No. 8431

Supreme Court of Illinois

Jackson Farrer

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vs.

Benj.T.Hinch

In the Cause of Jackson Farrar assignee of William F. Watson vs Benjamine D Finch administrator de bonis non of Sylvester Eulett deceased

Appeal from the County Court of Gallatin County Illinois to the Gallatin circuit Court Illinois. from a judgment rendered in said County Court judicially sitting and tried before William R Roberts the Judge of said County Court on the 7th day of January A D 1856 at the January Term 1856 of said Court at which time & term of trial the said Farrar assignee aforesaid was Plaintiff and Winder Bailey (since deceased) was the administrator of said Sylvester Eulett was the defendant.

"Copy of the Appeal Bond in said cause

"Know all men by these presents that we Jackson Farrar and Milton Bartley are held and firmly bound unto Winder Bailey administrator de bonis non of the estate of Sylvester Eulett deceased in the penal sum of fifty Dollars, lawful money of the United States, for the payment of which, well and truly to be made, we bind ourselves, our heirs and administrators, jointly,

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severally and firmly by these presents. Witness our hands and Seals. this 24th day of January A.D. 1856.

The Condition of the above obligation is such. That whereas the said Winder Bailey administrator &c. did. on the 4th day of January A.D. 1856 before William R Roberts. judge of the County Court for the County Court of Gallatin County. recover a judgment against the above bounden Jackson Hamar assignee of William F Watson for the sum of twelve Dollars and forty Cents as cost. from which judgment the said Jackson Hamar has taken an appeal to the Circuit Court of the County of Gallatin aforesaid, and State of Illinois. Now if the said Jackson Hamar shall prosecute his appeal with effect, and shall pay whatever judgment may be rendered by the Court upon dismissal or trial of said appeal. Then the above obligation to be void. otherwise to remain in full force and

K
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Appeal. signed Jackson Hazar (seal)
Approved by me at my Milton Barkley (seal)
office this 24th day of January 1856
J. E. Berry Dep. Clerk

Copy of the Summons to
Appellee issued in said Cause

State of Illinois } ss
Gallatin County }

The People of the State of Illinois
To the Sheriff of said County
Greeting: We command
you to Summon Winder Bailey
administrator de bonis non of
Sylvester Ewalette, if to be found
in your County, to appear
before the Circuit Court of said
County, on the first day of
the next Term thereof, to be
holden at the Court House in
Shawneetown on the second
Monday in the month of June
next, to answer to an appeal
obtained by Jackson Hazar
assignee of William F Watson
from a judgment rendered
against said Jackson
Hazar in favor of said Bailey
administrator before Wm R Robeson County
Judge of said County Judicially
sitting, on the 7th day of January
A.D. 1856 for the sum of $12.40 being
Costs of suit. And hereof make
due return to our said Court, as

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the law directs.

Seal

Witness J. C. Hall Clerk of our said Court and the Judicial Seal thereof at Shawneetown. this 24th day of January A.D. 1856.

~~signed~~ J. C. Hall clerk

On which summons appears the following endorsement.

"Executed by reading the within summons to the within named Winder Bayley administrator of Sylvester Evelith. February the 25th 1856

~~signed~~ James Davenport
Sheriff G. C.
by James Bradford
Deputy Sheriff
G. C.

Copy of the order made in the foregoing cause at the June Term 1856 of the Gallatin circuit Court Shawneetown Illinois Edwin Beecher Judge presiding in the cause of Jackson Fraser assignee of William F. Watson vs Winder Bailey administrator de bonis non of Sylvester Evelith deceased. ~~C. Beecher Judge presiding~~ Please Copy it.

Tuesday June 10 1856.

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1 [illegible]

Jackson Hamar Appellee of
William F Watson
vs
Winder Bailey admr
de bonis non of Sylvester
Ewell deed.
} Appeal from County Court.

On this day came the plff by their attorney & suggest the death of the defendant Bailey & the appointment of B B Finch as his administrator. It is therefore ordered that he be made party defendant to this suit and that Summons issue to him returnable to the next term of this Court and that this cause be continued &c

Copy of the summons issued to the Appellee B B Finch the administrator de bonis non. Here Copy it.

State of Illinois } ss.
Gallatin County }

The People of the State of Illinois
To the Sheriff of said County
Greeting — We Command
You to Summon Benjamin B
Finch administrator de bonis non
of Sylvester Ewell deceased if to be
found in your County. to appear

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before the circuit Court of said County on the first day of the next term thereof, to be holden at the Court House in Shawneetown on the 3d Monday in the Month of October next. to answer to an appeal obtained by Jackson Hanar appellee from a judgment rendered against said Hanar appellee in favor of Winder Bailey admr of ~~Jefferson~~ Crabb before Wm R Rabyer a judge of said County judicially sitting, on the 7th day of January A.D. 1836 for the sum of $12.40 costs of suit. And hereof make due return to our said Court; as the law directs

Witness John C Hall Clerk of our said Court, and the judicial seal thereof, at Shawneetown this 28th day of Aug. A.D. 1836

J C Hall Clerk

Seal

On which summons the following endorsement appears. Viz

Served the within summons by reading the same to the within Benjamine F Winch on this 22d day of Sept. 1836.

signed James Davenport Sheriff

G.C.

SJH31-L7

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Copy of the order & proceeding had in the foregoing Cause in the Gallatin circuit court at the October Term 1856 thereof ~~Here a copy it. the~~ Honorable Edwin Beecher judge of said Court presiding -

Here a copy it

Friday 31st. October 1856

Jackson Farrar assignee of William F Watson

vs

Benjamin F Smith administrator de bonis non of Sylvester Crelta decd

} Appeal from County

On this day Came again the parties by their attorneys and the issue being made - say let a jury come. whereupon Came a jury of Eight good and lawful men the parties agreeing that the said Cause be tried by said number, to wit James Logsdon. ~~Stephen~~ Dillard. Thomas Ferrill. Abram Smith. Isaac Schyler. John Willis. Harrison Calliott & William Dunn. who being elected tried & sworn. and evidence being heard and arguments had by the respective Counsel, returned into Court the following verdict

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We the jury find for the defendant. J R Loomis foreman

Whereupon Came the plaintiff by Bentley his attorney and moved the Court for a new trial. and in arrest of judgment. which motion being considered ~~by the~~ is by the Court sustained. and this Cause is continued.

Copy of the order and proceeding had in the foregoing Cause in the Gallatin Circuit Court. at the May Term thereof 1857.

None as yet.

Friday 29th May A D 1857

Jackson Farrar assignee of William F Watson
vs (Appeal from County Court
B D Hinch admr de bonis non of Sylvester Evelethh

Ordered that this cause ~~be~~ stand continued generally

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And afterwards to wit at the
Special July Term 1837. of the
Gallatin Circuit Court the foregoing
Cause stands as follows as appears of
record. Here set it.

Monday 20th day of July 1837

Jackson Hamar assignee
of William F Watson } Appeal from
vs } County Court
B P Finch admr. Debonis non
of Sylvester Crelett dec'd

ordered that this cause stand continued

And afterwards to wit 31st October 1837
at the act Term of the Gallatin Circuit
Court the following orders and proceedings
were had in the foregoing Cause.

Bill of exceptions as follows herein
stated. Jackson Hamar assignee of Wm F Watson } Appeal
vs } from County
B P Finch admr de bonis non of Sylvest Crelett }
Be it remembered that in the
Cause of Jackson Hamar assignee
of William F Watson versus
Benjamine P Finch
administrator de bonis non of
Sylvester Crelett deceased. which
was tried at the October
Term of the Gallatin
Circuit Court A.D. 1837 at
Shannesstown

[illegible]

Illinois before his Honor Wesley Sloan presiding judge of the nineteenth judicial circuit and a jury the said Jackson Farar assignee &c plaintiff in trouved then and there the following notes in evidence to wit.

1000 $ Shawneetown Ills July 13th 1853

Twelve months after date I promise to pay to the order of William & Watson one thousand Dollars for value received negotiable and payable without defalcation or discount signed Sylvester Ewlett

On the back of which said note was the following indorsement to wit.

I assign the within note to Jackson Farar for value received

(signed) William & Watson

250 $ Shawneetown Illinois July 13th 1853

On or before the first day of January next I promise to pay to the order of William & Watson two hundred and fifty Dollars for value

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received negotiable & payable
(without defalcation or discount
signed Sylvester Everett

[redacted] upon the back
of which said note was the
following indorsement
Viz.
I assign the within note to
Jackson Hamar for value
received
signed William F Watson.

250 Shawneetown Illinois
July 15 1853
On or before the first day
of April next I promise to
pay to the order of William
F Watson [redacted] Two hundred and
fifty Dollars for value received
negotiable and payable
without defalcation or
discount
signed Sylvester Everett
Upon the back of which
was the following endorsement
Viz. I assign the
within note to Jackson
Hamar for value received
(signed) William F Watson

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To the introduction of which said notes the defendant objected which said objection was by the Court overruled to which said holding of the Court the said defendant then & there excepted and the said notes having been read to the jury in evidence the said plaintiff then and there rested.

Whereupon the defendant introduced in evidence the following indenture made and executed by William F Watson and Jackson Farrar (plaintiff) ~~att~~ per William F Watson atty to Sylvester Eveleth. to wit:

"Whereas James M Clark of the city of Lancaster and state of Pennsylvania did obtain letters patent of the United States for improvements in combining grinding and bolting machines known as James M Clarks Patent Portable Flouring Mill:" which patent bears date May 13th 1851. and whereas the said James M Clark did for a consideration to him in hand paid on the 10th day of September 1851 lawfully assign sell and set over all the right title and interest which he had in said invention as secured to him by the said.

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letters Patent for, to and in the United States to Thomas M Clark. and whereas Jonathan H Smith. William H Watson and Jackson Fanar did on the second day of April 1852 obtain of said Thomas M Clark all the right, title and interest which he had in, to the counties of Alexander, Pulaski, Massac, Pope, Hardin, Saline, Gallatin, Williamson Johnson, Union, Jackson, Randolph, Perry, Franklin, Hamilton, White, Wabash, Edwards, Wayne, Jefferson, Washington, Clinton, Marion, Clay, Rockisland, Lawrence, Crawford, Jasper, Effingham, Fayette, Montgomery, Shelby, Christian, Cumberland, Clark, Edgar, Coles, Moultrie, Macon, Piatt, Champaign, Vermillion, Scott, and Calhoun, all in the State of Illinois. And whereas the said William H Watson and Jackson Fanar did for a valuable consideration obtain the exclusive interest and title of the said Smith in the said Counties, as will more fully appear by reference to Deed of the 26th May 1852. and recorded at Washington City in Liber T. [redacted] II Page 268 of Transfers of Patents. And whereas Sylvester Everlette is desirous of obtaining an interest therein. Now this Indenture

[illegible]
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witnesseth that the said William F Watson and Jackson Hanar for and in consideration of the sum of fifteen Hundred Dollars to them in hand paid, the receipt of which is hereby acknowledged, have granted, bargained, sold, and conveyed, assigned and set over, and by these presents do grant, assign, sell, and set over to the said Eveleth all their right title and interest in the said invention as secured to them by said deeds for, to, and in the counties of Gallatin, White, Saline, Williamson, Franklin, Hamilton Jefferson, Wayne, Edwards, and Wabash in the State of Illinois for his own use and benefit, and for the use and benefit of his heirs and assigns to the full end of the terms for which said letters Patent were granted as fully and entirely as the same would have been enjoyed by us if this assignment and sale had not been made.
In testimony whereof we have hereunto set our hands and affixed our seals this 12th day of July 1853
D D Hazen.

