

8425

No. _____

Supreme Court of Illinois

Wm. White

vs.

Minerva Merrell

71641  7

State of Illinois
Jefferson County

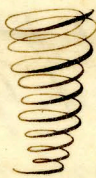
D. C. C.

Jefferson Circuit
Court. May Term 1863.

Minerva Merrell

v₃

William White



Assumpsit. - Change of Venue
from Marion County.

Be it remembered, that on the trial of this cause
the plaintiff to maintain his cause gave in evidence
the following receipts, to-wit:

" Received, Salem, Marion County, Illinois, April
20th of Minerva Merrell, the sum of three hundred
dollars to be credited on the Mortgage notes of N. C.
Merrell, dec'd. and if not redeemed the above amount
is not to be repaid to claimants of said estate.

April 20th 1861.

William White."

" \$ 135.00 Received, Salem Ill., of Mrs. Minerva
Merrell the sum of one hundred and thirty five
dollars, to be credited upon the notes of N. C. Merrell
given for the mortgage property of part of lot one
in Block one in Salem, which money is not to
be repaid to any claimant in case the said pro-
perty is not redeemed

Salem, Marion County, Ill.

May 27th 1861.

William White"

The plaintiff then introduced James Bassett, as a
witness in his behalf, who testified, that Mrs. Mer-
rell the Plaintiff is the widow of N. C. Merrell

deceased, that as such Widow, she was in possession of property in the town of Salem, that had been mortgaged by N. C. Merrill to Deft. White, to secure a debt to White of something over five thousand dollars that she desired, if possible to pay off the debt to White, and secure a title to the property to herself - that to this end she entered into a contract with White the Defendant to pay him one thousand dollars of his claim on or before the time, that the entire debt became due, and one thousand dollars per year for each year thereafter, until the whole of the debt was paid, and in consideration thereof the Plaintiff, the Plaintiff was to get a title to the said mortgaged property.

That just before the first money was paid to Defendant, being the \$300.⁰⁰ received for April 20th 1861. plaintiff called on witness as her friend and adviser to attend an interview with Defendant and to witness the payment of the money and at such interview the said three hundred three hundred dollars was paid on said contract; the contract was never reduced to writing. Where the money was paid, Defendant produced the receipt offered in evidence, which he had already prepared and handed it to the plaintiff. Witness took it and read it over and asked Mrs Merrill, if she was willing to receive it in that form, she said she was. - Witness then remarked, that if that was her contract, she ought of course to carry it out, but he as her adviser

could not approve it, and asked defendant to explain to receipt. He, Defendant, answered that by the word "Claimants" in the receipt he referred to Richard Atkins and wife, who claimed the right to redeem from the mortgage, Mrs Atkins being the daughter of W. C. Merrell, and that by the agreement between himself and Mrs Merrell, the money paid by her, was not to be credited on the notes, or in any way come to the benefit of Atkins and wife or any other claimants, who might redeem from the mortgage, and that in case of redemption by any such claimants, the money paid by Mrs. Merrell was to be returned to her by the Defendant. Defendant further stated at that time, that by the contract between himself and Mrs. Merrell, plaintiff was to pay him, one thousand dollars on or before the last note he held against W. C. Merrell became due, and one thousand dollars a year, every year thereafter, until the whole of his debt was paid - that if she had not completed the payment of the first thousand dollars by the time said notes matured, she was to be permitted to complete it on or before the foreclosure of the mortgage, and sale of the property on the decree, and if she had completed it by that time, the certificate of purchase would be taken so as to enure to her benefit. But if she did not complete the payment of the first thousand dollars by that time, the contract between them was to be at an end and the money paid on the contract was to be paid back to Mrs Merrell by White the Defendant.

Witness further stated, that he was present, with

Mrs. Merrell at the payment of the \$ 135. ⁰⁰ receipted for on the 27th day of May 1861, that the amount was paid to Dr. White, the Defendant by Mrs. Merrell in Gold and that the parties at that time talked over their contract again, and stated and agreed to it precisely, in substance, as stated on the former occasion.

The Defendant by his counsel objected to witnesses stating the verbal explanations made by Defendant of said receipts, or any verbal statements or explanations made by the parties, in regard to their contract, but the Court overruled the objection, and permitted witness to testify as above, to which ruling of the Court the said Defendant then and there by his counsel excepted.

Witness further testified, that at the interviews referred to between plaintiff and Defendant, Defendant stated that by the terms "Mortgage notes" in the receipts was meant the notes he held against N. C. Merrell deceased, and which said mortgage was given to secure.

In cross examination, witness was asked by counsel for Defendant, whether the contract between plaintiff and defendant had ever been rescinded. —

Answer "I think it was about a month or six weeks after the receipt of May 27th 1861. was given, that is to say sometime in the month of July or August 1861. at the request of Mrs Merrell.

