

8763

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

# Supreme Court of Illinois

J. A. Callicott

---

vs.

C. R. McNeal



State of Illinois Gallatin County, ss.  
Proceedings before the Honorable Wesley  
Sloan, Judge of the Circuit Court of Galla-  
tin County Illinois

Be it remembered that on ~~the~~ the  
27th day July 1866 Charles R. McNeal  
by his attorneys filed in the office of  
the Clerk of said Court a declaration  
agains in the words and figures, as  
follows; to wit;

State of Illinois Gallatin County,  
Of the Special July Term of the  
Gallatin Circuit Court in the year  
of Our Lord one thousand eight  
hundred and sixty five

Charles R. McNeal the plaintiff in  
this suit complains of John A. Callcott  
the defendant in this suit summoned  
se in a plea of aumpset. For that whereas  
one Pinkney J. Welsh before and at the time of the  
promise and undertaking of the said defendant  
hereinafter next mentioned was indebted by his certain  
promissory note then due to the said plaintiff in a large  
sum of money to wit: the sum of One Thousand Dollars  
to wit: at the County of Gallatin and State of Illinois  
aforesaid and thereupon heretofore to wit: on the fifteenth  
day of August in the year of Our Lord One Thousand



Eight Hundred and Sixty-one &c. aforesaid to wit:  
at the County of Gallatin and State of Illinois in  
consideration of the premises and that the said plaintiff  
at the special instance and request of said defendant  
would surrender, transfer and deliver, then and there  
to said defendant the aforesaid promissory note due to  
said plaintiff by said Pinkney & Welch for said large  
sum of money, to wit: the sum of One Thousand dollars  
he, the said defendant undertook in writing and then  
and there faithfully promised the said plaintiff to pay  
him the sum of Eight Hundred and Seventeen dollars  
on the first day of November then next ensuing, to wit:  
on the first day of November in the year of Our Lord  
One Thousand Eight Hundred and Sixty-one &c.  
aforesaid And the said plaintiff avers that he, confiding  
in the <sup>promise</sup> promise and undertaking of the said defendant  
as made as aforesaid did then and there surrender,  
transfer and deliver, to said defendant the aforesaid  
promissory note due said plaintiff by said Pinkney  
& Welch calling for said sum of money to wit: the  
the sum of One Thousand dollars; but that the said  
sum of \$817, by the tenor and effect of the said promise  
and undertaking of the said defendant has been  
long since due and payable, thereby, he, the said  
defendant then and there became liable, to pay to the  
said plaintiff the said sum of \$817, and being so  
liable, he the said defendant afterwards to wit: on the  
day and year aforesaid &c. aforesaid undertook



and there and then promised the said plaintiff to  
pay him to pay him the said sum of \$817 according  
to the tenor and effect of aforesaid promise and under-  
taking of the said plaintiff. Yet the said plaintiff  
avere that the said defendant has not paid the said  
sum of \$817 or any part thereof, though the same has  
been long since due and payable, according to the tenor  
and effect of the said promise and undertaking but  
to pay the same or any part thereof according to the  
tenor and effect of the said promise and undertaking  
or otherwise however, he the said defendant has hitherto  
wholly failed and still doth fail and refuse or to do  
to the said plaintiff's damage of \$1000.

And whereas afterwards on &c aforesaid at &c  
aforesaid, to wit: on the fifteenth day of August in the  
year of Our Lord One Thousand Eight Hundred and  
Sixty-one at the County of Gallatin and State of Illinois  
aforesaid, the said defendant by the name & style of  
J. A. Callicut, made his certain bill of exchange in  
writing bearing date a certain day and year therein  
mentioned, to wit: the day and year aforesaid and thereby  
then and there requested Messrs J. J. Peanum & Co of  
New Orleans La to pay to the order of the said plaintiff  
by the name and style of C. B. McNeal the sum of  
Eight Hundred and Seventeen dollars on the first day  
of November next thereafter ensuing, and then and  
there delivered the said Bill of exchange to the said  
plaintiff which said bill of exchange, by reason of



