Defendant
in Error. }

I.—THE SET-OFF.

At common law, and independent of the statute of set-off, a defendant is entitled to retain, by way of *deduction*, all just demands accruing to him in respect of the *same transaction*, which forms the ground of the action, although not a *set-off* in the strict legal sense of the term, but constitutes a *deduction* or *recoupment*. I. Chitty Pl. 568.

So where demands, originally cross, have, by *express agreement*, been stipulated to be deducted or set off against each other, only the *balance* can be recovered; and it is only necessary to plead such *special agreement* when the action is on a specialty. Ibid, 568.

The rule is, that a demand of one defendant, in a suit against several, cannot be set off, *except in cases of an express agreement* to that effect, and where there is such an agreement, the rule does not apply. Ibid., 571; Chitty on Con., 848; *Kimberly v. Hossack*, 2 Taunt., 170; *Walker v. Chovin*, 16 Ill., 489.

In Pennsylvania, one of two defendants may set off a debt due him from the plaintiff. *Stewart v. Coulter*, 12^d Serg. & Rawle, 252; and *Crist v. Brindle*, 2 Rawle, 121.

In New York, one of several defendants, may set off a separate debt, in a suit brought on a joint and several undertaking. Under our statute, all joint obligations shall be taken, and held to be joint and several obligations. Scates Stat., 290; *Parsons v. Nash*, 8 Howard, 454.

II.—THE CONSIDERATION.

Any act required to be done, even of the most trifling description, is sufficient to support a promise; but in this case, the consideration was not only that the plaintiffs in error would establish the account in question in the county court, but that the county court would allow the same to the defendant in error, which is alleged in the plea to have been done; so that the defendant in error actually gets the benefit of the whole account sought to be set off. Chitty on Contracts, 32; *Cabet v. Haskins*, 3 Pick., 83.

Any act, not unlawful, which is for the benefit of one party, or to the prejudice of another, is a good consideration for a promise; as, where a woman promised a creditor of her deceased husband that, if he would *prove* the indebtedness, she would pay it; and where the promise was in consideration that the creditor would *swear* to his claim, were held to be sufficient considerations to support the promises. Chitty on Contracts, 33; *Brooks v. Ball*, 18 Johns. 337; *Underhill v. Gibson*, 2 N. Hamp. 352; *Sampson v. Swift*, 11 Vt., 315; *Doyle v. Knapp*, 3 Scam. 334.

III.—THE DECLARATION.

The description of the instrument sued on in this case, in the declaration of the plaintiff below, as a *promissory note or writing obligatory*, being in the disjunctive, is uncertain. I Chitty's Pl., 243.

An averment that the note sued on was "lost or destroyed," was held to be bad for uncertainty. *Rogers v. Miller*, 4 Scammon, 334.

The doctrine laid down in the case of *Wilson v. Myrick*, 26 Ill. R., 34, that we cannot plead and demur to the declaration at the same time, may apply in this case; but that other doctrine applies as well, that "those who live in glass houses should not throw stones." *Reeves v. Foreman*, 26 Ill. R., 313.

BUXTON & WHITE,
Attorneys for Plaintiffs in Error.

Plaintiffs Brief

A. Heckenkamp et al

vs
John E. Dingwehr

14

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
John E. Dingwehr - Defendant
vs
HERMAN HECKENKAMP et al
Plaintiffs in Error

Filed Sept. 3, 1863.
Attest
J. S. ...

These issues should not have been...
In this case, but that other doctrine applies to help that other...
The doctrine laid down in the case of *Wheat v. Wheat*, 30 Ill. 2d 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

SUPREME COURT OF ILLINOIS.

First Grand Division—November Term, 1863.

ABSTRACT OF THE RECORD.

HERMAN HECKENKEMPER, *et al.*,
Plaintiffs in Error.
vs.
JOHN E. DINGWEHRS, Defendant
in Error.

Error to Clinton.