William F Watson (Seal)
Jackson Hanar (Seal)
Per. William F Watson
Atty

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14 Whereupon the said defendant introduced D D Hazen the

subscribing witness who after having
been duly sworn. stated that William
F Watson signed and executed the
said deed above for himself & the plaintiff
The said defendant then offered to
read the same in evidence. to
which the said plaintiff then and
there objected. which said objection
was then and there overruled by the
Court. To which said ruling of
the Court the said plaintiff then
and there excepted. and the same
by defendant was read in evidence
The said deft then introduced
the said D J Hazen and asked him
the following questions to wit.
Did Evelith at the time of the
delivery of said deed pay to said
Watson the said sum of 15-00 ?
Ans. I do not know whether Evelith
paid anything down or not
Interg. What was Watson doing here?
Ans. He was selling the right to sell
Mills in this state & Kentucky.
Interg. Do you know whether Watson
was to furnish said Evelith with
a mill like the one Watson had
here or of any size?
Ans Watson told me that
when he returned to St. Louis
he was going to send Mr. Evelith
a mill of the largest size

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Interg Would the patent right be of any worth without a mill as a sample?

Ans I do not think it would

Interg Was the delivery of the Mill a part of the Consideration of the 1500# mentioned in the said deed.

Ans I do not know

Interg. Did Watson move his saw to St. Louis and send a mill to Eulett?

Ans Not to my knowledge I never knew of Eulett receiving any -

Whereupon the said Neff asked the said D G Harper upon cross examination the following questions to wit:

Interg - Did you see the notes executed and delivered?

Ans. I did not see them executed or delivered I know nothing about them.

Interg Do you know what the Consideration of the notes was?

Ans I do not know what the Consideration was

Interg. Did you buy of Watson the right to sell mills of the same kind in Kentucky

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Ans I did buy the night and of Watson. and about the same time that Coelette did.

Ques Was Watson to furnish you a mill because you had purchased the night?

Ans No I bought the mill separate. and it was a different and distinct contract from the purchase of the night I bought the mill that Watson was exhibiting at Coelettes and took it away.

Ques Did not Bruce buy the night to sell the same night?

Ans I believe he did

Ques Did he get a mill with the night?

Ans I believe not. the mill was a separate contract

Ques Did you ever know of Watsons throwing in a mill with the purchase of a night?

Ans I never did.

Whereupon the deft [redacted] introduced John Smith who after having been duly sworn according to law the deft told the said Smith to go on and state all he knew of anything in regard to the

Sale of a Patent right by
Watson to one Ewlette. Whereupon
said Smith Stated. "I was up
at the mill several times while
Watson and Ewlette were trying
the mill" That Watson brought
with him. Ewlette and Watson
were three or four days
trading and I understood
from hearing the parties
talk that Watson was to furnish
Ewlette with a mill of the
largest size in two or three
Months after the trade was
made and I think Ewlette was to
pay Watson a certain amount
upon the delivery of the mill.
I dont know exactly how
much for certain I think 300$
I think Ewlette paid Watson
some money down on the
Contract I dont Know how
much. But my best impression
is that he paid some Money
down I think the mill was
a part of the Contract.
Ewlette never got any mill,
that I know of I never heard
of his getting any. Smith also
said that he understood from
Watson & Ewlette that Ewlette
had purchased the Patent right

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Ques Do you know that 15.00$ was
all that Evdeth gave for the right & the mill
ans I do not know, how, much he gave

of the mill, and that as a part of the same contract Watson was to furnish Cuelett a mill such as the Patent was for. Cuelett wanted the mill to just rip to grind corn & to show to others so as to enable him to sell the Patent right by exhibiting the mill. Smith had some experience in selling Patent rights, and thinks the Patent right to the mill would be of no value without a mill to exhibit to show how it would work

Whereupon the Plaintiff upon cross Examination asked said Smith the following questions

Quest Do you know that the delivery of the mill and the sale of the right was all one and the same trade or Contract?

Ans I do not; but that was my understanding from the Parties

Ques Do you know just how many trades Watson & Cuelett made?

Ans I do not know whether they made one or a dozen

Ques Did they not make a hundred for all you know?

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Ans I dont Know but that they did

Whereupon the deft introduced J. P. Lowe who after having been duly sworn according to law stated. I am engaged in the forwarding and Commission business upon the Wharf Boat at Shawneetown been on said Boat with the exception of nine Months in the year 1875 since the first of the year 1875. and no patent Mill ever came to Cuelta or was any received by me. nor was any landed or offered to be landed. No Mill ever came from Watson to Cuelta.

Whereupon the deft introduced Wm. J. Hazen who after having been sworn the deft asked said Hazen the following questions to wit.

Ques Do you Know anything about William H. Watson and Jackson Farrar being in partnership in the sale of Clarks Portable Patent

Flouring Mills?

Ans Sometime in the year 1852 I was in St. Louis and saw a man by the name of Hasar (the Plaintiff in this case) who asked me if I knew whether Dr. Bishop of Shawneetown was good for his debts, and he said that he wanted to know because he and Walton had sold Dr Bishop a patent right of a mill, and that he and Walton were partners in such patent right. The Plaintiff now present was the Hasar I saw. he was a pawn broker in St. Louis

Whereupon deft introduced A W Hamilton who after being duly sworn. upon his oath was asked the following questions

Ques Did Hasar the Plff ever tell you any thing about his being in partnership with Walton? Whereupon the Plaintiff objected to said question and the Court overruled said objection. To which holding of the Court the said Plaintiff then and there excepted.

Ans. Hasar told me that he

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[illegible]

was in partnership with Watson in the sales made to the defts intestate and Bruce of the Patent right, but not in the sale made to Hazen

Whereupon the deft introduced Stephen R Rowen who being duly sworn the deft asked the following questions

Ques Did you in 1872 live near Enfield?

Ans I was his next neighbor

Ques Do you recollect anything about Watson being there?

Ans I remember the time that Watson was there with a mill, and went up frequently to see it work

Ques Did Enfield ever receive any mill?

Ans Not that I know of

Ques Did Enfield fit up and get ready to receive the mill?

Ans Enfield told me that he did and that the mill was came

Whereupon the deft asked the following question upon cross examination

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Ques Do you Know anything
about the contract at all
Ans I do not Know anything at all
about their trading.
Whereupon deft introduced
William Frias and asked him
the following questions.
Ques Do you Know anything about
Watson agreeing to send
a mill to Evelett?
Ans Watson was to send Evelett
a mill to operate with at
Shawneetown. This was in the
summer of 1843. I saw a
mill at Evelets at that time
which Watson sold to Keyser. The
mill that Watson was to send
to Evelett was to be larger
than the one I saw at Evelets
and Watson was to send
it in five or six weeks.
Ques was there any other trade or
transaction between the parties?
Ans None that I Know of
Ques Was you at that time
intimate with Evelett?
Ans I was quite intimate with him
Whereupon deft asked leave
of the Court to recall
Stephen R Rowan. which being
granted the defendant
asked the following additional

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questions

Ques How frequently was you at Evelette's mill during the time that Watson was trying the mill?

Ans I was there nearly every day

Ques Did you ~~you~~ hear Evelette speak of any other transaction with Watson except the patent and Mill transactions?

Whereupon the said plaintiff objected to said question which being overruled by the court. the said plaintiff then and there excepted

Ans I heard of no other transaction but the mill and patent.

Whereupon ~~deft~~ introduced William Fletcher. who after being sworn was asked by deft the following questions

Ques Was you acquainted with Evelette and did you know the business he was in?

Ans I was acquainted with him in 1853. and was at one time his ~~partner~~ partner He was in the said Mill business

that was the only business that I ever knew of his following.

Ques Was you acquainted with his circumstances in 1853 as regards money matters?

Ans He was hard pushed for money. He at that time owed me and I could not get it.

Ques. Do you think that in 1853 he had any considerable amount of money?

Ans I do not think he had.

Whereupon plaintiff asked said Fletcher the following questions, upon cross examination

Ques Was there not a considerable amount due Evelette in 1853

Ans He had a good many debts standing out, a good many people were owing him.

Ques Do you know whether or not he collected any great amount or not?

Ans I dont know. He might have collected a good deal for all I know.

Ques Did he have any land in White County

Ans He had a farm in White County

[illegible]
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Ques might he not for
all you know have
raised Money by
Mortgaging that Farm
Ans Yes
Ques Was his credit good?
Ans It was
Ques Could he not have borrowed
Considerable Money?
Ans I suppose he could.
Whereupon the deft
asked Comt leave to recall
Stephen R Rowan.
Whereupon Plff objected.
Which objection was by
the Court overruled. To which
ruling the said Plff then
and there excepted.
Said Rowan being again
upon the stand the
said deft asked the following
questions
Ques Were you acquainted
intimately with the affairs
of Ewell in 1853.
Whereupon the Plff objected
and the said deft being
asked by the Court the
intention of said question
declared that he the said
deft intended to prove by
said witness the condition of

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of said Coleth at that time, to prove that in all probability Coleth could not have paid the consideration in the deed mentioned and to prove circumstances from which the jury might infer that the consideration expressed in the deed were never paid and that the notes sued on were given therefor Whereupon the Court overruled the objection. To which overruling the said Pltff then and there excepted.

Ans I was intimately acquainted with Coleth in 1853. He frequently came to my house and talked with me concerning his business and sometimes borrowed Money of me

Ques Do you think he had as much as 15-00/ in 1853.

Ans I do not think he had.

Whereupon the Pltff put the following questions upon cross Examination

Ques Were not a good many people owing Coleth in 1853

Ans I think so

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Ques Do you know but what he collected that amount 1500 ℔s or more in 1853?

Ans I do not

Ques did not Evelith own a a farm in White County?

Ans I believe he did

Ques Could he not have raised money by Mortgaging that farm and you have known nothing about it?

Ans I suppose he could

Ques When you dont know anything about how much money he had or raised?

Ans No. He might have had a great deal or but a little — I cant tell

Ques Was not Evelths credit good in 1853?

Ans It was good

Whereupon said defendant introduced Henry Fries who being sworn was by the deft asked the following questions.

Ques Where did you live in 1853

Ans I was working for Mr Evelith at his Cane mill

Ques Were you in his employ when Watson came there with a patent flowering mill?

Ans I was with Eveleth at that time and afterwards

Ques Do you know any thing about the trade between Watson & Eveleth?

Ans I do not I paid no attention to what they said

Ques Did you ever hear Eveleth say any thing about the trade?

Ans I never heard him say a word about it. He was a man who kept his business to himself

Whereupon the deft rested his cause

Whereupon the said Pfff introduced the following letter to wit.

"Shawneetown Illinois
January 29th 1854

Mr. I Bonar
Sir
I received your note relative to the amount I am due you. I had written to Mr. Watson some before on the

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subject. My affairs at present are such that I cannot meet the notes just now, having been compelled to lay out all the money I could raise for some logs in order to get them on the spring raise or I should be idle all the season I shall be able to pay part of it soon and will try to meet it all as soon as possible If Mr. Watson is about St. Louis let me know and I will come and pay whatever money I can raise as I wish to see Mr. Watson

Yours &c Prescott

Whereupon the said Plff introduced George W McReary who being sworn stated that he was the Post Master at Shawneetown and after having examined the said letter stated that said letter bore the Post Mark of the Post Office at Shawneetown

The said Plff then introduced

one George A Ridgway
who after having been
sworn was asked the
following questions by Plff
Ques Were you acquainted
with Mr. Sylvester Ewlett?
Ans I was
Ques Did you ever see him
write his name?
Ans I have frequently.
Said letter being handed
to witness he was asked
to examine said letter and
state whose writing it was
Ans The letter is in Ewletts
hand. The signature is
Ewletts.
Whereupon the said deft
objected to the introduction
of said letter. and the
Court overruled said
objection. To which holding
the said defendant then &
there objected

Whereupon the said
Plaintiff as well as the
said defendant rested &
Whereupon the deft asked
the following instructions
To wit.