I was present at an interview between Mrs Merrell and Defendant. She told Defendant, that she was

not satisfied with the receipts he had given her, that she did not understand them herself, but she had consulted several lawyers about it and they all told her that the receipts were not in compliance with the contract between them, and she wanted him to give her his notes for the amount she had paid him, or give her receipts in due form. Defendant refused to do so, but said, but said, if she would pay him more money, he would take up the receipts she had, and give her whatever notes or receipts she might want for the whole amount as she wished. After a good deal of talk plaintiff said, that it would be impossible for her to pay for the property and she wanted the matter fixed up then. She proposed to him to keep a portion of the property and let her take the balance, which she thought she could pay for, but they could not agree and she said she could not pay for the whole, and she would not pay any more. Defendant said, if she could not, he stood bound by the contract - if she could not pay up then, the contract would be at an end and he would stand by his receipts. - After a good deal of talk the parties separated in not very good humor and did not come to any final understanding then about the matter. If the payments had been completed by Mrs. Merrill for the property, it would have taken until some time in 1865, to complete them according to the contract.

Mrs. Merrill held possession of the property under the homestead right, and surrendered the same to Dr. White

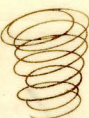
at the time he took his deed under the mortgage sale,
at the expiration of 15. months from mortgage sale
and surrendered keys to him about the 19th of January.
1863.

It was agreed at the trial and admitted by
Defendant, that the money paid by plaintiff to Defen-
dant was not credited on the notes of W. C. Merrell,
and that Defendant obtained a decree of foreclosure
for the entire amount of his debt, without credit
or reduction, and bought in the property at the sale,
and obtained his deed, at the expiration of fifteen
months from the sale, and has obtained possession
of the property.

This was all the evidence in the case.
Verdict for plaintiff for \$ 480. ⁰⁰ and costs, motion
be defendant for new trial. - motion overruled, and
Judgement for plaintiff, to which opinion of the
Court, in overruling the motion for new trial and
entering Judgment for Plaintiff, Defendant then and
there by his counsel excepted and prays, that this
his bill of exceptions, be signed and sealed and
made part of the record herein, which is done.

J. J. Marshall. Seal"

"filed May 11th 1863. J. J. Bogan Clerk."

State of Illinois
Marion County 

Pleas and proceedings had
before the Hon. Elias L. Bryan
Judge of the 2^d Judicial Circuit

in and for the County of Marion
and State of Illinois in a
cause heretofore pending in said
Circuit Court, wherein Minerva
Merrill was Plaintiff and Wil-
liam White Defendant.

Be it Remembered, that on the 4th day of Februa-
ry, A. D. 1863. the above Plaintiff by her Attorney filed
in the office of the Clerk of said Court her preceps
for summons against said Defendant, which is herewith
sent, marked Exhibit A.

Whereupon summons
issued herewith sent marked "B"

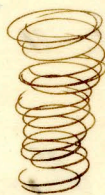
And afterwards to-wit
on the 5th day of March A. D. 1863. said Plain-
tiff by her Attorney filed in said Office her Decla-
ration, which is herewith sent, marked exhibit "C."

Afterwards at the
March term of said Court for the year 1863. the fol-
lowing order was in said cause made, To-wit:

" Minerva Merrill

vs

William White



Assumpsit

And now at this day
To-wit, Tuesday, March 17th 1863. came the parties
by their attorneys and the Court having been of
Counsel for one of the parties, It is ordered, that
the venue herein be changed to Jefferson County
It is therefore ordered by

Court, that the Clerk of this Court make out, certify and transmit the papers and proceedings herein to the Clerk of the Circuit Court of Jefferson County Illinois, according to Law and the practice of this Court.

Copy of Lost Bill.

Plaintiff Costs

Clerks fees.

App. & filg. 15.	Dock. suit 10.	Filg. proc. & nara 10.	35.
Am. & filg. 40.	Order for costs 20.		60.
Bill costs 30.	Copy do. 20.	Cert. & oral 35.	1.00
Intg. order for charge of venue			20.
Record & postage			1.15
			<u>3.30.</u>

Sheriff Fees on Gums. (V. R. Carman)	60.
Docket fee & stamp paid by Pltff	1.50.
	<u>\$ 5.40.</u>

State of Illinois
Marion County J. J.

J. J. Chance, Clerk
of the Circuit Court of said County
do hereby certify the foregoing to be a true and complete
transcript of the Records and proceedings had in our
said Court in the above entitled cause and that ex-
hibits herewith sent, marked "A" "B" & "C" are
all the original papers filed in said cause.