a civil war raging in State of Louisiana (where  
said Bill was payable) at the time said bill of  
exchange, by the terms tenor and effect thereof was  
due and payable, was not nor was it possible, for  
said plaintiff to have presented the same at  
New Orleans to Messrs J. J. Prarrow & Co by reason of  
the blockade of the Ohio and Mississippi Rivers and  
other hostile obstacles growing out of said civil  
war, of all which premises the said defendant  
afterwards to wit; on &c, last aforesaid at &c aforesaid  
said had notice, by means whereof and by the force  
of the statute in such case made and provided  
the said defendant then and there became liable,  
to pay to the said plaintiff the said sum of \$817  
in the said bill of exchange mentioned according to  
the tenor and effect of the said bill of exchange  
and being so liable, he the said defendant afterwards  
to wit on the day year last aforesaid at &c aforesaid  
undertook and then and there in consideration of  
the several premises faithfully promised to pay to the  
said plaintiff on demand the said sum of \$817  
in the said bill of exchange mentioned. Yet the  
said plaintiff avers that he, afterwards to wit; on &c  
aforesaid at &c aforesaid made demand of said  
defendant for said sum of \$817 in the said bill  
of exchange mentioned and that the said defendant  
refused and still doth refuse to pay said plaintiff  
said sum of money last above mentioned or any



part thereof, to said plaintiff's damage of \$1000.

And for that whereas also the said defendant heretofore to wit: on the 15th day of August in the year of Our Lord 1861 to wit: at the County of Gallatin aforesaid, being indebted to the said plaintiff in a larger sum of money to wit: in the sum of Eight Hundred and Seventeen dollars for divers goods wares merchandize and choses in action before that time sold delivered transferred and surrendered by the said plaintiff to the said defendant at his request and in a like sum for divers goods wares and choses in action before that time sold delivered and transferred by the said plaintiff to one Pinkney J. Welch at the special instance and request of said defendant, and being so indebted he, the said defendant in consideration thereof afterwards, to wit: on the day and year aforesaid; to wit: at the County and State last aforesaid made his certain bill of exchange in writing bearing date a certain day and year therein mentioned, to wit: the day and year aforesaid, and thereby then and there requested Messrs J. J. Plummer & Co (whose individual names are to the plaintiff unknown) of New Orleans in the State of Louisiana on the first day of November then next ensuing, to pay to the <sup>said</sup> plaintiff or order the sum of \$817. And then and there delivered the said bill of exchange to the said plaintiff. And the plaintiff avers that afterwards and before the payment of the said sum of money mentioned in said bill of exchange to wit: on the day and year aforesaid and continually thereafter until long after



the falling due of the money mentioned in said bill of exchange and after the commencement of this suit, a rebellion and civil war was raging in the Southern portion of the United States by means whereof the Mississippi river had become blockaded and all intercourse between the sections of country in which said bill of exchange was made to wit: in the State of Illinois and the State of Louisiana wherein said J. J. Pearson has resided had become and was totally suspended, by reason of which said rebellion and civil war, the plaintiff avers that it was impossible, to present said bill of exchange for acceptance or payment, of all of which said premises the said defendant then and there had notice to wit: at &c. aforesaid. By means whereof and by reason of the non-payment of the said sum of money mentioned in said bill of Exchange the said defendant afterwards to wit: on the second day of November A.D. 1861 became liable to pay the said sum of money mentioned in said bill of Exchange to the said plaintiff who requested, and being so liable, he the said defendant afterwards to wit: on the first day of December A.D. 1861 to wit: at the County of Gallatin aforesaid, undertook and faithfully promised the said plaintiff to pay him said last mentioned sum of money when requested. Yet the said defendant although often requested so to do has not as yet paid the said sum of money last above mentioned or any part thereof, to the said plaintiff, but he to do this hath wholly neglected and refused and still refuses to the damage of the said plaintiff of \$1500<sup>00</sup>