If the jury believe

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from the evidence that the plaintiff Farar was a partner of Watson in the mill contract made with Evelette then the law presumes that Farar knew all the conditions of that contract and if the notes sued on were given by Evelette to Watson in consideration of the mill contract with Evelette, then Farar if he was a partner of Watson's in that contract had notice of all the conditions of the contract - and stands precisely in the same condition in this case as Watson himself would if he had sued on the notes in his own name "Given"

If the jury believe from the evidence that Watson and Farar were partners in the patent right spoken of in the evidence and that Watson as one of such partners made a contract with Evelette about the sale of such patent right

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and that such contract was that Ewleth purchased such right for certain counties, and that as a part of such contract Watson agreed to send to Ewleth a mill, three months after said contract was made & that such mill never was sent to Ewleth, and if they further believe from the evidence that such patent right was of no use or benefit to Ewleth without having such mill, and that the notes sued on were given by Ewleth in consideration of such contract. Then the consideration of said notes has failed and the Plaintiff cannot recover.

Given

2d The Plaintiff Hamar was a partner of Watsons in the consideration of the notes sued on, then the law presumes that he had notice before he received such assignment of said Notes & all the conditions of the

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Consideration and is as much bound by such condition as Watson himself Given

To the giving of which said three foregoing instructions the said Plaintiff then and there excepted

Whereupon the plaintiff asked of the Court the following instructions.

The Court instructs the jury that although they believe from the evidence that said Lamar was such partner of Watson as mentioned in the deed offered in evidence in this cause in regard to selling patent rights and that said notes were made to said Watson by Evelette in consideration of the sale of Patent rights mentioned in said deed together for the further consideration of a mill to be delivered by said Watson in such time as is pretended by said defendant. Yet unless they further believe from the evidence that said G. Watson as such

LS 431-347
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partner of Dana was fully authorized by the terms and within the scope of such partnership as that mentioned in the said deed, to make such a contract for a mill to delivered as a part of the consideration of the notes herein, in selling said rights under such partnership, they must find for the plaintiff. unless it appears in evidence that plaintiff as such partner approved of such sale of right and mill to Veleth after such sale and before the notes were assigned by Watson to him, and if it appears in evidence that Watson had such power by the terms of such partnership to sell such right and a mill together and did make such contract under such power, and that said mill was not delivered they may allow such set off to said notes as they may think proper and just under the proofs .. Refused

patent

[9431-35]
B5

which said instruction the court

requested to give. To which the said Plaintiff then & there excepted.

The Court further instructed the jury, to wit. "The Court instructs the jury that if the evidence shows that the Notes in question were assigned by Watson to the Plaintiff before they became due, and if there is no date to the assignment. the law presumes that the assignment was so made. In such case no legal defence can be urged against the Plaintiffs right to recover, unless the evidence further shows that Plaintiff had notice of such defence

"Given

If you believe from the evidence that Eveleth in his lifetime wrote a letter to Plaintiff in which he admitted that there was an amount due from him to Plaintiff and that this amount was the sum due by virtue of the Notes sued on. This is a material

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Circumstance for your
Consideration in Coming to a
verdict in this case and
you should give it such
weight as in your opinion
it is justly entitled to
given
If the letter shows that
Ewlett in his lifetime to wit on
the 29th day of January 1834.
promised to pay plaintiff the
amount of said notes. The jury may
infer from such promise that
it was not then his intention to set
up any defence to said notes.
given

If you believe from the
evidence that the delivery of
the Will to deceased was not a
part of the Contract, but that the
Consideration of the Contract was
the sale of the patent right
alone, and that deced received
said patent right according
to Contract, you should find for
plaintiff.

Argument was then made
pro and con as well by the
plaintiffs Counsel as by the
defendants Counsel, and upon

L 4131-37
87

arguments heard the jury returned a verdict in favor of the defendant. Whereupon the plaintiff entered his motion for a new trial and in arrest of judgment ~~Court gave judgment against the plaintiff then and there for the costs of suit. And thereupon the plaintiff then and there entered his motion for a new trial in this cause~~; and assigned as the grounds for a new trial the following causes to wit

1st The verdict of the jury is against law.

2nd The verdict is against evidence

3rd The verdict should have been for plaintiff and not for the defendant, which said motion being then and there argued by R G Ingersoll on the part of the plaintiff and by John Olney for defendant, which arguments being heard by the Court. The Court then and there overruled the motion and refused a new trial in this cause. To which ruling of the Court the plaintiff then and there excepted and the Court then and there gave judgment for defendant for costs on said verdict. And the Court then and there ordered

that plaintiff have sixty days to prepare his bill of exceptions and present the same to the judge in vacation in sixty days to be signed and sealed by him and it is accordingly done

Wesley Sloan (Seal)

Copy of the order and proceedings of the foregoing cause at the foregoing stated term of the Gallatin circuit court as stated in the foregoing Bill of exceptions to wit.

Jackson Hanar assignee of } Appeal
of William F Watson } from county
to } court.
Benjamin D Brick }
administrator de bonis }
non of Sylvester Enoch }
deceased }

October Term 1847

Of the Gallatin circuit court

Saturday 31st day of October 1847.

On this day came the plaintiff by Bartley his attorney as also the defendant by Freeman & Prebble his attorney, and issue being joined a jury [illegible]

[8431-39]

89

Come. Whereupon came a
Jury of twelve good and
Lawful men. To wit. John D
Strickland, Robert Martin,
George W Alden, William
Combs, Jacob H Rose, George
Thompson, Benjamin W Hicks,
George Byrd, Samuel Anders,
Henry Morgan, John S
Hoffines, and Sandford Evans,
And Evidence being Heard
and arguments thereon both
Pro and Con; the Jury retired
to Consider of their Verdict
and after mature deliberation
returned into Court the
following Verdict to wit.
We the Jury find for the
defendant. J. P. Hoffines
Foreman. Whereupon the
Plaintiff by Barkley his
attorney entered his Motion
for a new ~~trial~~ trial.
which said Motion was by
the Court overruled. It is
therefore ordered and adjudged
by the Court that the
defendant recover of the
plaintiff his costs and
Charges in this behalf
expended. and that he have
Execution Therefore &c

1843-45

40

It is further ~~ordered by the~~
adjudged that the Plaintiff
have sixty days to prepare
his Bill of exceptions and to
present ~~them~~ it to the
Judge in vacation to sign as
per agreement of the parties

And afterwards at the May
Term 1858 of the Gallatin
Circuit Court. The following
order appears of Record towit

John Rowan & Lamar assignees of
William F Watson
vs
Benjamin D Brick } Appeal
Administrator of Sylvester Crutchfield deceased. } from County Court

Monday 31st May 1858
On this day came the
Plaintiff by Barkley his
attorney and on his
motion it is ordered by the
Court that the Clerk of this Court
amend the order of this Cause
made at the October Term 1857
of as to make it correspond with
the agreement of the
parties allowing the Plaintiff
sixty days to prepare Bill
of exceptions and to present the

Same to the judge of this court in vacation to sign

State of Illinois
Gallatin County } ss

I James Davenport Clerk of the circuit Court in and for said County do hereby certify that the Forty Two foregoing pages contain a full true Perfect and complete record and copy of all the Record and proceedings in the cause therein Specified where in Jackson Farrer assignee of William F Watson is Plaintiff & Benjamin P Hinch Administrator debonis non of Sylvester Eveleth Dec'd is defendant as appears from the Records & files of My office

In Testimony whereof I have hereto Set my hand and affixed the Seal of Said Court at my office in Shawneetown this 9th day of July 1858

James Davenport Clerk

fee for This Record Seven dollars & 25 cents cred paid by Milton Bartley Attorney for Plaintiff

James Davenport Clerk

[3431-42]

36

Jackson Farrier-
assignee of
William F. Watson
Plff in error
vs
Benjamin P. Hinch
Admr. de bonis non of
Sylvester Eveleth
Defdt in error

Filed Octr. 15th 1858
St. Johnston Clk

Jackson Tanar assignee of William F Watson

vs

Benjamine F Ewell administrator de bonis non of Sylvester Ewell dec'd

Error to Gallatin

The Plaintiff in error who was the Plaintiff below, comes and assigns his grounds of error in the foregoing Cause. and assigns the following as grounds of error in this Cause Viz't.

1st. The Court below erred in permitting the deed from William F Watson and and Jackson Tanar made by said Watson as Attorney 12th July 1843, to be read to the jury in the trial of this Cause.

2nd The Court erred in permitting A. W. Hamilton evidence to go to the jury in regard to the Statements of Plaintiff. to prove Plaintiff in Partnership with said Watson in sale of patent rights to defendants intestate and to Ewell.

3d The Court erred in permitting Stephen R. Rowan to testify to the jury in this Cause, to the fact. that he (Rowan) never heard Ewell speak of any other transaction except the Patent and mill transaction.

4th The Court erred in allowing the evidence of Stephen R Rowan to be given to the jury in regard to the pecuniary affairs of Ewell in 1843. to prove as avowed by deft. that in all probability Ewell could not have paid the consideration in the deed mentioned and to prove circumstances from which the jury might infer the consideration ~~[illegible]~~ the

[illegible]

of prefixed in the deed was never paid, and that the notes sued on were given therefor.

5th The Court erred in giving the three instructions asked by the defendant Bowit. 1st 2nd and 3d instructions of deft to the jury.

6 The Court erred in refusing plaintiffs 1st instruction to the jury.

7th The Court erred in not granting a new trial in this Cause as asked by plaintiff

8th The Court erred in entering judgment against the plaintiff on the verdict of the jury.

9th The Court erred in permitting the defendant to introduce evidence to rebut the facts stated in said deed from Walson & Hamar by Walson to Creekbaum, which deed was by defendant alone introduced by him and read to the jury in this Cause.

10 The Court erred in permitting improper and irrelevant evidence to go to the jury on the part of the defendant

Milton Bartley Jr
Plaintiff in error

Joinder in Error
John Olney
N. L. Freeman
attys for defts in Error

4243-447

STATE OF ILLINOIS—IN THE SUPREME COURT—FIRST GRAND DIVISION—OF THE NOVEMBER TERM, 1858.

JACKSON FARRAR, assignee of WILLIAM F. WATSON, plaintiff in Error,
vs.
BENJAMIN P. HINCH, administrator de bonis non of SYLVESTER EVELETH, deceased.
} Error to Gallatin.

Pages of Record.

ABSTRACT.

1–4 This cause was brought into the Gallatin Circuit Court, at the June Term, 1856, of said court, by the plaintiff, Jackson Farrar, assignee of
2 William F. Watson, on appeal from the County Court of Gallatin County, from a judgment rendered in said County Court against said Farrar, who
3 was the plaintiff in that court, and Winder Bailey, administrator de bonis non of Sylvester Eveleth, was the defendant in that court—the judgment of said County court was rendered at the January Term, 1856.

4–5–6 Before the June Term, 1856, of the Gallatin Circuit Court, said Winder Bailey departed this life, and at the said June term of said Circuit Court the
6 death of said Bailey is suggested, and Benjamin P. Hinch, as administrator de bonis non, is made party to this suit, and is duly summoned to the October term, 1856, of said court.