Seal of
the C. C. of
Marion Co.
Ill.

Given under my hand and
official Seal at Salem,
this 31st day of March

U. S. Justice
Post. Rev. Stamp
10. ct. 1863

A. D. 1863

J. O. Chance Clerk

Filed April 14th A. D. 1863. J. J. Bogan Clerk

"Declaration in Assumpsit"

State of Illinois Word Term Marion Circuit
Marion County Court A. D. 1863.

Minerva Merrell

vs
William White Ass't.
Damages \$600.00

William White

The Defendant in this suit was summoned to answer Minerva Merrell Plaintiff of a plea of trespass on the case upon promises and thereupon the said pff by B. B. Smith her Attorney complains: For that whereas the said defendant heretofore to-wit on the first day of February A. D. 1863. at, that is to say at the County of Marion and State of Illinois was indebted to the said plaintiff in the sum of \$600.00 lawful money of the United States for so much money by the said pff. before that time paid, laid out and expended to and for the use of the said Defendant at his special instance and

And in the further sum of \$600.00 for so much money by the said defendant before that time had and received to and for the use of the said Pff. And being so indebted to the said Defendant in consideration thereof afterwards to-wit, on the day and year

aforesaid, at &c. aforesaid, undertook and then and there faithfully promised the said plaintiff to pay him the said several sums of money, when he the said defendant should be thereunto afterwards requested.

And whereas the said Defendant afterwards to-wit on the 1st day of February A. D. 1863. was indebted to the said pff. in the further sum of \$600. ⁰⁰ lawful money, for so much interest before that time and then due and payable from the said defendant to the said pff. for interest upon and for the forbearance of large sums of money before then due and owing from the said Defendant to the said pff. and by the said pff. forbore to said Defendant for long spaces of time before then elapsed at the like special instance and request of the said defendant and being so indebted to the said defendant, in consideration thereof afterwards to-wit, on &c. at &c. aforesaid undertook and then and there faithfully promised the said plaintiff to pay her the said last mentioned sum of money when he the said Defendant should be thereunto afterwards requested.

Nevertheless the said Defendant not regarding his said several promises and undertakings but contrary and fraudulently intending craftily and subtly to deceive and defraud the said pff. in this behalf hath not as yet paid the said several sums of money or any or either of them or any part thereof to the said pff. (Although after requested so to do) but the said defendant to pay her the same hath

" William White

vs

Manerva Merrill

The said defendant by
Willard & Stoker his Attorneys comes and de-
fends the wrong and injury when & c. and
says, that he did not undertake or pro-
mise as alleged in the said plaintiffs dec-
laration and of this he puts himself upon
the Country & c.

And the Pltff does
the same

Williard & Stoker
Atty for Deft.

Smith & Shaeffer

Atty for Pltff

Filed May 8. 1863.

J. S. Bogan Clerk.

hitherto wholly neglected and refused and still re-
fuses to pff. Damage \$ 600.00 and therefore she sues.

Minerva Merrell
By B. B. Smith Atty

Account

William White D.
to Minerva Merrell

April 20th

April 20. 1861. To money paid to defendant \$ 300.00

May 27th 1861. To money paid to Defendant \$ 135.00

So interest at 10 percent from date
per contract \$ 600.00.

Filed March 5th 1863 J. O. Chance Clk.

By G. S. Chance Deputy

Filed April 14th t. J. 1863 J. S. Bogan Clerk

" William White
vs
Minerva Merrell



May Term of the Jefferson
Circuit t. J. 1863.
Assumpsit.

And for a fur-
ther plea in this behalf save &c. being first had
and obtained say actionon. Because he says
that the money in said Plff. declaration charged to
have been paid, laid out and expended by the said
Plff. to and for the use of the said Defendant if
any was paid, was paid by the said Plff. to the
said defendant on notes and mortgage executed by
one N. C. Merrell in his lifetime, since deceased to
this defendant and Defendant further avers, that

said mortgage was executed by said W. C. Merrel & the said Plff. and defendant further avers, that receipts in writing were given to said Plff. for said money, by which said written receipts, it was then and there stated and agreed by & between said parties, that said money was to be credited upon said notes of W. C. Merrel died and should not be paid back to any claimant of the said estate of the said W. C. Merrel died - and this he the said deft. is ready to verify & therefore he prays judgement & c.

Willard & Stoker Attys
for Deft.