And whereas also the said defendant heretofore  
to wit; on the 15th day of August A.D. 1861 to wit; at the  
County of Gallatin and State of Illinois became and  
was indebted to the said plaintiff in the further sum  
of Eight Hundred and Seventeen Dollars for divers goods  
and choses in action before that time sold and delivered  
by the said plaintiff to the said defendant at his  
request, and in a like sum for divers goods, chattels  
and choses in action before that time sold and delivered  
by the said plaintiff to One Pinkney J. Welsh, at the request  
of the said defendant; and in a like sum for divers goods  
chattels and choses in action, before that time sold and  
delivered by the said plaintiff to Pinkney J. Welsh and Frank  
Welsh partners &c. by the name and style of P. J. Welsh & Co.  
at the special instance, and request of the said defen-  
dant, and being so indebted he, the said defendant  
in consideration thereof afterwards to wit; on the  
day and year last aforesaid, to wit; at the County and  
State last aforesaid undertook and then and there faith-  
fully promised the said plaintiff to pay him the said  
sum of \$817. when he the said defendant should be,  
thereto afterwards requested and a memorandum  
or note of said promise in writing was then and  
there signed by the said defendant and delivered to  
the said plaintiff. Yet the said defendant although often  
requested has not paid the said sum of \$817 or any  
part thereof, but he, to do this hath hitherto wholly neg-  
lected and refused and still refuses to the damage of the  
plaintiff of \$1500<sup>00</sup>



And whereas also the said defendant heretofore to wit;  
on the day and year last aforesaid, to wit: on the 15<sup>th</sup> day  
of August A<sup>d</sup> 1861 to wit: at the County of Gallatin and State  
of Illinois being indebted to the said plaintiff in the sum  
of \$817, in consideration thereof by the name and abbrevi-  
ation of J. A. Halliwell, drew his certain order in writing  
directed to J. J. Pearson & Co of New Orleans Louisiana,  
by which the said defendant ordered and requested the  
said J. J. Pearson & Co (whose individual names are to the  
plaintiff unknown) to pay to the said plaintiff on the  
first day of November then next ensuing the sum of \$817  
which said order was signed by said defendant by the  
abbreviation aforesaid and was then and there delivered  
by him to the said plaintiff - And the plaintiff avers  
that in consequence of a civil war that was then raging  
in the United States it was impossible for the said plaintiff  
to present the said order for acceptance or payment to  
the said J. J. Pearson & Co and that said war continued  
and said impossibility of presentment existed until long  
after the commencement of this suit of all of which premises  
the defendant had notice. Whereby the said defendant became  
liable to pay the said sum of \$817 to the said plaintiff when  
requested, and being so liable afterwards to wit on the 25<sup>th</sup>  
day of December 1861 undertook and promised to pay the  
same to the said plaintiff on request. Yet the said defen-  
dant although often requested has not paid the said last men-  
tioned sum of \$817 or any part thereof to the said plaintiff, but he, to do this  
hath hitherto wholly neglected and refused and still refuses to the



damage of the plaintiff of \$1500. wherefore he sues &c  
Bartley &  
Burnett & Hall

for P. lffs

And afterwards on the seventh day of August  
1866 the defendant filed the following plea to wit:

State of Illinois Gallatin County  
In the Circuit Court of said County  
August Term 1866,

Charles R. McNeal

vs  
John A. Ballicott } Assumpsit

And the said defendant  
comes and defends the wrong and injury  
wherein and says that he did not undertake,  
or promise in manner and form as the said  
plaintiff hath thereof in the said several counts  
of said declaration or any or either of them  
complained against him and of this he puts  
himself upon the Country &c

And the said plaintiff  
doth the like,

Olney for  
lffs

Bartley, Burnett & Hall atty for

Plaintiff

And afterwards on the ninth day of August  
1866 the court made the following order in  
words and figures as follows to wit:



Charles R. McNeal

vs  
John A. Callicut } Appraiser

This day come the parties respectively and the issues being joined, came a jury of twelve good and lawful men to wit:

Abner Moore, James Moore, R. S. Parks  
Stephen Sanders, John J. Wathen, Andrew B. Bumble  
James Prewitt, Wm F. Endicott, William W. Rodgers  
William Campbell, Wm Me. Haygrave, Bluford Robinson  
Who being duly elected, tried and sworn, the proofs are introduced, and arguments are submitted by the respective counsel. And afterwards the jury retire, and in due time return into court the following verdict "We, the jury find for Plff and award him damages at the amt of One Thousand Forty-five dollars seventy-six cents \$1045<sup>76</sup>." A. J. Wathen fireman

Thereupon comes the Defendant by Olney his Atty and enters his motion to set aside the verdict

And afterwards on the 17<sup>th</sup> day of September 1866 the following bill of exceptions was filed