At which term of the court there was a trial by a jury of eight by agreement, Beecher judge presiding, and verdict was for the defendant,
7–8 Benjamin P. Hinch, which verdict was on motion of Plaintiff's counsel set
8 aside by the court and a new trial awarded—and cause continued. At the
9 May term and also at the July special term of said Circuit court said cause was continued.

And, at the October term, 1857, of the Gallatin Circuit Court, this cause was tried by a jury of twelve men, his honor Wesley Sloan judge of said court presiding; the jury found for the defendant, Benjamin P. Hinch. Motion was made for new trial, and in arrest of judgment. The court overruled the motion and entered judgment for defendant for costs, &c.

9 The Bill of exceptions shows as follows, therein stated, to-wit:

Jackson Farrar, assignee of William F. Watson,
vs.
B. P. Hinch, adm'r de bonis non of Sylvester
9 Eveleth, deceased.
} Appeal from county court.

Be it remembered that in the cause of Jackson Farrar, assignee of William F. Watson, versus Benjaman P. Hinch, administrator de bonis non
9 of Sylvester Eveleth deceased, which was tried at the October term of the
9–10 Gallatin Circuit Court, A. D. 1857, at Shawneetown, Illinois, before his honor
10–10 Wesley Sloan, presiding judge of the nineteenth judicial circuit, and a jury, the said Jackson Farrar, assignee, &c., plaintiff, introduced then and
10–10 there the following notes in evidence, to-wit:

1000$. Shawneetown, Ill's, July 13th, 1853.

10 Twelve months after date, I promise to pay, to the order of William F. Watson, one thousand Dollars, for value received, negotiable and payable without defalcation or discount.

Signed, SYLVESTER EVELETH.

Upon the back of which note was the following indorsement, to-wit: I assign the within note to Jackson Farrar for value received.

10 (Signed) WILLIAM F. WATSON.

10 250$. Shawneetown, Illinois, July 13th, 1853.

On or before the first day of January next, I promise to pay to the
10 order of William F. Watson, two hundred and fifty Dollars for value received,
11 negotiable and payable without defalcation or discount.

Signed, SYLVESTER EVELETH.

Upon the back of which said note was the following indorsement, to-wit: I assign the within note to Jackson Farrar for value received.

Signed, WILLIAM F. WATSON.

250$ Shawneetown, Illinois, July 13, 1853.

11 On or before the first day of April next, I promise to pay to the order of William F. Watson, two hundred and fifty Dollars, for value received, negotiable and payable without defalcation or discount.

Signed, SYLVESTER EVELETH.

Upon the back of which was the following indorsement, to-wit: I assign the within note to Jackson Farrar for value received.

(Signed) WILLIAM F. WATSON.

12 To the introduction of which said notes the defendant objected, which said objection was by the court overruled, to which holding of the court the said defendant then and there excepted, and the said notes having been read to the jury in evidence, the said plaintiff then and there rested.

Whereupon the defendant introduced in evidence the following indenture, made and executed by William F. Watson and Jackson Farrar (plaintiff) by William F. Watson, att'y, to Sylvester Eveleth, to-wit:

"Whereas, James M. Clark of the city of Lancaster, and State of Pennsylvania, did obtain letters patent of the United States for improvements in combining, grinding and bolting machines, known as James M. Clark's Patent Portable Flouring Mill, which patent bears date May 13th, 1851, and whereas the said James M. Clark did, for a consideration to him in hand paid on the 10th day of September, 1851, lawfully assign, sell and set over all the right, title and interest which he had in said invention, as secured to
13 him by said letters patent for to and in the United States to Thomas M. Clark, and whereas Jonathan H. Smith, William F. Watson and Jackson Farrar did on the second day of April, 1852, obtain of said Thomas M. Clark all the right, title and interest which he had in and to the counties of Alexander, Pulaski, Massac, Pope, Hardin, Union, Jackson, Randolph, Perry, Franklin, Hamilton, White, Wabash, Edwards, Wayne, Jefferson, Washington, Marion, Clay, Rock Island, Lawrence, Crawford, Jasper, Effingham, Fayette, Montgomery, Shelby, Christian, Cumberland, Clark, Edgar, Coles, Moultrie, Macon, Piatt, Champaign, Vermillion, Scott and Calhoun, all in the State of Illinois.

13 And whereas, the said William F. Watson and Jackson Farrar did, for a valuable consideration, obtain the exclusive interest and title of the said Smith in the said counties, as will more fully appear by reference to Deed of the 26th May, 1852, and recorded at Washington City in Liber Y, T, Page 268, of transfers of Patents. And whereas, Sylvester Eveleth is
14 desirous of obtaining an interest therein. Now this indenture witnesseth that the said William F. Watson and Jackson Farrar for, and in consideration of the sum of fifteen hundred Dollars, to them in hand paid, the receipt of which is hereby acknowledged, have granted, bargained, sold and conveyed, assigned and set over, and by these presents, do grant, assign, sell and set over to said Eveleth, all their right, title and interest in the said invention,
14 as secured to them by said deeds, for to and in the counties of Gallatin,

White, Saline, Williamson, Franklin, Hamilton, Jefferson, Wayne, Edwards and Wabash, in the State of Illinois, for his own use and benefit, of his heirs and assigns, to the full end of the time for which said letters Patent were patented, as fully and entirely as the same would have been enjoyed by us, if this assignment and sale had not been made. In testimony whereof, we have hereunto set our hands and affixed our seals, this 12th day of July, 1853.

D. T. HAZEN. WILLIAM F. WATSON, (seal.)
JACKSON FARRAR, (seal.)
Per WILLIAM F. WATSON, Att'y.

Whereupon the said defendant introduced D. T. Hazen, the subscribing witness, who, after being duly sworn, stated that William F. Watson signed and executed the said deed for himself and the said plaintiff. The said defendant then offered to read the same in evidence, to which the said plaintiff then and there objected, which objection was then and there overruled by the court, to which holding of the court the said plaintiff then and there excepted, and the same by defendant was read in evidence. Defendant then introduced said D. T. Hazen and asked him the following questions, to-wit:

1st, Did Eveleth, at the time of the delivery of said deed, pay to said Watson said sum of $15,000?

Ans: I do not know whether Eveleth paid anything down or not.

2nd Inter. What was Watson doing here?

Ans: He was selling the right to sell mills in this State and Kentucky.

3d Inter. Do you know whether Watson was to furnish said Eveleth with a mill like the one Watson had here or of any size?

Ans: Watson told me that when he returned to St. Louis he was going to send Mr. Eveleth a mill of the largest size.

4th Inter. Would the Patent right be of any worth without a mill as a sample?

Ans: I do not think it would.

5th Inter. Was the delivery of the mill a part of the consideration of the $1500 mentioned in the said deed.

Ans: I do not know.

6th Inter. Did Watson, upon his return to St. Louis, send a mill to Eveleth?

Ans: Not to my knowledge. I never knew of Eveleth receiving any.

On cross examination, by plaintiff, the said witness stated that he did not see the notes executed or delivered and knew nothing about them—and did not know what the consideration of the notes was—that he bought the right of Watson to sell mills of the same kind in Kentucky about the same time Eveleth bought—that witness bought a mill separate, and it was a different and distinct contract from the purchase of the right. Witness testified that he bought the mill which Watson was exhibiting at Eveleth's and took it away—and that he believed Bruce bought the same right to sell the right, and believes Bruce did not get a mill with the right—that the mill was a separate contract, and he never knew of Watson's throwing in a mill with the purchase of a right.

Job Smith was next introduced as a witness, by defendant, who, after being sworn, was asked to go on and state all he knew, if anything, in regard to the sale of a patent right by Watson to one Eveleth. Whereupon

18 said Smith stated, that he was up at the mill several times while Watson and Eveleth were trying the mill which Watson brought with him—that Eveleth and Watson were three or four days trading, and that he understood from hearing the parties talk that Watson was to furnish Eveleth with a mill of the largest size, in two or three months after the trade was made, and he thought Eveleth was to pay Watson a certain amount upon the delivery of the mill—did not know exactly how much for certain—thought $300. He thought Eveleth paid Watson some money down on the contract—did not know how much. But the best of his impression was that Eveleth paid some money down. Witness, Smith, thought the mill was a part of the
18 contract—that Eveleth never got any mill as he (witness) knew of—never heard of his (Eveleth's) getting any. Smith also stated that he understood, from Watson and Eveleth, that Eveleth had purchased the patent right of
19 the mill, and that as a part of the same contract Watson was to furnish Eveleth a mill, such as the patent was for. Smith further stated that Eveleth wanted the mill to put up to grind with and to show to others, so as to enable him to sell the patent right by exhibiting the mill—that he, Smith, had some experience in selling patent rights, and thought the patent right to the mill would be of no value without a mill to exhibit to show how it would work.

19 On cross-examination by plaintiff said witness, Smith, stated, that he did not know how much Eveleth gave for the right and the mill—that he did not know that the right and delivery of the mill was all one trade or contract —but that that was his understanding from the parties. Said Smith further testified, that he did not know whether Watson and Eveleth made one or a
20 dozen trades—that for all he (Smith) knew they may have made a hundred trades.

20 A. K. Lowe being introduced by defendant and sworn, stated, that he was engaged in the forwarding and commission business, upon the Wharf Boat at Shawneetown, had been on said Boat, with the exception of nine months, in year 1855, ever since the first of the year 1853, and that no patent mill ever came to Eveleth, or was any received by him, nor was any landed or offered to be landed. No mill ever came from Watson to Eveleth.

20 Mr. T. S. Hazen was next introduced by defendant, who, being duly sworn, was asked by def't if he knew anything about William F. Watson and Jackson Farrar being in partnership in the sale of Clark's Portable
21 Patent Flouring Mill, to which said Hazen testified, that, some time in the year 1852, he was in St. Louis and saw a man by the name of Farrar (the plaintiff in this case) who asked him if he (witness) knew whether Dr. Bishop of Shawneetown was good for his debts, stating that he (Farrar)
21 wanted to know because he and Watson had sold Dr. Bishop a patent right of a mill, and that he and Watson were partners in such patent right. Said Hazen also stated that the plaintiff, now present, was the Farrar he saw—that he (meaning Farrar) was a pawn broker in St. Louis.

21 Defendant next introduced A. W. Hamilton, who, being sworn, def't asked him the following question: Did Farrar, the plaintiff, ever tell you anything about his being in partnership with Watson? The plaintiff objected to the question and the court overruled the objection, to which holding the plaintiff then and there excepted. Said Hamilton answered, that Farrar
21–22 told him that he was in partnership with Watson in the sales made to

22 the defendants intestate and to Bruce of the patent right, but not in the sale made to Hazen.

22 Stephen R. Rowan was next introduced by def't, who testified, after being sworn, as follows: that he was the next neighbor to said Eveleth, remembered the time when Watson was there with a mill, and went up frequently to see it work—that Eveleth never received any mill as witness knew of, and that Eveleth told witness he, Eveleth, did fix up and got ready to receive the mill and that no mill ever came.

22 Said Rowan, on cross-examination by plaintiff, stated, that he knew
23 nothing at all about their trading (meaning Eveleth's and Watson's trading).