And for a further plea in this behalf have & c. bring first had and obtained, the said Deft. says, action pro, Because he says that the money in said Plaintiffs Declaration charged to have been paid, laid out and expended by the said Plff. to and for the use of the said Defendant, and if any was paid, had and received by said deft. to and for the use of the said Plff. if any was paid & received by him, was by the said Plaintiff Paid to this deft. and by agreement set forth in written receipt therefor given by said deft. to said Plff. in Part payment of the redemption money of part of Lot one in Block one in Salem, which property had been sold on foreclosure of Mortgage against one W. C. Merrel since died and the said Plff. and Deft. avers that said money was not to be paid back to any claimant, if said property was

was not redeemed. - and Deft. further avers that said Defendant had not up to the time of the commencement of this suit, to-wit, on the 4th day of February 5. 1863. refused to allow said Plff. to redeem said part of Lot one in Block one in Salem and this he is ready to verify, wherefore he prays Judgment &c.

And the said Deft for a further plea in this behalf have &c. being just had and obtained says, actionon, because he says, That one hundred and forty eight dollars and fifty cents, parcel of the said sum of money in said Plff. declaration charged to have been paid, laid out and expended by the said Plff. to & for the use of the said deft. if any was paid, was paid by said Plff to said Deft. to pay him the said deft. the taxes and double taxes, which was paid by said deft. on property mortgaged by the said Plff. & one N. C. Merrel dec. to secure the payment of promisory notes executed by said N. C. Merrel decd to this deft. and which sum of hundred and forty eight dollars & fifty cents was not to be repaid by the said deft. to the reclaimants and this he is ready to verify, wherefore he prays judgment &c.

Willard & Stoker
Attys for Deft."

Filed May 8. 1863.

J. J. Bogan
Clerk

State of Illinois)
Jefferson County)
May Term of the Jefferson-
son Circuit Court A. D. 1863

Minerva Merril

vs
William White

Assumpsit.

Demurrer to pleas. And the
said pff. by Schaeffer & Smith comes & c. and says
that the said 1st, 2nd & 3^d special plea in
this behalf pleaded is insufficient in law and that
said pff. ought not to be bound of the aforesaid
action in this behalf & c.

For special cause pff. says:
1st that 1st special plea sets up matter of de-
fense, that is admissable under the plea of
the general issue
2nd said plea avers that the money sought
to be recovered in their action was paid on
notes made by N. C. Merril since deceased to de-
fendant under an agreement expressed in receipts
but does not aver either the time nor place of mak-
ing said agreement - nor the time nor place, when
and where said pay went, was made - nor does
it aver, that any consideration moved between
the parties to said agreement, - nor does it
aver, that the money so alleged to have been paid
was credited on said notes of N. C. Merril
3rd The second special plea is insufficient, because

the same matter may be introduced under the general issue.

That said second special plea is uncertain and insufficient because it avers, that the money sought to recover was paid under such an agreement, but does not set it out in substance nor form - with as to time, place nor terms of the contract. Said plea negatives a breach of said agreement, but does not set it out, so that pff. can know whether said breach is properly assigned.

3rd Third plea same objections as above.

Schaeffer & Smith
for Pff.

"Filed May 8. 1863. G. S. Bogan Clerk"

William White
ats.

Minerva Merrill

The said defendant by Willard & Stoker his attorney comes and defends the wrong and injury when & c. and says, that he did not undertake or promise as alleged in the said Plaintiffs Declaration and of this he puts himself upon the Country &c.

Willard & Stoker
Attys for Deft.

And the Pff. does the same.

Smith & Schaeffer Attorneys for Pff.

"B. B. Smith Esq. Atty for Minerva Merrell in
case of Minerva Merrell vs William White, now
pending in the Jefferson Circuit Court, Jefferson
County Illinois, You will take notice, that we
shall require you to produce on the trial of this
cause two receipts for money, one for the sum of
three hundred dollars dated April 20th 1861. and
signed by William White, one for the sum of one
hundred and thirty five dollars dated May 27th
1861. purporting to be for money paid for redemp-
tion money, for part of lot one, in Block one,
in Salem and signed by said White and any
and all other receipts for money recd from said
Minerva Merrell by said White since April 20th
1861. and all contracts between said parties, if
any now have relating to money paid to said
White by said Merrell for such redemption.

William White M. J.

By Willard & Goodman
Atty for Deft.

"Filed May 9. 1863. J. J. Bogan Clerk"

"Rec'd Salem Marion County April 20th of
Minerva Merrell the sum of Three hundred doll^{rs}.
to be credited on the mortgage notes of N. C. Mer-
rell dec'd and if not redeemed the above amot.,
is not to be repaid, to the claimants of said estate.

April 20th 1861.

Wm White.

Filed May 9. 1863. J. J. Bogan Clerk"

1861. April 20th Recd. of Minerva Merrell one hundred and forty eight dollars and fifty cents for taxes and double taxes of the Mortgage premises in the year 1859. the above amt. not to be repaid to the releases.

W. White

present. James Baggett.