State of Illinois Gallatin County

In the Circuit Court of said County

August Term A. D. 1866

Charles R. McNeal

John A. Callicut } Appraiser



It remembered that on the trial of this cause  
the plaintiff read in evidence, a draft in the words  
and figures following to wit:

Sharonetowne Ills

August 15<sup>th</sup> 1861

Messrs. J. J. Pearson & Co New Orleans La  
On the 1<sup>st</sup> day of November next pay to the order  
of G. R. McNeal Eight Hundred and Seventeen Dollars  
and this shall be a receipt for the above amount  
on your acceptance, for John Taylor Moore for \$1857<sup>75</sup>/<sub>100</sub>  
and which acceptance, is due November next and  
which I now hold

J. A. Callicott

The plaintiff then read in evidence, the following  
contract in writing between Noah Welsh and the  
defendant, which is in the words and figures as  
follows to wit: I have this day received from John  
A Callicott a draft drawn by him and of even  
date herewith and in the words and figures following  
to wit:

Sharonetowne Ills. Aug 15<sup>th</sup> 1861

Messrs J. J. Pearson & Co. New Orleans La  
On the 1<sup>st</sup> of November next pay to the order of  
G. R. McNeal Eight Hundred & Seventeen dollars  
and this shall be a receipt for the above amount  
on your acceptance, for John Taylor Moore, of  
\$1857<sup>75</sup>/<sub>100</sub> and due November next and which accep-  
tance, I now hold

J. A. Callicott



Now I the undersigned do hereby agree that in case the above described draft is not honored by the payment of the sum of money therein called for to the holder upon presentation after due, I will return the same to the said John A. Callier or the drawer thereof or pay him that amount of money together with all damages which he may sustain by reason of the same not being returned to him as above.

Given under my hand and seal on this 15th day of August  
A D 1861

Noah Welsh seal

The plaintiff then introduced Pinckney J. Welsh as a witness who testified that on the first day of November 1861 all the ordinary channels of communication between Illinois and Louisiana were closed by the obstacles created by the war that a person could only have passed through the lines by strategy and that he is acquainted with the defendant but does not know the plaintiff. That about the first of March 1861 he purchased some goods at Shawneetown Illinois from William Fuller amounting in value to about Nine Hundred dollars - that he at request of said Fuller executed a note for said goods in the sum of Nine Hundred dollars and made the note payable to plaintiff, L. R. McNeal and afterwards about the <sup>15th</sup> of August 1861 Noah Welsh lifted said note and gave it to witness. That witness did not know of his own personal knowledge that the draft



sued upon was given for that note  
The plaintiff <sup>also</sup> introduced Silas Rhoads as a witness  
who testified that defendant was in the army during  
the time from November 1861 until the year 1863  
that he was at home in Shawneetown on leave of  
absence, in January or February 1863 at which time  
he authorized witness to purchase the claims which  
William Fuller held against said defendant.

That he saw said Fuller about it, but that Fuller will  
not agree to take the amount offered, does not recollect  
what amount Callcott authorized him to pay thinks  
it was three hundred or five hundred dollars  
Witness informed Noah Welsh of what Callcott  
authorized witness to do and Welsh objected to his doing  
it. Witness then wrote to Callcott informing him  
that Welsh objected to witness settling with Fuller on  
the terms proposed, and that Callcott then wrote to  
Witness not to settle. Witness did not know what claims  
Callcott referred to other than a claim William Fuller  
then held against said Callcott

The plaintiff then introduced E. H. Callcott as a  
witness who testified that in the winter of 1863. William  
Fuller proposed selling to witness the draft sued on  
in this case - Witness told defendant of the fact of  
Fuller proposing to sell said draft - Defendant then  
authorized witness to offer Fuller five hundred dollars  
for said draft, and that if Fuller would take that  
amount for the draft the money should be forthcoming



or he would find a man that had the money.  
This was during the winter of 1863.