The defendant, Hinch, next introduced as a witness, William Frier, who, being sworn and examined, testified that Watson was to send Eveleth a mill to operate with at Shawneetown. This was in the summer of 1853. That he (witness) saw a mill at Eveleth's at that time. Watson sold that mill to Hazen. That the mill, Watson was to send to Eveleth was to be larger than
23 the one witness saw at Eveleth's, and that Watson was to send it in five or six weeks—that there was no other trade or transaction between the parties as witness knew of, and that at that time he, witness, was quite intimate with Eveleth.

23 Stephen R. Rowan being recalled by defendant, testified to the following
24 additional facts: that at the time Watson was trying the mill, witness was there nearly every day. Said Rowan was then asked by said defendant if he heard Eveleth speak of any other transaction with Watson except the patent and mill transaction. To which question plaintiff then and there objected and the court overruled the objection, and plaintiff then and there excepted—and said Rowan stated that he heard of no other transaction but
24 the mill and patent.

William Fletcher was next introduced by defendant, who, being sworn and examined, stated that he was acquainted with Eveleth in 1853, and was
25 at one time his partner—that Eveleth was in the said mill business which was the only business he ever knew of his following—that, in 1853, Eveleth was hard pushed for money—that at that time he owed witness, and witness could not get it, and that in 1853 witness does not think Eveleth had any considerable amount of money.

25 Said Fletcher, on cross-examination by plaintiff, stated that, in 1853, Eveleth had a good many debts standing out—that a good many people were owing Eveleth, and that he, witness, did not know whether or not Eveleth collected any great amount or not—that he might have collected a
25–26 good deal for all witness knew, and that Eveleth had a farm in White County, and might have raised money by mortgaging that farm, and that Eveleth's credit was good. Witness supposed Eveleth could have borrowed considerable money.

26 The defendant asked leave to recall Stephen R. Rowan, and plaintiff objected. The court overruled the objection, to which holding of the court said plaintiff then and there excepted.

26 Said Rowan, then being upon the witness stand, defendant asked him if, in 1853, he was acquainted intimately with the affairs of Eveleth in 1853. To which the plaintiff objected—and the court asked defendant the intention of said question, and defendant stated that he intended to prove by the
26–27 witness the condition of Eveleth at that time—to prove that in all probability

Eveleth could not have paid the consideration in the deed mentioned; and to prove circumstances from which the jury might infer the consideration expressed in the deed was never paid, and that the notes sued on were given therefor. Whereupon the court overruled the plaintiff's objection—to which holding of the court said plaintiff then and there excepted.

And said Rowan stated that he was intimately acquainted with Eveleth in 1853—that he frequently came to his (witness's) house and talked with him concerning his (Eveleth's) business, and sometimes borrowed money of witness. Witness was then asked further, by the defendant, if he thought Eveleth had as much as $1500 in 1853. To which witness answered he did not think he had.

Upon cross-examination by the plaintiff, witness stated that he thought a good many people in 1853 were owing Eveleth, and that he, witness, did not know but that he (Eveleth) collected $1500 in 1853—that he believed Eveleth owned a farm in White County, and witness supposed Eveleth could have got money by mortgaging that farm and witness have known nothing about it, and that he, witness, knew nothing about how much money Eveleth had or raised—that Eveleth might have had a great deal or but little, he, witness, could not tell, and that Eveleth's credit was good.

Defendant next introduced Henry Frier, who, being sworn and examined, stated that in 1853 he was working for Mr. Eveleth at his saw mill, and was with Eveleth at the time Watson came there with a Patent Flouring Mill, and afterwards—that he knew nothing about the trade between Watson and Eveleth—paid no attention to what they said, and never heard Eveleth say anything about the trade—he was a man who kept his business to himself. Whereupon the defendant rested his cause.

Whereupon the plaintiff introduced the following letter, from Eveleth to plaintiff, to-wit:

Shawneetown, Illinois, January 29th, 1854.

MR. J. FARRAR—Sir: I received your note relative to the amount I am due you. I had written to Mr. Watson some before on the subject. My affairs are such that I cannot meet the notes just now, having been compelled to lay out all the money I could raise for saw logs in order to get them on the spring raise, or I should be idle all the season. I shall be able to pay part of it soon, and will try to meet it all as soon as possible.

If Mr. Watson is about St. Louis let me know and I will come and pay whatever money I can raise, as I wish to see Mr. Watson.

Yours, S. EVELETH.

Plaintiff introduced George W. McKeaig, who, being sworn and examined, stated that he was the Post Master at Shawneetown, and having examined said letter stated that it bore the post mark of the Post office at Shawneetown.

Plaintiff then introduced George A. Ridgway, who, after being sworn and examined, stated that he was acquainted with Sylvester Eveleth and had frequently seen him write his (Eveleth's) name—and said letter then being handed to said witness, who, after examining it, stated that said letter was in the hand writing of Eveleth, and that the signature was Eveleth's. Whereupon the defendant objected to the introduction of the letter. The court overruled the objection and defendant then and there excepted—which letter being read the plaintiff as well as defendant rested, &c.

31 The defendant asked the following three instructions, which were by the
31–32 court given: 1st instruction. "If the jury believe, from the evidence, that the plaintiff, Farrar, was a partner of Watson in the mill contract made with Eveleth, then the law presumes that Farrar knew all the conditions of that contract, and if the notes sued on were given to Watson, in consideration of the mill contract with Eveleth, then Farrar, if he was a partner of Watson in that contract, had notice of all the conditions of the contract, and stands precisely in the same condition in this case as Watson himself would if he had sued on the notes in his own name. And the plaintiff excepted.

32 2nd instruction. "If the jury believe, from the evidence, that Watson and Farrar were partners in the patent right spoken of in the evidence, and that Watson, as one of such partners, made a contract with Eveleth about
32–33 the sale of such patent right, and that such contract was that Eveleth purchased such right for certain counties, and that, as a part of such contract, Watson agreed to send to Eveleth a mill within three months after said contract was made, and that such mill never was sent to Eveleth—and if they further believe, from the Evidence, that such patent right was of no use or benefit to Eveleth without having such mill, and that the notes sued
33 on were given by Eveleth in consideration of such contract, that the consideration of said notes has failed and the plaintiff cannot recover. And the plaintiff excepted.

33 3d instruction. "If the plaintiff, Farrar, was a partner of Watson's in the consideration of the notes sued on, then the law presumes that he had notice before he received such assignment of said notes of all the conditions
33–34 of the consideration, and as much bound by such condition as Watson himself. And the plaintiff excepted.

The plaintiff asked the following instruction, which was by the court
34 refused:

"The court instructs the jury that although they believe, from the
34 evidence, that said Farrar was such partner of Watson, as mentioned in the deed offered in evidence in this cause, in regard to selling patent rights, and that said notes were made to said Watson by Eveleth in consideration of the sale of patent rights mentioned in said deed together for the further consideration of a mill to be delivered by said Watson in such time as is
34 pretended by said defendant—yet, unless they further believe, from the
34–35 evidence, that said Watson, as such partner of Farrar, was fully authorized by the terms and within the scope of such partnership, as that mentioned
35 in the said deed, to make such a contract for a mill to be delivered as a part of the consideration of the notes herein—in selling said rights under such partnership, they must find for the plaintiff, unless it appears, in evidence, that plaintiff, as such partner, approved of such sale of right and mill to Eveleth after such sale, and before the notes were assigned by Watson to him. And if it appears in evidence that Watson had such power by the
35 terms of such partnership, to sell such patent rights and mill together, and did make such contract under such power, and that said mill was not delivered, they may allow such set off to said notes as they may think proper
35–36 and just under the proofs. The court refused to give said instruction, and the plaintiff excepted.

38 The plaintiff moved for a new trial, and in arrest of judgment, upon the following grounds:

38 1st, Because the verdict of the jury was against law. 2d, Because the verdict is against evidence. 3d, Because the verdict should have been for the plaintiff, and not for the defendant.

38 The motion for a new trial and in arrest of judgment was overruled, and judgment entered in accordance with the verdict—and the plaintiff excepted.

BARTLEY & INGERSOLL,
Att'ys for plaintiff in Error.

The plaintiff in error, who was the plaintiff below, assigns the following grounds of error in this cause.

1st, The court below erred in permitting the deed from William F. Watson and Jackson Farrar, made by said Watson as attorney, 12th July, 1853, to be read to the jury in the trial of this cause.

2d, The court erred in permitting A. W. Hamilton's evidence to be given to the jury, in regard to the statements of plaintiff, to prove pl'ff in partnership with said Watson, in sale of patent rights to defendants intestate and to Bruce.

3d, The court erred in permitting Stephen R. Rowan to testify to the jury in this cause, to the fact that he Rowan never heard Eveleth speak of any other transaction with Watson except the patent and mill transaction.

4th, The court erred in allowing the evidence of Stephen R. Rowan, to be given to the jury, in regard to the pecuniary affairs of Eveleth in 1853, to prove as avowed by def't that in all probability Eveleth could not have paid the consideration in the deed mentioned—and to prove circumstances from which the jury might infer the consideration expressed in the deed was never paid, and that the notes sued on were given therefor.

5th, The court erred in giving the three instructions asked by the defendant, to-wit: 1st, 2nd, and 3d instruction of def't to the jury.

6th, The court erred in refusing plaintiff's 1st instruction to the jury.

7th, The court erred in not granting a new trial in this cause, as asked by plaintiff.

8th, The court erred in entering judgment against plaintiff on the verdict of the jury.

9th, The court erred in permitting the defendant to introduce evidence to rebut the facts stated in the said deed from Watson & Farrar, by Watson to Eveleth—which deed was by defendant alone introduced in evidence by him and read to the jury in this cause.

10th, The court erred in permitting improper and irrelevant evidence to go to the jury on the part of the defendant.

MILTON BARTLEY, for
Plaintiff in Error.

[8431-52]

36

Farrer & Co

vs

Smith & Co

Filed Nov 11. 1858

N. Johnston Clk

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238000
10000
248000
10500
237500

4000
2000
1500
5000
10500

9403
50
470150
9403.20

375
30
11250
4701.50
481400
500000
18.6.00

37500
481400
518900

MILTON BARTLEY, Attorney for plaintiff in error, in the cause of

JACKSON FARRAR, assignee of William F. Watson,
vs.
Benjamin P. Hinch, administrator de bonis non of Sylvester Eveleth dec'd. } Error to Gallatin.

Refers to the following authorities on the points relied on:

This cause originated in the County Court of Gallatin, on three certain promissory notes, executed by Sylvester Eveleth on the 13th July, 1853, payable to William F. Watson or order. Watson indorsed these notes, in blank and without date, to said Farrar, who tried to collect them of the estate of said Eveleth, he (Eveleth) being now dead. The County Court allowed the claim against the estate of Eveleth, and by agreement between Winder Bailey, the administrator of Eveleth and said Farrar's attorney, time was given in that court for said administrator to make further defense to said notes. At a subsequent term of that court the administrator and his counsel appeared and succeeded in getting that court to dismiss said Farrar's claim out of court. The cause was then appealed to the Circuit court of Gallatin county, and is now brought to this court by writ of error, by Farrar the plaintiff. The plaintiff assigns ten causes of error. The first is to the introduction, on the trial by the defendant below, of a certain sealed deed, dated 12th July, 1853, and purporting to have been executed by one William F. Watson and Jackson Farrar, by William F. Watson attorney. The deed ought not to have been read to the jury in the trial of this cause.

1st. Because it is a sealed instrument and has no reference or relation on its face to said notes sued on, and being under seal is not susceptible of parol proof to contradict or prove that the said $1500, mentioned in said deed was not paid, as evidenced by said deed. See Starkie on evidence, Vol. 2, side pages 757 and 758, and notes p and q thereunder.