- R. 6 This was an action of debt brought by the defendant in error vs. the plaintiffs in error, upon a promissory note, under seal, payable to the defendant in error, as "commissioner to sell the real estate of John Nordhouse, deceased," for the sum of \$1130 40, dated April 29th, 1861, due twelve months after date, drawing ten per cent. interest after due.
- R. 3 The declaration is in the usual form in such cases, except that the instrument sued on is therein described as "a promissory note or writing obligatory."
- R. 7 At the March term, 1863, the plaintiffs in error filed their plea of the general issue, and a special plea, setting out that, on the 15th day of May, 1861, the defendant in error agreed with Herman Heckenkemper, one of the defendants below, that if said H. would establish in the Clinton county court a certain account which H. claimed to have against the heirs of John Nordhouse, deceased, as their former guardian, and said
- R. 8 court would allow the same to Dingwehrs, then that D. would give H. credit, for the amount so established and allowed, on the note sued on in this case; and plea avers that H. did, at the August term, 1861, of said county court, establish said account in said county court to the amount of \$335 00, and that said county court did, then and there, allow the same to said D., he then being the guardian of said heirs; which sum so established and allowed, the plea asked to be set off and allowed as credit on the note sued on, as per agreement between Dingwehrs and Heckenkemper; and concludes with a verification.
- R. 7 Defendant in error joined issue on the first plea of the plaintiffs in error, and filed a special demurrer to their second plea, setting down the following causes: 1. That said plea sought offset of an individual demand.
- R. 9 2. That it stated a contract without consideration, a *nudum pactum*.
- R. 9 3. That said plea was otherwise insufficient.
- R. 9 The circuit court sustained the demurrer to the second plea, and the plaintiffs in error elected to stand by the plea.
- R. 10 The cause was tried by the court, upon the general issue, who rendered judgment for the defendant below for \$1130 40 debt and \$97 34 damages and cost of suit. Defendants below entered a motion for new trial and in arrest of judgment, which motions were overruled by the court and execution ordered on the judgment.

ERRORS ASSIGNED.

- R. 11 1. The court below erred in sustaining the demurrer to the second plea of the plaintiffs in error.
2. The court below erred in not sustaining said demurrer to the declaration of the plaintiff below.
3. The court below erred in rendering judgment for the plaintiff below for \$1130 40 debt and \$97 34 damages and cost of suit.
4. The court below erred in overruling the motions by the plaintiffs in error for a new trial and in arrest of judgment.

BUXTON & WHITE,

Attorneys for Plaintiffs in Error.

Abstract of Record

H. Heckenkemper et al

vs
John E. Dingwicks

14

SUPERIOR COURT OF ILLINOIS

First Circuit Division—General Term

ABSTRACT OF THE RECORD.

JOHN E. HECKENKEMPER, Defendant,
vs
HENRY A. HERRERKEVELER, et al,
Plaintiffs in Error.

Filed Sept. 3-1863
H. Johnston cly

R. 1 This was an action of debt brought by the defendant in error as the plaintiff in error as set forth in the petition of the defendant in error as follows:

R. 2 The defendant in error in such case credits that the plaintiff in error is indebted to the defendant in error as follows:

R. 3 At the March term, 1863, the plaintiff in error filed with the court a certain account which it claimed to have rendered for the defendant in error, and which it claimed to have rendered for the defendant in error as follows:

R. 4 The plaintiff in error in such case credits that the defendant in error is indebted to the plaintiff in error as follows:

R. 5 The defendant in error in such case credits that the plaintiff in error is indebted to the defendant in error as follows:

R. 6 The plaintiff in error in such case credits that the defendant in error is indebted to the plaintiff in error as follows:

R. 7 The defendant in error in such case credits that the plaintiff in error is indebted to the defendant in error as follows:

R. 8 The plaintiff in error in such case credits that the defendant in error is indebted to the plaintiff in error as follows:

R. 9 The defendant in error in such case credits that the plaintiff in error is indebted to the defendant in error as follows:

R. 10 The plaintiff in error in such case credits that the defendant in error is indebted to the plaintiff in error as follows:

R. 11 The defendant in error in such case credits that the plaintiff in error is indebted to the defendant in error as follows:

R. 12 The plaintiff in error in such case credits that the defendant in error is indebted to the plaintiff in error as follows:

R. 13 The defendant in error in such case credits that the plaintiff in error is indebted to the defendant in error as follows:

R. 14 The plaintiff in error in such case credits that the defendant in error is indebted to the plaintiff in error as follows:

R. 15 The defendant in error in such case credits that the plaintiff in error is indebted to the defendant in error as follows:

40 19-14
28 20-14
20 21-14
20 22-14
20 23-14
20 24-14
20 25-14
20 26-14
20 27-14
20 28-14
20 29-14
20 30-14
20 31-14
20 32-14
20 33-14
20 34-14
20 35-14
20 36-14
20 37-14
20 38-14
20 39-14
20 40-14
20 41-14
20 42-14
20 43-14
20 44-14
20 45-14
20 46-14
20 47-14
20 48-14
20 49-14
20 50-14
20 51-14
20 52-14
20 53-14
20 54-14
20 55-14
20 56-14
20 57-14
20 58-14
20 59-14
20 60-14
20 61-14
20 62-14
20 63-14
20 64-14
20 65-14
20 66-14
20 67-14
20 68-14
20 69-14
20 70-14
20 71-14
20 72-14
20 73-14
20 74-14
20 75-14
20 76-14
20 77-14
20 78-14
20 79-14
20 80-14
20 81-14
20 82-14
20 83-14
20 84-14
20 85-14
20 86-14
20 87-14
20 88-14
20 89-14
20 90-14
20 91-14
20 92-14
20 93-14
20 94-14
20 95-14
20 96-14
20 97-14
20 98-14
20 99-14
20 100-14

In the Supreme Court, State of Illinois,
FIRST GRAND DIVISION, AT MT. VERNON.

NOVEMBER TERM, A. D. 1863.

HECKEN KEMPER, et al. }
vs. } Defendant's Brief.
DINGWEHLS, Com' &c. }

1.] The plea is bad because one of three Def'ts. who made the note seeks to set off his individual claims against the joint contract. —Breese's Rep. 143, 11th Illinois 28. 11th Illinois, 645. 4th Gilman, 136.

2.] The note ^{was} due to Dingwehls, as a trustee, only, and no consideration passed on the agreement set out in the plea to him.

3. Dingwehls was acting under the appointment of the Circuit Court as a Trustee or Commissioner to sell lands, as a Agent for that special purpose only, and had no power to make the agreement as alledged in said plea.

SPARKS & O'MELVENY, for Def't

14

Hecker Kampenitz

or
Dingwells

Deft. Primp

alleged in said plea.

special purpose only, and had no power to make the agreement as
Court as a trustee or Commissioner to sell lands, as a agent for that

3. Dingwells was appointed under the appointment of the Circuit

on the agreement set out in the plea to him.

2.] The sole purpose of Dingwells, as a trustee, only, and no commission.

1.] The plea is bad because one of these Defts. who made the

DINGWELLS Com. Sec.

Defendant's Plea.

NOVEMBER TERM, A. D. 1863.

FIRST GRAND DIVISION, AT MT. VERNON.

In the Supreme Court, State of Illinois.

EBYER & OMBELMENT, for Deft.

Filed Nov. 12 - 63
A. Johnston Clk

44 — 6

Höckenkampfer &
Söhne

L. E. Singschens

am 1. Oktober

Neu- und
Verkauft

1863

Reported

X

2132

copy of order and
opinion sent to Prof
Ormsbury - also Receipt
for Costs - June 13. 64

14 6

H. K. Kempner

to others -

re.

J. E. Dingwicks

Order to Clinton

Nov June 1863