The plaintiff then introduced William Fuller who being sworn to answer questions stated that he had no interest in the result of this suit. He was then sworn as a witness in the cause and testified that he as agent for the plaintiff took the draft in question (which was then shown him being the one admitted in evidence) from Noah Welsh and gave for it a note in favor of the plaintiff one Priney J. Welsh. Witness was indebted to the plaintiff and the plaintiff authorized him - witness - to do the best he could to pay him - the plaintiff. This was all the authority witness had from the plaintiff. Witness sold Priney J. Welsh a lot of goods and took note for the amount and had the note made payable to McNeal to secure part of what witness owed McNeal. Afterwards on the day of the date of the draft, witness gave up that note to Noah Welsh and took in place and, in payment for it the said draft. McNeal, the plaintiff, lived in Mississippi at the times the note and draft were taken. Witness had no communication with him after the blockade was effected. The bill or draft was never presented for acceptance or payment because it could not be presented for the reason of the war. It was not the contract that witness should take the draft without recourse. Witness saw Col. Callicott and spoke to him about



the matter in the early part of the year 1863. He was in the army at the time and left the same evening for St Louis. He said he would attend to it and try and see it fixed. After Callicott left Silas Rhoads sent for me and asked me how much Callicott owed me. I told him \$817, he said he had not that much of Callicott's money but he would write to Callicott, Callicott then wrote to Rhoads not to pay me. On cross-examination witness stated that in taking the note from Pinckney J. Welsh and the draft from Noah Welsh. Witness acted as agent for McNeal under the authority stated on his examination in chief - that he owed McNeal and McNeal had authorized witness to do the best he could to pay him - this was all the authority witness had to act as agent for McNeal - and that if McNeal failed to collect the amount of this draft from Callicott the defendant, <sup>witness</sup> he would be liable for the amount to McNeal and that he had not paid McNeal what he owed him. Whereupon the court, in motion of the defendant, decided that said witness Fuller was not a competent witness and excluded his testimony from the jury and instructed the jury to disregard his testimony, to which ruling of the Court this said Fuller was not a competent witness for plaintiff and instructed the jury to disregard his testimony, the plaintiff then and there excepted.

The defendant then offered Noah Welsh as a



witness, who being sworn to answer questions stated that he had no interest in the result of this suit and would not be liable to the defendant if a judgment should go against him in this case. The Court thereupon decided that said Welsh was a competent witness. And said Noah Welsh then being sworn as a witness testified that he went into business in Shawmutown with Pinckney J. Welsh in August 1861. That Eight Hundred and seven ten dollars of the draft payable to the defendant referred to in the draft sued on was in fact coming to witness. That he made arrangements with Pinckney to take up a note he had given to Williams Fuller but which note was payable to L. R. McNeal. That witness proposed to Fuller to give him the draft sued on for the note of Pinckney, and that Fuller accepted the same and was to take the risk of said draft for \$817 being paid and said he would be able to present the draft for payment and that he would rather have a Southern man's word than a Northern man's note. That the draft sued on was given by witness to Fuller for said note of Pinckney and on the terms and stipulations as just stated by witness on the 15th August 1861. That witness is the person who executed the contract which was read in evidence by the plaintiff. The Court thereupon and before the defendants had concluded questioning him decided that said Noah Welsh was not a competent



witness on behalf of the defendant and instructed the jury to disregard all his evidence, - to which ruling of the Court in deciding that said Welsh was not a competent witness and instructing the jury to disregard his evidence, the said defendant then and there accepted. And this was all the evidence, in this cause.

The Court then on behalf of the plaintiff gave the following instructions to wit: Let that if the evidence shows that the defendant Callcott drew his bill of exchange in favor of Charles B. McNeal, the plaintiff, or J. J. Pearson & Co of New Orleans, it then became the duty of McNeal to present the said Bill for payment when it became due, if he could do so by any reasonable effort but if the evidence shows that such presentation was prevented by reason of war or other overwhelming obstacle, then such presentation for payment or acceptance, would be excused and and if you believe that the defendant Callcott had knowledge of such inability to present the bill for payment he became liable to pay the bill himself, and under such circumstances you should find for the plaintiff.

And

If the evidence, in this case shows that at the time the Bill of exchange in question became due, the presentation of the same for payment or acceptance, was prevented by reason of the existence of a war; then Callcott became liable, to pay the Bill himself, to the holder, if he had knowledge of the inability of the holder to present the same and having once become liable,



his liability continues

3<sup>rd</sup> All persons are chargeable, with notice, of the existence, and proclamations or declarations of war and of all legal proclamations during a state of war by competent authority, establishing blockades or interdicting communication.