2nd. Because said deed, having no relation to the notes on its face or apparent in any way, was calculated and apt to mislead the jury.

3d. Because said deed, even if it had any reference or relation to said notes sued on, could not be evidence against Farrar the plaintiff here, from the fact that said deed purports to have been executed by William F. Watson and Jackson Farrar, by William F. Watson attorney, and is executed under their seals; and the deed itself does not show that said Watson had the authority to sign and seal said deed for said Farrar as attorney, nor was it shown that said Farrar authorized said Watson to make and seal said deed for him.

4th. Said deed should not have been introduced and read to the jury because it showed that the consideration of the deed was fully paid.

5th. The said deed ought not to have been read to the jury to prove the consideration of the notes, and to lay the foundation for other evidence, with the view of showing, if possible, that said patent right mentioned in the deed, and also a mill to be delivered by Watson to Eveleth, were the considerations of the said notes. Because, even if we allow that said Watson and Farrar were in partnership in the sale of said patent rights mentioned in said deed, yet it nowhere appears by said deed that they were in partnership in the sale of said patent rights and of mills; and, unless it so appeared, a sale by Watson of a right and mill by himself, in the name of such firm and for such firm, could not affect Farrar. See Story on partnership, 3d Edition, page 184, section 117.

Colyer 4183-4

It is said all the Evidence is not shown in Bill.

If it does is a bad one

[1431-53]

As to the 2nd error, the evidence of A. W. Hamilton ought not to have gone to the jury, to prove the statements of the plaintiff in regard to plaintiff's partnership with Watson in sale of patent rights to defendants intestate and to Bruce. Because such evidence was irrelevant and calculated to mislead the jury. And, in this cause, the defense is not the sale of patent rights, but of patent right and a mill together, and said Hamilton's evidence only shows a partnership in sale of patent rights to defendants intestate and to Bruce, and does not show any partnership in sale of any rights and mills—and unless the partnership in sales, spoken of by witness, included a partnership also to sell mills, and rights—see Story on partnership, 3d Edition, pages 177, 178, & 179, Sections 110, 111 & 112—the evidence ought not to have gone to the jury.

In regard to the 3d error assigned, Stephen R. Rowan should not have been allowed to testify to the jury to what he had heard Eveleth speak, as regards said Rowan's not having heard Eveleth speak of any other transaction with Watson except the patent and mill transaction. Eveleth is the defendants intestate, and what said Eveleth said could not be given in evidence on the part of the defendant. 1st. Because if Eveleth was living, and a party defendant to the suit, he could not testify in his own behalf. 2nd. Because hearsay evidence in such case is not admissible—7 Cranch 290. 3d. Because the evidence was irrelevant and only calculated to mislead the jury by assuming that there had been a patent and mill transaction proven, when in fact and truth no such proof had been made in the trial. Irrelevant evidence will be rejected, as well for its irrelevancy as for its incompetency. 11 Mass 140, Walker vs. Leighton, 4 Litt, 272.

On the fourth grounds of error, in respect to Stephen R. Rowan's testifying to Eveleth's pecuniary affairs, with the avowed intention to prove that in all probability Eveleth could not have paid the consideration in the deed mentioned, and to prove circumstances from which the jury might infer the consideration expressed in the deed was never paid, and that the notes sued on were given therefor. This evidence should have been excluded from the jury, for the reasons: 1st, That its object being to impeach the evidence proven by said deed introduced by defendant, it ought not to have been allowed on the general principle of evidence that a party is not allowed to impeach his own witness. 2nd, Because said deed is a sealed instrument, and parol evidence is not allowable to disprove such deed. See U. S. Digest, Vol. 2, page 294, section 2059 and 2069—page 295, section 2089 and 2090; 1 McCord 209; 7 J. J. Marshall 367; 4 J. J. Marshall 583; 13 Peck 121; 6 Mass 435; 5 Mass 411.

The first instruction asked by defendant, and given by the court to the jury, was improper and not warranted by the evidence, and had a tendency to mislead the jury. There is no evidence in the case proving that said Farrar was in partnership with Watson in the mill contract made with Eveleth. But, on the contrary, all the evidence went to show that said Farrar was not in partnership with said Watson in the sale of mills. It was proven by T. S. Hazen that said Farrar was, in 1852, a Pawnbroker in St. Louis, and the said deed introduced by defendant only shows Watson and Farrar to own, jointly, interests in a certain patent right mentioned in said deed, and shows no joint interest in any mill or mills. D. T. Hazen, the subscribing witness to said deed, also testified that Watson was to send a mill

[illegible]

to Eveleth, when he, Watson, returned to St. Louis. If Farrar had been in partnership with Watson in sale of mills, W. would have certainly used the word we will send a mill, &c., for it is in proof Farrar was then residing in St. Louis. Said Hazen further testified he, himself, bought a right from said Watson and a mill also, but that the right and mill were separate and distinct contracts; and further, said D. T. Hazen testified that Bruce also bought a right but got no mill, and that he never knew of Watson throwing in a mill with the purchase of a right. Job Smith testifies that Watson was to furnish a mill of the largest size, and that Eveleth, on the delivery of the mill, was to pay, he thought, $300, and that he thought Eveleth had paid Watson some on the contract. All the evidence which bore on the mill contract had a tendency to show the right and the mill were separate and distinct trades. Even Eveleth's letter to Farrar would show that he did not complain of not getting a mill—and A. W. Hamilton's evidence, before referred to, conduces to prove that Farrar could not have been in partnership in the mill sale, as he was proven by Hamilton to have been in partnership in the sale of the right to defendants intestate and to Bruce—and it is proven by Hazen that Bruce got no mill with his purchase of a right, and that Watson was making no such sales as selling rights and mills in one contract. It is fair to infer from the whole evidence that said Watson and Farrar were not in any such partnership of selling patent rights and mills—and the said 1st instruction was apt to mislead the jury, and was against evidence and law, and ought to have been refused by the court.

The second instruction is both against law and evidence. There was no evidence in the case proving that said notes were executed for the patent right and mill purchase, as pretended by defendant. No witness saw the notes executed, nor did any witness testify any thing of proof in regard to the consideration of the notes. Yet, if the jury could believe Farrar was in partnership with Watson in the sale of the patent rights, still, unless it also appeared in evidence that Watson and Farrar were in partnership in the sale of mills as well as rights, it is not the law that the mere fact of Watson and Farrar being in partnership in the sale of said patent rights, would bind said Farrar as such partner by any contract made by said Watson as one of such firm in the manner this matter was transacted, unless said Watson acted in the premises within the limits and scope of such partnership—See Story on partnership, 3d Edition, pages 177, 178 & 179, sections 110, 111 & 112—and the evidence of the defendant clearly shows that Farrar was not concerned with Watson in sale of mills, and that Eveleth knew the fact. The deed proves this, and Hazen's and Hamilton's evidence corroborate the fact that if Watson and Farrar were in partnership, in the sale of said rights, that that partnership did not extend to the sale of mills.

The third instruction of the court for the defendant is not against the law, but is, for the reasons stated in the objections to the 1st and 2nd instructions, not warranted by the evidence in the cause, and so calculated to mislead the jury. There was no evidence in this cause, tending to prove what the consideration of the notes were, nor to prove Farrar a partner of Watson in such consideration—and so the instruction is not warranted by the evidence, and ought to have been refused by the court.

The court should have given the 1st instruction asked for by the plaintiff. The instruction embraces the law in such case. See Story on partnership, 3d Edition, pages 177, 178 & 179, sections 110, 111 & 112—

Story on contracts, pages 211 and 212, section 218, 3d edition—Kent's commentaries, 5th Edition, top page 45, side page 46.

The court should have granted a new trial. The verdict of the jury was against the evidence and the law, and not warranted by the evidence. It was contended on the trial, that the said deed, supported by the evidence of A. W. Hamilton, proved Watson and Farrar in partnership in the sale of patent rights—and that the testimony of Rowan and others, proved that the consideration mentioned in the said deed was not paid as evidenced by the deed, by reason of Eveleth's circumstances in life. The evidence of the deed was not rebutted, nor impeached, neither directly nor by implication. Rowan, Fletcher, and all who testified as to Eveleth's condition in life with the view of letting the jury guess or presume that Eveleth was unable to have paid the $1500 mentioned in the deed at the time the deed was made —also, on cross examination, swore that Eveleth at that time had good credit—had a farm in White County—could and might have, for ought witnesses knew, borrowed $1500, by mortgaging said farm—and Fletcher stated that Eveleth had, at the time, many debts due him, and might have collected the amount of $1500, for all he knew. Hamilton's evidence only proved that Farrar admitted he was a partner of Watson's in the sale of patent rights to Eveleth and to Bruce. But that evidence does not prove, nor connect any other evidence to the fact, that the notes here sued on by Farrar, as assignee of Watson, were executed by Eveleth to Watson, for and on account of the consideration of the sale of patent rights to Eveleth, made by Watson as such partner of Farrar, nor does any of the evidence in the cause prove for what consideration the notes were made. The letter of Eveleth to Farrar repelled any mere presumption of fraud in the obtaining of the notes by Watson—and Farrar, being the assignee of Watson, and the assignment being without date, Farrar held the notes as an innocent assignee, and stood as such, and is so presumed to be in law, unless the contrary appears by evidence—and the consideration of the notes could not be inquired into in this case, unless defendant had proved him a partner with Watson in the consideration of the notes sued on, and it was incumbent on defendant to have made the proof. In absence of such proof the verdict is against evidence, and should have been set aside by the court, and the court should not have entered judgment on the verdict.

The 9th and 10th errors have been referred to herein before, as to irrelevant evidence, and the impeachment by defendant of his own evidence. This evidence by defendant, to-wit: the evidence of Rowan and others, to rebut or disprove the evidence of the deed, was referred to herein before, and Starkie on evidence, Vol. 2, side pages 757 and 758, and notes p and q thereunder referred to, as the law showing that written instruments, nor instruments under seal, cannot be rebutted by parol evidence. The court erred in allowing parol evidence to go to the jury, to rebut or impeach said evidence of the deed, because such a course was against law, and further because the defendant ought not to have been allowed to impeach his own proof.

J. W. EDWARDS, PRINTER, SHAWNEETOWN.

36

Brief of Pltff

in case Fraser

by

Hinds admr

Filed Nov. 13. 1854

N. Johnston Clk

STATE OF ILLINOIS—IN THE SUPREME COURT—FIRST GRAND DIVISION—OF THE NOVEMBER TERM, 1858.

JACKSON FARRAR, assignee of WILLIAM F. WATSON, plaintiff in Error,
vs.
BENJAMIN P. HINCH, administrator de bonis non of SYLVESTER EVELETH, deceased.
} Error to Gallatin.

Pages of Record.

ABSTRACT.

1–4 This cause was brought into the Gallatin Circuit Court, at the June Term, 1856, of said court, by the plaintiff, Jackson Farrar, assignee of
2 William F. Watson, on appeal from the County Court of Gallatin County, from a judgment rendered in said County Court against said Farrar, who
3 was the plaintiff in that court, and Winder Bailey, administrator de bonis non of Sylvester Eveleth, was the defendant in that court—the judgment of said County court was rendered at the January Term, 1856.

4–5–6 Before the June Term, 1856, of the Gallatin Circuit Court, said Winder Bailey departed this life, and at the said June term of said Circuit Court the
6 death of said Bailey is suggested, and Benjamin P. Hinch, as administrator de bonis non, is made party to this suit, and is duly summoned to the October term, 1856, of said court.