\$135⁰⁰ Received Salem Mo. of Mrs. Minerva Merrell the sum of one hundred and thirty five dolls. to be credited upon the notes of W. C. Merrell given for the mortgaged property of part of lot one in Block one in Salem, which money is not to be repaid to any claimant in case the said property is not redeemed

Salem, Marion County

Ill May 27th 1861.

W. White.

Filed May 9. 1863.

J. S. Bogan Clerk

In the Jefferson Circuit Court. May Term 1. 2. 1863.

State of Illinois

County of Jefferson S. S.

At a regular Term of the Circuit Court of said County of Jefferson begun and holden in the Court House in Mount Vernon, in said County of Jefferson on Friday the eighth day of May, in the year of our Lord One Thousand Eight Hundred and Sixty three being the first Monday of said Month

Present: The Hon. J. S. Marshall Judge

John S. Bogan, Clerk & W. Goodrich Sheriff

5th day Friday, May 8th J. T. 1863.

N^o 74

Minerva Merrill

vs

William White



Assumpsit. - Change of venue from
Marion County.

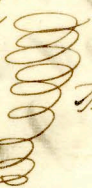
Came this day the Plaintiff by
Shaeffer & Smith her Attorneys and the Defendant by
Willard and Stoker his Attorneys and thereupon the Plain-
tiff by her Counsel files her Demurrer to the special pleas
of the Defendant herein also filed.

The Court having heard said Demurrer argued and
being fully advised finds the law to be with the Plain-
tiff and said Demurrer well taken. It is therefore or-
dered, that said Demurrer to special pleas be and it
is hereby sustained.

Minerva Merrill

vs

William White



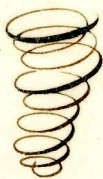
Assumpsit. - Change of venue from
Marion County

Again on this day comes the Parties
herein by their Attorneys and this cause coming on to be
heard, by agreement is submitted to the Court. The Court
having heard the proofs and evidence, as also the arguments
of Counsel and being well advised, it is considered and
ordered, that the said Plaintiff have judgment in her
favor and against the said Defendant for the sum of
(\$480.⁰⁰) Four Hundred and Eighty Dollars her
Damages, together with the costs, to be taxed by the
Clerk and that execution issue therefor &c.

Thereupon the Defendant by his Counsel enters
his Motion for a New Trial. The Court having heard

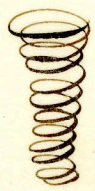
said motion argued and being sufficiently advised
it is ordered, that said motion be and it is hereby
overruled.

Same
vs.
Same




Again on this day come the Parties by
their Attorneys and on motion, Leave is given to Plain-
tiff to withdraw one of the receipts on file.

Same
vs.
Same



Again on this day come the Parties by
their Attorneys, whereupon the Defendant by his Counsel
prays a appeal to the Supreme Court, - which is
granted by the Court, upon the Defendant filing
Bond in the sum of Eight Hundred Dollars within
sixty days from this date, conditioned, as the law
requires, with security to be approved by the
Clerk of this Court.

State of Illinois
Jefferson County



D. John G.
Bogart, Clerk of the
Circuit Court, within and for the

The County of Jefferson and State of Illinois do here
by certify, that the foregoing and within are
true, correct and complete copies from the Bill
of Exceptions as filed and given by Hon. S.S.
Marshall, Judge of our said Court, from
the Pleas and Proceedings in Marion County
Circuit Court and the Pleas and Proceedings
and papers on file in our said Court, as
well as a true and correct copy from the
Record of our said Circuit Court of the
Proceedings and judgment of said Cause
from Book "G" Page 145. & 146.

In Testimony

Whereof I have hereto set my
hand and seal of our said
Circuit Court at Office in
Mount Vernon, the ninth day
of June A. D. 1863.

John S. Bryan Clerk
Ct. Jeff. Co.

Know all Men by these presents, That we William White M. D. and Coleman A. Nichols are held and firmly bound unto Minerva Merrill in the penal sum of Eight hundred dollars Lawful money of the United States for the payment of which well and truly to be made we bind ourselves, our heirs administrators and assigns jointly severally and firmly by these presents.

Witness our hands and seals this 12th day of June A. D. 1863.

The Condition of the above obligation is such, that whereas the said Minerva Merrill did at the May Term of the Jefferson Circuit Court A. D. 1863. recover a Judgment against the said William White M. D. for the sum of four hundred & eighty dollars & costs of suit, from which said Judgment the said William White M. D. has taken an appeal to the Supreme Court of the State of Illinois. Now if the said William White M. D. shall prosecute his suit, appeal with effect and shall pay whatever Judgment may be rendered by the said Supreme Court upon dismissal or trial of said appeal,

then this obligation to be void, otherwise to be and remain in full force and effect.