4<sup>th</sup> The existence of a war is a sufficient excuse for the failure, to present a bill of Exchange for acceptance or payment if the evidence, shows that its presentation for payment or acceptance, was prevented by such war, and although it might be possible for a party to pass through the lines by misrepresentation or by some contrivance, or fraud, yet he is not only not bound to do so but he would not be justified in doing so. Hence he is not bound to present a bill under such circumstances in order to charge the drawer

5<sup>th</sup> If the evidence, shows that the defendant became liable, to pay the bill of exchange, for \$817 he, the defendant is also chargeable, with interest on said amount at the rate of six percent per annum from and after the time said liability commenced, and you should compute such interest in considering the amount due the plaintiff

6<sup>th</sup> That in order to entitle the payee of a bill of exchange to recover in an action against the drawer it is not necessary for the plaintiff in such action to prove a consideration paid to the drawer for the bill and that the bill of exchange itself implies on its



face, a consideration without further proof

To the giving of each and every of said instructions the defendant then and there excepted

The court then gave the following instructions to the jury on behalf of the defendant to wit:

1 If the jury believe from the evidence, that the civil war existed at the time the draft was executed and that such civil war continued until the draft became due, then unless the jury also believe from the evidence that the plaintiff notified the defendant within a reasonable time afterwards that said draft was unpaid they will find for the defendant

2nd If the jury believe from the evidence, that at the time of drawing the bill of exchange in question, the civil war was then in existence, and that it continued until the draft became due and long after, and if you further believe that the plaintiff was prevented from presenting said draft for payment, by said civil war, then it became the duty of the plaintiff to inform defendant in a reasonable time of the non-payment of the draft and if he did not do so you should find for the defendant

The counsel for the defendant requested the court to give to the jury the following instructions to wit:

3d The court instructs the jury that if they believe from the evidence, that the plaintiff was prevented from making the demand of payment of said bill of



exchange at the time the same became due and payable by reason of a civil war then existing, then unless the jury also believe from the evidence, that the plaintiff did afterwards and before the commencement of this suit present said bill of exchange to said J. J. Pearson & Co for payment they will find for the defendant

4th If the jury believe from the evidence, that Leallicott drew this draft and delivered the same to Noah Welch with the agreement that said draft was to be returned to him if it was not paid by J. J. Pearson & Co at maturity, and that Leallicott received nothing for the draft they will find for the defendant

5th Unless the jury believe from the evidence, that the plaintiff within a reasonable time after the draft became due notified defendant that the same was not paid they will find for defendant unless they find that defendant afterwards promised to pay the draft, but such promise must be absolute and without condition made to the plaintiff or his authorized agent

All of said instructions number 3, 4 & 5 asked for by said defendant the court refused; to the ruling of the court in refusing to give each and every of said instructions the defendant then and then excepted

The jury then returned into Court the following



6  
verdict to wit:

"We the Jury find for Plff and award his damages  
at amt of One thousand forty five dollars seventy  
six cents (\$1452.76)

J. D. Wathen foreman

The defendant thereupon moved the court to set  
aside the verdict, and to grant a new trial in said  
cause for the following causes

- 1st That there was not sufficient evidence to sus-  
tain said verdict
- 2nd The verdict is contrary to law.
- 3d The verdict is contrary to the evidence,
- 4th The Court erred in excluding the evidence of Noah  
Welsh
- 5 The court erred in giving the first, second,  
third, fourth fifth and sixth instructions asked  
for by the plaintiff
- 6th The court erred in refusing the third fourth  
and fifth instructions asked for by defendant. The  
court then overruled said motion to set aside the  
verdict and to grant a new trial, to which opinions  
of the court the defendant then and there excepted and  
prays that this, his bill of exceptions may be signed  
sealed and made part of the records in said cause  
all of which is accordingly done in open court  
this the day of August 1866

Wesley Sloan (seal)  
Judge



And afterwards at the August Term 1866 of  
said Circuit Court, commenced and holden at  
the Court House in Shawneetown on the 6th day of  
August 1866, the Honorable Wesley Sloan presiding  
Judge on the 17th day of August 1866, being the  
day of said Term the following order was made  
and entered in said cause to wit:

Charles R. McNeal

vs

John A. Calliott

} Approposuit

Now on this day come again  
the parties by their attorneys, and the motion for a  
new trial is overruled. Wherefore it is considered by  
the Court that the said plaintiff Charles R. McNeal  
have and recover off and from the said Defendant  
John A. Calliott the said sum of One Thousand and  
forty-five dollars seventy-six cents, as also his costs  
and charges, in and about this suit expended  
and that he have execution therefor &c.