At which term of the court there was a trial by a jury of eight by agreement, Beecher judge presiding, and verdict was for the defendant,
7–8 Benjamin P. Hinch, which verdict was on motion of Plaintiff's counsel set
8 aside by the court and a new trial awarded—and cause continued. At the
9 May term and also at the July special term of said Circuit court said cause was continued.

And, at the October term, 1857, of the Gallatin Circuit Court, this cause was tried by a jury of twelve men, his honor Wesley Sloan judge of said court presiding; the jury found for the defendant, Benjamin P. Hinch. Motion was made for new trial, and in arrest of judgment. The court overruled the motion and entered judgment for defendant for costs, &c.

9 The Bill of exceptions shows as follows, therein stated, to-wit:

Jackson Farrar, assignee of William F. Watson,
vs.
B. P. Hinch, adm'r de bonis non of Sylvester
9 Eveleth, deceased.
} Appeal from county court.

Be it remembered that in the cause of Jackson Farrar, assignee of William F. Watson, versus Benjaman P. Hinch, administrator de bonis non
9 of Sylvester Eveleth deceased, which was tried at the October term of the
9–10 Gallatin Circuit Court, A. D. 1857, at Shawneetown, Illinois, before his honor
10–10 Wesley Sloan, presiding judge of the nineteenth judicial circuit, and a jury, the said Jackson Farrar, assignee, &c., plaintiff, introduced then and
10–10 there the following notes in evidence, to-wit:

1000$. Shawneetown, Ill's, July 13th, 1853.

10 Twelve months after date, I promise to pay, to the order of William F. Watson, one thousand Dollars, for value received, negotiable and payable without defalcation or discount.

Signed, SYLVESTER EVELETH.

Upon the back of which note was the following indorsement, to-wit: I assign the within note to Jackson Farrar for value received.

10 (Signed) WILLIAM F. WATSON.

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10 250$. Shawneetown, Illinois, July 13th, 1853.

On or before the first day of January next, I promise to pay to the
10 order of William F. Watson, two hundred and fifty Dollars for value received,
11 negotiable and payable without defalcation or discount.

Signed, SYLVESTER EVELETH.

Upon the back of which said note was the following indorsement, to-wit: I assign the within note to Jackson Farrar for value received.

Signed, WILLIAM F. WATSON.

250$ Shawneetown, Illinois, July 13, 1853.

11 On or before the first day of April next, I promise to pay to the order of William F. Watson, two hundred and fifty Dollars, for value received, negotiable and payable without defalcation or discount.

Signed, SYLVESTER EVELETH.

Upon the back of which was the following indorsement, to-wit: I assign the within note to Jackson Farrar for value received.

(Signed) WILLIAM F. WATSON.

12 To the introduction of which said notes the defendant objected, which said objection was by the court overruled, to which holding of the court the said defendant then and there excepted, and the said notes having been read to the jury in evidence, the said plaintiff then and there rested.

Whereupon the defendant introduced in evidence the following indenture, made and executed by William F. Watson and Jackson Farrar (plaintiff) by William F. Watson, att'y, to Sylvester Eveleth, to-wit:

"Whereas, James M. Clark of the city of Lancaster, and State of Pennsylvania, did obtain letters patent of the United States for improvements in combining, grinding and bolting machines, known as James M. Clark's Patent Portable Flouring Mill, which patent bears date May 13th, 1851, and whereas the said James M. Clark did, for a consideration to him in hand paid on the 10th day of September, 1851, lawfully assign, sell and set over all the right, title and interest which he had in said invention, as secured to
13 him by said letters patent for to and in the United States to Thomas M. Clark, and whereas Jonathan H. Smith, William F. Watson and Jackson Farrar did on the second day of April, 1852, obtain of said Thomas M. Clark all the right, title and interest which he had in and to the counties of Alexander, Pulaski, Massac, Pope, Hardin, Union, Jackson, Randolph, Perry, Franklin, Hamilton, White, Wabash, Edwards, Wayne, Jefferson, Washington, Marion, Clay, Rock Island, Lawrence, Crawford, Jasper, Effingham, Fayette, Montgomery, Shelby, Christian, Cumberland, Clark, Edgar, Coles, Moultrie, Macon, Piatt, Champaign, Vermillion, Scott and Calhoun, all in the State of Illinois.

13 And whereas, the said William F. Watson and Jackson Farrar did, for a valuable consideration, obtain the exclusive interest and title of the said Smith in the said counties, as will more fully appear by reference to Deed of the 26th May, 1852, and recorded at Washington City in Liber Y, T, Page 268, of transfers of Patents. And whereas, Sylvester Eveleth is
14 desirous of obtaining an interest therein. Now this indenture witnesseth that the said William F. Watson and Jackson Farrar for, and in consideration of the sum of fifteen hundred Dollars, to them in hand paid, the receipt of which is hereby acknowledged, have granted, bargained, sold and conveyed, assigned and set over, and by these presents, do grant, assign, sell and set over to said Eveleth, all their right, title and interest in the said invention,
14 as secured to them by said deeds, for to and in the counties of Gallatin,

14 White, Saline, Williamson, Franklin, Hamilton, Jefferson, Wayne, Edwards and Wabash, in the State of Illinois, for his own use and benefit, of his heirs and assigns, to the full end of the time for which said letters Patent were patented, as fully and entirely as the same would have been enjoyed by us, if this assignment and sale had not been made. In testimony whereof, we have hereunto set our hands and affixed our seals, this 12th day of July, 1853.

D. T. HAZEN. WILLIAM F. WATSON, (seal.)
JACKSON FARRAR, (seal.)
Per WILLIAM F. WATSON, Att'y.

14 Whereupon the said defendant introduced D. T. Hazen, the subscribing witness, who, after being duly sworn, stated that William F. Watson signed
15 and executed the said deed for himself and the said plaintiff. The said defendant then offered to read the same in evidence, to which the said plaintiff then and there objected, which objection was then and there overruled by the court, to which holding of the court the said plaintiff then and there excepted, and the same by defendant was read in evidence. Defendant then introduced said D. T. Hazen and asked him the following questions, to-wit:

1st, Did Eveleth, at the time of the delivery of said deed, pay to said Watson said sum of $15,000?

Ans: I do not know whether Eveleth paid anything down or not.

2nd Inter. What was Watson doing here?

15 Ans: He was selling the right to sell mills in this State and Kentucky.

3d Inter. Do you know whether Watson was to furnish said Eveleth with a mill like the one Watson had here or of any size?

Ans: Watson told me that when he returned to St. Louis he was going
15 to send Mr. Eveleth a mill of the largest size.

16 4th Inter. Would the Patent right be of any worth without a mill as a sample?

Ans: I do not think it would.

5th Inter. Was the delivery of the mill a part of the consideration of the $1500 mentioned in the said deed.

Ans: I do not know.

6th Inter. Did Watson, upon his return to St. Louis, send a mill to Eveleth?

Ans: Not to my knowledge. I never knew of Eveleth receiving any.

16 On cross examination, by plaintiff, the said witness stated that he did not see the notes executed or delivered and knew nothing about them—and did not know what the consideration of the notes was—that he bought the right
17 of Watson to sell mills of the same kind in Kentucky about the same time Eveleth bought—that witness bought a mill separate, and it was a different and distinct contract from the purchase of the right. Witness testified that he bought the mill which Watson was exhibiting at Eveleth's and took it away—and that he believed Bruce bought the same right to sell the right, and believes Bruce did not get a mill with the right—that the mill was a separate contract, and he never knew of Watson's throwing in a mill with the purchase of a right.

17 Job Smith was next introduced as a witness, by defendant, who, after
18 being sworn, was asked to go on and state all he knew, if anything, in
18 regard to the sale of a patent right by Watson to one Eveleth. Whereupon

18 said Smith stated, that he was up at the mill several times while Watson and Eveleth were trying the mill which Watson brought with him—that Eveleth and Watson were three or four days trading, and that he understood from hearing the parties talk that Watson was to furnish Eveleth with a mill of the largest size, in two or three months after the trade was made, and he thought Eveleth was to pay Watson a certain amount upon the delivery of the mill—did not know exactly how much for certain—thought $300. He thought Eveleth paid Watson some money down on the contract—did not know how much. But the best of his impression was that Eveleth paid some money down. Witness, Smith, thought the mill was a part of the
18 contract—that Eveleth never got any mill as he (witness) knew of—never heard of his (Eveleth's) getting any. Smith also stated that he understood, from Watson and Eveleth, that Eveleth had purchased the patent right of
19 the mill, and that as a part of the same contract Watson was to furnish Eveleth a mill, such as the patent was for. Smith further stated that Eveleth wanted the mill to put up to grind with and to show to others, so as to enable him to sell the patent right by exhibiting the mill—that he, Smith, had some experience in selling patent rights, and thought the patent right to the mill would be of no value without a mill to exhibit to show how it would work.

19 On cross-examination by plaintiff said witness, Smith, stated, that he did not know how much Eveleth gave for the right and the mill—that he did not know that the right and delivery of the mill was all one trade or contract —but that that was his understanding from the parties. Said Smith further testified, that he did not know whether Watson and Eveleth made one or a
20 dozen trades—that for all he (Smith) knew they may have made a hundred trades.

20 A. K. Lowe being introduced by defendant and sworn, stated, that he was engaged in the forwarding and commission business, upon the Wharf Boat at Shawneetown, had been on said Boat, with the exception of nine months, in year 1855, ever since the first of the year 1853, and that no patent mill ever came to Eveleth, or was any received by him, nor was any landed or offered to be landed. No mill ever came from Watson to Eveleth.

20 Mr. T. S. Hazen was next introduced by defendant, who, being duly sworn, was asked by def't if he knew anything about William F. Watson and Jackson Farrar being in partnership in the sale of Clark's Portable
21 Patent Flouring Mill, to which said Hazen testified, that, some time in the year 1852, he was in St. Louis and saw a man by the name of Farrar (the plaintiff in this case) who asked him if he (witness) knew whether Dr. Bishop of Shawneetown was good for his debts, stating that he (Farrar)
21 wanted to know because he and Watson had sold Dr. Bishop a patent right of a mill, and that he and Watson were partners in such patent right. Said Hazen also stated that the plaintiff, now present, was the Farrar he saw—that he (meaning Farrar) was a pawn broker in St. Louis.

21 Defendant next introduced A. W. Hamilton, who, being sworn, def't asked him the following question: Did Farrar, the plaintiff, ever tell you anything about his being in partnership with Watson? The plaintiff objected to the question and the court overruled the objection, to which holding the plaintiff then and there excepted. Said Hamilton answered, that Farrar
21–22 told him that he was in partnership with Watson in the sales made to

22 the defendants intestate and to Bruce of the patent right, but not in the sale made to Hazen.

22 Stephen R. Rowan was next introduced by def't, who testified, after being sworn, as follows: that he was the next neighbor to said Eveleth, remembered the time when Watson was there with a mill, and went up frequently to see it work—that Eveleth never received any mill as witness knew of, and that Eveleth told witness he, Eveleth, did fix up and got ready to receive the mill and that no mill ever came.

22 Said Rowan, on cross-examination by plaintiff, stated, that he knew
23 nothing at all about their trading (meaning Eveleth's and Watson's trading).

The defendant, Hinch, next introduced as a witness, William Frier, who, being sworn and examined, testified that Watson was to send Eveleth a mill to operate with at Shawneetown. This was in the summer of 1853. That he (witness) saw a mill at Eveleth's at that time. Watson sold that mill to Hazen. That the mill, Watson was to send to Eveleth was to be larger than
23 the one witness saw at Eveleth's, and that Watson was to send it in five or six weeks—that there was no other trade or transaction between the parties as witness knew of, and that at that time he, witness, was quite intimate with Eveleth.