25. Cts
U. S. Dist.
Rev. Stamp
25 Cts

Wm White Seal
Coleman A. Nichols
Seal

State of Illinois
 Marion County I, J. O. Chance, Clerk of
 the Circuit Court of said County certify the fore-
 going Bond to be good, that the signers of same
 own valuable Real Estate in Marion County
 unincumbered and consider them amply com-
 petent to pay the penalty mentioned in said
 Bond.

Given under my hand and offi-
 cial Seal at Salem this 19th day
 of June A. D. 1863.

J. O. Chance

U. S. Int.
 Rev. Stamp
 50. B
 Seal of C. C.
 Marion Co.
 Ills

Approved and Filed June 22. 1863 J. S. Bogan Clerk

State of Illinois
 Jefferson County S. S.

I John S.

Bogan, Clerk of the Circuit
 Court of County and State aforesaid, do hereby cer-
 tify, that the foregoing is a true and per-
 fect copy, from the original Appeal Bond
 on file in our Office at Mount Vernon
 County and State aforesaid.

Given under my hand and Seal
 of Office, the 22nd day
 of June A. D. 1863.

John S. Bogan

C. C. Jeff Co Ills



Errors Assigned

And now comes said Plaintiff, by Willard & Goodnow his Attorneys, and sets down and assigns the following causes of Error

- 1st The Court erred in overruling motion for new trial and entering judgment on verdict.
- 2^d Court erred in permitting parole evidence to contradict written contract
- 3^d Court erred in permitting parole evidence by Plaintiff to contradict written evidence introduced by herself to sustain her own case
- 4th Court erred in rendering judgment for \$400, when it should have been for which was contrary to evidence

And for these and other manifest errors, this cause ought to be reversed and remanded

Willard & Goodnow

Attys for Pltff on Error

And the said appellee by B. B. Smith and James B. B. her attorneys comes and says there is no error in the rulings findings and judgment aforesaid and of this she prays judgment &c

B. B. Smith } atty
James B. B. } for
 Defⁿ
 sup.

Filed Nov. 9 - 1863
A. A. Hunter atty.
Paid by Goodner \$11-

²⁷
Jefferson County
Circuit Court

May Term T. D.

Nov 1863
vs White
Minerva Merrill

Kurtz & Bush
of W. Va.

~~William White~~

Transport - Change
of Venue from
Marion County

Bill of Exceptions
Pleas & proceedings &c

Copy of Appeal Bond \$6.35
3 cert. & stamp 85. ct
Stamp on Appeal Bond 25. ct
Fee \$4.75. ct
Stamp 25. ct
Certificate 5. 00. ct

2115-13

William White
Appellant
Minerva Merrett
Appellee

Brief for Appellee.

I The papers sued on are ^{simple} receipts for the sum of money specified therein to wit \$300 and \$135. And being such ~~may~~ be explained or contradicted by parol testimony
1 Greenleaf Sec 305.

II The papers sued on are not a Contract, they lack consideration, none appear on them to have passed to Mrs Merrett - they also lack Mutuality, two essentials to a Contract. As to consideration. A valid and sufficient consideration or recompense for making, or motive or inducement to make the promise upon which a party is charged, is of the very essence of a contract not under seal, at Law and in equity Clitty on Contracts 26. As to Mutuality. Every agreement ought to be so certain and complete, that each party may have an action upon it, in regard to matters to be performed for his benefit by the other contracting party Clitty on Contracts 15a

III If the paper sued on be deemed a Contract
then they must be in such terms as import a
legal obligation without any uncertainty
~~But these are uncertain~~ 1 Greenleaf Cr. Sec. 275

Doyle vs Teas 355.

4 Scam 255. 256.

Scott vs Bennett 3 Gil 254

Lane vs Sharp 3 Scam 375.

James P. Felt
atly for Appellee.

Supreme Court
Nov Term 1863

No 27

William White

vs

Minerva Mealy

—

Deft Writ

27 — 13

White
Merrill

Appl. for Jefferson

Assessment

Reported

1803

State of Illinois }
Jefferson County } ss

William White }

vs

Minerva Merrell }

Appeal from Jefferson

Mr Clerk please dock

at the above entitled cause

B C Goodnow

Attorney for Pltff

White
M

Merrill

Preap's

27

Filed Nov. 9. 1863.

N. Johnston Cllg
11

ABSTRACT.

In Supreme Court---1st Grand Division, in the State of Illinois.

WILLIAM WHITE, Pl'tff. in Error.

vs.

MINERVA MERRELL, Defn't. in Error.

} APPEAL FROM JEFFERSON.