Whereupon the said defendant prays an appeal  
to the supreme Court, which is allowed on his giving  
bond to the plaintiff as required by law in the  
penalty of \$2500, with Noah Welsh as security,  
said bond to be filed within thirty days. It is  
further ordered that the defendant be allowed  
forty days to file his bill of exceptions.

And afterwards to wit. On the fourteenth day



of September 1866 the defendant filed the following appeal-bond to wit:

Know all men by these presents that we, John A. Callcott and Noah Welsh of the County of Gallatin and State of Illinois are held and firmly bound unto Charles R. McNeal in the penal sum of Two Thousand five Hundred dollars, lawful 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 the fourteenth day of September in the year of Our Lord One Thousand Eight Hundred and Sixty-six.

The condition of the above obligation is such that whereas the said Charles R. McNeal did on the 17th day of August 1866 recover a judgment in the Circuit Court of Gallatin County, Illinois at the August Term 1866 thereof against the above bounden John A. Callcott in an action of Assumpsit for the sum of One Thousand forty five dollars seventy six cents and costs of suit from which judgment the said John A. Callcott prayed an appeal to the Supreme Court of this State of Illinois. Now if the said John A. Callcott shall well and truly prosecute his said appeal and shall well and truly pay the said judgment & costs and all interest



and damages thereon, in case the said judgment shall be affirmed, then the foregoing obligations shall be void, but otherwise to be and remain in full force and effect

Attest  
John. Olney

J. A. Callicott seal  
Frank Welsh seal

State of Illinois Gallatin County  
I, James R. Loomis Clerk of Circuit  
Court in said County do hereby certify,  
that the foregoing **24** pages are true copies  
of the records & files in my office.

Given under my hand and official  
seal this 3d day of November 1866

James R. Loomis clk

Clerks fee for this record paid  
by J. A. Callicott \$10.  $\frac{15}{100}$

J. R. Loomis clk

We agree that the foregoing record contains  
all that is material to its determination by  
the Supreme Court. Burnett & Hall

of Counsel for deft. in error.  
Olney & Lunsden, attys  
for plff in error.



State of Illinois

First Division Supreme Court

November Term 1866

John A. Callicott, appellant

vs. Appeal from Gallatin

Charles R. McNeal, appellee

The said John A. Callicott says that in the foregoing record and proceedings there is manifest error in this, to wit:

1<sup>st</sup>

The Court erred in giving the first second, third, fourth, fifth, and sixth instructions asked for by the plaintiff below

2<sup>nd</sup> The Court erred in refusing the third fourth and fifth instructions asked for by the defendant below

3<sup>rd</sup> The Court erred in not setting aside the verdict

4<sup>th</sup> The Court erred in refusing to grant the defendant below a new trial



5<sup>th</sup> The Court erred in excluding the evidence of Noah Welsh.

By reason whereof the appellant prays that the judgment may be reversed.

Olney & Lonsden  
attorneys for  
appellant.



John A. Callicott  
Appellant.  
vs.

Charles R. McNeal  
Appellee

---

Appeal from  
Gallatin.

Filed Nov. 7 1866,  
St. Johnstown, N.Y.  
Paid by Olney \$5.00



J. H. Callcott }  
v }  
C. R. McNeal }

The clerk of the Supreme  
Court of the First Grand Division  
is ordered to so amend the ~~and~~ judgment  
of reversal for non-joinder entered in  
the above cause at the Nov. Term,  
1866, <sup>so</sup> ~~and~~ that the cause shall be  
remanded to the court below for  
further proceedings

P. H. Walker  
" "

Springfield

Feb. 13, 1867.

W. H. Brewster

C. B. Lawrence



Calliott  
by  
McNeil

Ordinary Court

Filed March 26. 1867.  
St. Johnstown N.Y.



J. A. Collicott  
Appellant  
vs

C. R. McNeal  
Appellee

Appeal from  
Circuit

Judgment  
Reversed for  
Nonsuit & Costs  
Reversed -  
entire on Page 34.  
of book "B"

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