1. This was a suit in assumpsit heard before S. S. Marshall, Judge at the May term, 1863, of Jefferson Circuit Court.

That on the trial of this cause, the Plaintiff to maintain her cause, gave in evidence the following receipt :

Received, Salem, Marion county, Illinois, April 20th, Minerva Merrell, the sum of three hundred dollars to be credited on the mortgage notes of N. C. Merrell, deceased, and if not redeemed, the above amount is not to be repaid to claimants of said estate. April 20th, 1861.

WILLIAM WHITE.

\$135.00. Received, Salem, Illinois, of Mrs. Minerva Merrell, the sum of one hundred and thirty-five dollars to be credited upon the notes of N. C. Merrell, given for the mortgage property of part of lot one, in block one in Salem, which money is not to be repaid to any claimant in case the said property is not redeemed. Salem, Marion county, Illinois, May 27th, 1861.

WILLIAM WHITE.

- 2 Plaintiff then introduced Jas. Bassett witness, who testifies that Plaintiff is a widow of N. C. Merrell, who was in possession of property mortgaged by N. C. Merrell to Defendant to secure debt to Defendant. She desired to pay off the debt and get title to the property; and she entered into contract with Defendant to pay him \$1000 before the time the entire debt became due, and \$1000 yearly each year thereafter until the debt was paid, then she was to get title to the property. That witness was present when the \$300 was paid on said contract; the contract was not reduced to writing. When the money was paid Defendant produced the receipt offered in evidence, and handed it to Plaintiff, witness asked Defendant to explain the receipt. Defendant said by claimants he referred to Richard Atkin and wife, Mrs. Atkin being the daughter of N. C. Merrell. That the money paid by Plaintiff, was not to be credited on the notes or in any way enure to the benefit of Atkin's wife, or any other claimants who might redeem from mortgage. That in case of redemption by any such claimants the money was not to be refunded. That Plaintiff was to pay Defendant \$1000 on or before the last note became due, and \$1000 yearly thereafter till the debt was paid; if she had not completed the payment of the first \$1000 when the notes matured, she was permitted to complete it before the foreclosure of the mortgage and sale of property. If she paid by that time the certificate of purchase would be taken to enure to her benefit. But if she did not pay the first \$1000 by that time the contract was at an end, and the money paid on the contract was to be paid back. That witness was present at the payment of second receipt, that parties talked over the contract as before.

Defendant then and there objected to witness stating verbal explanations made by Defendant of said receipts, or any verbal statement or explanations made by the parties in regard to their contract.

The Court overruled the objections, and permitted witness to testify as above, which ruling Defendant excepted.

Witness further stated that Defendant stated that by the terms mortgage notes in the receipt was meant the notes he held against N. C. Merrell.

Cross examined :

- 5 I was present about a month after the receipt of May 27th, 1861, was given at an interview between Plaintiff and Defendant. Plaintiff told Defendant that she was not satisfied with the receipts he had given her that she had been told they were not in compliance with the contract between them. She wanted him to give her his notes for the amount she had paid him or receipt in due form. Defendant refused to do so. After some talk Plaintiff said it would be impossible for her to pay for the property, and she wanted the matter fixed up. She proposed to him to keep a portion of the property and let her have the balance which she thought she could pay for, but they could not agree for the whole, and she would not pay any more. Defendant said if she could not he stood by the contract, if she could not pay up then, the contract would be at an end, and he would stand by his receipts. Plaintiff surrendered property at expiration of mortgage sale 15 months about January 19th, 1863.

It was agreed that the money paid by Plaintiff was not credited on the notes of N. C. Merrell, and Defendant obtains decree of foreclosure for the entire amount of debt, and sold property to the amount and got deed in due time.

This is all the testimony in the case, judgment for Plaintiff for \$480—motions for new trial, overruled. Defendant excepts. Filed May 11th, 1863.

S. S. MARSHALL. [SEAL.]

- 9 Declarations in assumpsit common count for money paid, laid out and expended for the use of
 said Defendant at his special instance. 2 count money had and received for the use of said Plaintiff.
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 21 Copy of bond.

WILLARD & GOODNOW,
 Attorneys for White.

ERRORS ASSIGNED.

And now comes said Plaintiff, by Willard & Goodnow his Attorneys, and sets down and assigns the following causes of error.

- 1st. The Court erred in overruling motion for new trial and entering judgment on verdict.
- 2nd. Court erred in permitting parole evidence to contradict written contract.
- 3rd. Court erred in permitting parole evidence by Plaintiff to contradict written evidence introduced by herself to sustain her own case.
- 4th. Court erred in rendering judgment for 480, when it should have been for which was contrary to evidence.

And for these and other manifest errors, this cause ought to be reversed and remanded.

WILLARD & GOODNOW,
 Attorneys for Plaintiff in Error.

BRIEF.

William White }
 vs. }
 Minerva Merrell. }

As a general rule, a written contract cannot be varied by parole evidence. 1st Greenleaf, Sec. 275.

It is a presumption, that all terms and conditions of a contract, are merged in the written agreement. Lane vs. Thorp, 3rd Scammon 575. Matters collateral to a contract may be proven by parole but not to change terms of written contract. Lane vs. Thorp, 3rd Scammon 573.

A simple receipt for money received, is only *prima facie* evidence of payment may be contradicted and explained, but if it contains contract to perform some other act it is not susceptible of explanation by parole evidence. 1st Greenleaf, Sec. 305.

Wm White
vs
Minerva Merrill

Abstract

27

Officer

Jul 16th Nov 9 - 1863 -
A. Johnston City

As a general rule, a written contract cannot be proved by parol evidence. 1st Greenleaf, Sec. 302.
It is a presumption, that all terms and conditions of a contract are marked in the written agreement. Lane vs. Thorp, 3rd Greenleaf, 232. Matters collateral to a contract may, however, be proved by parol evidence. Lane vs. Thorp, 3rd Greenleaf, 232. Matters collateral to a contract may, however, be proved by parol evidence. Lane vs. Thorp, 3rd Greenleaf, 232.

10. Value of money paid.
11. Receipt of money.
12. Discharge of money.
13. Receipt of money.
14. Discharge of money.
15. Receipt of money.
16. Discharge of money.
17. Receipt of money.
18. Discharge of money.
19. Receipt of money.
20. Discharge of money.

November term - Supr. Court - 1863.

Million White.

Appellants.

vs

Minoron Mendel.

Appellee

Appellants' Costs.

Appeal from Jefferson.

Judgments affirmed

1863.	To filing Transcript 20 - Docketing Cases 12 -	32.
" "	" Papers	87.
" "	" Abstracts (1200 words each)	16.80
" "	" Entering Motions & Orders	1.00.
" "	" " Opinions of Courts.	1.80.
" "	" Dockets for	6.00
" "	" Certificates Entering Service	37.
" "	" Pen. Mile 50. Stamp 5. Postage 6-	<u>61</u>
		<u>\$27.77</u>

Ch. Prepaid on filing Transcript -	\$11.00	
" Abstracts furnished	<u>2.40</u>	
	\$13.40 -	<u>13.40</u>
	Real. Due him	\$14.37

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White
by
Stevell

Coast Hill

Entered in Page 584

1803

[Faint handwritten notes, possibly bleed-through from the reverse side]

[Faint handwritten notes, possibly bleed-through from the reverse side]

State of Illinois

William White

Appellant

vs

Minerva Merrell

Appellee

In the Supreme Court
First Grand Division
Nov Term 1863

Appeals.

from Jefferson County
Circuit Court.

I hereby enter ~~my~~ appearance as
attorney in this case for Minerva Merrell
Appellee

Salem Oct 14th 1863

B. B. Smith

James Bayless
att'y for appellee

Supreme Court

William White

vs

Miranda Marshall

Appearance of
Def. Marshall

ABSTRACT.

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vs.

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WILLIAM WHITE.

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WILLIAM WHITE.

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 vs. }
 Minerva Merrell. }

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Wm White
vs
Minerva Merrill

Abstract

27

Requid Nov 12

8425

Filed Nov. 9. 1863.

N. Johnston Clk

11

Specification for Patent of Invention
of a certain improvement in the
method of printing, which is
set forth in the following
description, reference being
made to the accompanying
drawings, and to the claims
at the end of the same.

1. The object of the present invention is to improve the method of printing, and to provide a means for printing in a more efficient and economical manner than is at present possible. This is accomplished by the use of a certain improvement in the method of printing, which is set forth in the following description, reference being made to the accompanying drawings, and to the claims at the end of the same.

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Wm White
vs
Minerva Merrill

Abstract

William White
vs
Minerva Merrill.

27

Mr. Goodnow
argued for appeal
Court Nov 12-63

Mr Bassett for
appellee -
Get him make brief

Filed Nov. 9-1863.
A. Johnston cly

29 Certificates of Clerk.
30 Affidavit of Clerk.
31 Judgment of Court.
32 Changing of venue from Maine county.
33 Second receipt. Third receipt.
34 Notice on Plaintiff to produce the receipts filed May 31st 1863. First receipt.
35 Defendant to special plea.
36 Special plea.
37 Plea returned, issue filed May 31st 1863.
38 The court on instant for postponement of issue of money.
39 The court on instant at his special instance. The court money paid and receipt for the use of said Plaintiff.
40 The court on instant in remittitur. The court money paid and receipt for the use of said Plaintiff.

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WILLIARD & GOODNOW.