23 Stephen R. Rowan being recalled by defendant, testified to the following
24 additional facts: that at the time Watson was trying the mill, witness was there nearly every day. Said Rowan was then asked by said defendant if he heard Eveleth speak of any other transaction with Watson except the patent and mill transaction. To which question plaintiff then and there objected and the court overruled the objection, and plaintiff then and there excepted—and said Rowan stated that he heard of no other transaction but
24 the mill and patent.

William Fletcher was next introduced by defendant, who, being sworn and examined, stated that he was acquainted with Eveleth in 1853, and was at one time his partner—that Eveleth was in the said mill business which
25 was the only business he ever knew of his following—that, in 1853, Eveleth was hard pushed for money—that at that time he owed witness, and witness could not get it, and that in 1853 witness does not think Eveleth had any considerable amount of money.

25 Said Fletcher, on cross-examination by plaintiff, stated that, in 1853, Eveleth had a good many debts standing out—that a good many people were owing Eveleth, and that he, witness, did not know whether or not Eveleth collected any great amount or not—that he might have collected a
25–26 good deal for all witness knew, and that Eveleth had a farm in White County, and might have raised money by mortgaging that farm, and that Eveleth's credit was good. Witness supposed Eveleth could have borrowed considerable money.

26 The defendant asked leave to recall Stephen R. Rowan, and plaintiff objected. The court overruled the objection, to which holding of the court said plaintiff then and there excepted.

26 Said Rowan, then being upon the witness stand, defendant asked him if, in 1853, he was acquainted intimately with the affairs of Eveleth in 1853. To which the plaintiff objected—and the court asked defendant the intention of said question, and defendant stated that he intended to prove by the
26–27 witness the condition of Eveleth at that time—to prove that in all probability

27 Eveleth could not have paid the consideration in the deed mentioned; and to prove circumstances from which the jury might infer the consideration expressed in the deed was never paid, and that the notes sued on were given therefor. Whereupon the court overruled the plaintiff's objection—to which holding of the court said plaintiff then and there excepted.

27 And said Rowan stated that he was intimately acquainted with Eveleth in 1853—that he frequently came to his (witness's) house and talked with him concerning his (Eveleth's) business, and sometimes borrowed money of witness. Witness was then asked further, by the defendant, if he thought Eveleth had as much as $1500 in 1853. To which witness answered he did not think he had.

27 Upon cross-examination by the plaintiff, witness stated that he thought
28 a good many people in 1853 were owing Eveleth, and that he, witness, did not know but that he (Eveleth) collected $1500 in 1853—that he believed Eveleth owned a farm in White County, and witness supposed Eveleth could have got money by mortgaging that farm and witness have known nothing about it, and that he, witness, knew nothing about how much money Eveleth had or raised—that Eveleth might have had a great deal or but little, he, witness, could not tell, and that Eveleth's credit was good.

28 Defendant next introduced Henry Frier, who, being sworn and examined, stated that in 1853 he was working for Mr. Eveleth at his saw mill, and was
28–29 with Eveleth at the time Watson came there with a Patent Flouring Mill, and afterwards—that he knew nothing about the trade between Watson and Eveleth—paid no attention to what they said, and never heard Eveleth say anything about the trade—he was a man who kept his business to himself. Whereupon the defendant rested his cause.

29 Whereupon the plaintiff introduced the following letter, from Eveleth to plaintiff, to-wit:

29 Shawneetown, Illinois, January 29th, 1854.

MR. J. FARRAR—Sir: I received your note relative to the amount I am due you. I had written to Mr. Watson some before on the subject. My
30 affairs are such that I cannot meet the notes just now, having been compelled to lay out all the money I could raise for saw logs in order to get them on the spring raise, or I should be idle all the season. I shall be able to pay part of it soon, and will try to meet it all as soon as possible.

30 If Mr. Watson is about St. Louis let me know and I will come and pay whatever money I can raise, as I wish to see Mr. Watson.

Yours, S. EVELETH.

30 Plaintiff introduced George W. McKeaig, who, being sworn and examined, stated that he was the Post Master at Shawneetown, and having examined said letter stated that it bore the post mark of the Post office at Shawneetown.

30–31 Plaintiff then introduced George A. Ridgway, who, after being sworn and examined, stated that he was acquainted with Sylvester Eveleth and had frequently seen him write his (Eveleth's) name—and said letter then being handed to said witness, who, after examining it, stated that said letter was in the hand writing of Eveleth, and that the signature was Eveleth's. Whereupon the defendant objected to the introduction of the letter. The court overruled the objection and defendant then and there excepted—which
31 letter being read the plaintiff as well as defendant rested, &c.

31 The defendant asked the following three instructions, which were by the
31–32 court given: 1st instruction. "If the jury believe, from the evidence, that the plaintiff, Farrar, was a partner of Watson in the mill contract made with Eveleth, then the law presumes that Farrar knew all the conditions of that contract, and if the notes sued on were given to Watson, in consideration of the mill contract with Eveleth, then Farrar, if he was a partner of Watson in that contract, had notice of all the conditions of the contract, and stands precisely in the same condition in this case as Watson himself would if he had sued on the notes in his own name. And the plaintiff excepted.

32 2nd instruction. "If the jury believe, from the evidence, that Watson and Farrar were partners in the patent right spoken of in the evidence, and that Watson, as one of such partners, made a contract with Eveleth about
32–33 the sale of such patent right, and that such contract was that Eveleth purchased such right for certain counties, and that, as a part of such contract, Watson agreed to send to Eveleth a mill within three months after said contract was made, and that such mill never was sent to Eveleth—and if they further believe, from the Evidence, that such patent right was of no use or benefit to Eveleth without having such mill, and that the notes sued
33 on were given by Eveleth in consideration of such contract, that the consideration of said notes has failed and the plaintiff cannot recover. And the plaintiff excepted.

33 3d instruction. "If the plaintiff, Farrar, was a partner of Watson's in the consideration of the notes sued on, then the law presumes that he had notice before he received such assignment of said notes of all the conditions
33–34 of the consideration, and as much bound by such condition as Watson himself. And the plaintiff excepted.

The plaintiff asked the following instruction, which was by the court
34 refused:

"The court instructs the jury that although they believe, from the
34 evidence, that said Farrar was such partner of Watson, as mentioned in the deed offered in evidence in this cause, in regard to selling patent rights, and that said notes were made to said Watson by Eveleth in consideration of the sale of patent rights mentioned in said deed together for the further consideration of a mill to be delivered by said Watson in such time as is
34 pretended by said defendant—yet, unless they further believe, from the
34–35 evidence, that said Watson, as such partner of Farrar, was fully authorized by the terms and within the scope of such partnership, as that mentioned
35 in the said deed, to make such a contract for a mill to be delivered as a part of the consideration of the notes herein—in selling said rights under such partnership, they must find for the plaintiff, unless it appears, in evidence, that plaintiff, as such partner, approved of such sale of right and mill to Eveleth after such sale, and before the notes were assigned by Watson to him. And if it appears in evidence that Watson had such power by the
35 terms of such partnership, to sell such patent rights and mill together, and did make such contract under such power, and that said mill was not delivered, they may allow such set off to said notes as they may think proper
35–36 and just under the proofs. The court refused to give said instruction, and the plaintiff excepted.

38 The plaintiff moved for a new trial, and in arrest of judgment, upon the following grounds:

38 1st, Because the verdict of the jury was against law. 2d, Because the verdict is against evidence. 3d, Because the verdict should have been for the plaintiff, and not for the defendant.

38 The motion for a new trial and in arrest of judgment was overruled, and judgment entered in accordance with the verdict—and the plaintiff excepted.

BARTLEY & INGERSOLL,
Att'ys for plaintiff in Error.

The plaintiff in error, who was the plaintiff below, assigns the following grounds of error in this cause.

1st, The court below erred in permitting the deed from William F. Watson and Jackson Farrar, made by said Watson as attorney, 12th July, 1853, to be read to the jury in the trial of this cause.

2d, The court erred in permitting A. W. Hamilton's evidence to be given to the jury, in regard to the statements of plaintiff, to prove pl'ff in partnership with said Watson, in sale of patent rights to defendants intestate and to Bruce.

3d, The court erred in permitting Stephen R. Rowan to testify to the jury in this cause, to the fact that he Rowan never heard Eveleth speak of any other transaction with Watson except the patent and mill transaction.

4th, The court erred in allowing the evidence of Stephen R. Rowan, to be given to the jury, in regard to the pecuniary affairs of Eveleth in 1853, to prove as avowed by def't that in all probability Eveleth could not have paid the consideration in the deed mentioned—and to prove circumstances from which the jury might infer the consideration expressed in the deed was never paid, and that the notes sued on were given therefor.

5th, The court erred in giving the three instructions asked by the defendant, to-wit: 1st, 2nd, and 3d instruction of def't to the jury.

6th, The court erred in refusing plaintiff's 1st instruction to the jury.

7th, The court erred in not granting a new trial in this cause, as asked by plaintiff.

8th, The court erred in entering judgment against plaintiff on the verdict of the jury.

9th, The court erred in permitting the defendant to introduce evidence to rebut the facts stated in the said deed from Watson & Farrar, by Watson to Eveleth—which deed was by defendant alone introduced in evidence by him and read to the jury in this cause.

10th, The court erred in permitting improper and irrelevant evidence to go to the jury on the part of the defendant.

MILTON BARTLEY, for
Plaintiff in Error.

[8431-45]

36

Farrer et al
vs
Hinch et al

8431

Office

Filed Nov. 11. 1858.
N. Johnston Clk

MILTON BARTLEY, Attorney for plaintiff in error, in the cause of

JACKSON FARRAR, assignee of William F. Watson,
vs.
Benjamin P. Hinch, administrator de bonis non of Sylvester Eveleth dec'd. } Error to Gallatin.

Refers to the following authorities on the points relied on:

This cause originated in the County Court of Gallatin, on three certain promissory notes, executed by Sylvester Eveleth on the 13th July, 1853, payable to William F. Watson or order. Watson indorsed these notes, in blank and without date, to said Farrar, who tried to collect them of the estate of said Eveleth, he (Eveleth) being now dead. The County Court allowed the claim against the estate of Eveleth, and by agreement between Winder Bailey, the administrator of Eveleth and said Farrar's attorney, time was given in that court for said administrator to make further defense to said notes. At a subsequent term of that court the administrator and his counsel appeared and succeeded in getting that court to dismiss said Farrar's claim out of court. The cause was then appealed to the Circuit court of Gallatin county, and is now brought to this court by writ of error, by Farrar the plaintiff. The plaintiff assigns ten causes of error. The first is to the introduction, on the trial by the defendant below, of a certain sealed deed, dated 12th July, 1853, and purporting to have been executed by one William F. Watson and Jackson Farrar, by William F. Watson attorney. The deed ought not to have been read to the jury in the trial of this cause.

1st. Because it is a sealed instrument and has no reference or relation on its face to said notes sued on, and being under seal is not susceptible of parol proof to contradict or prove that the said $1500, mentioned in said deed was not paid, as evidenced by said deed. See Starkie on evidence, Vol. 2, side pages 757 and 758, and notes p and q thereunder.

2nd. Because said deed, having no relation to the notes on its face or apparent in any way, was calculated and apt to mislead the jury.

3d. Because said deed, even if it had any reference or relation to said notes sued on, could not be evidence against Farrar the plaintiff here, from the fact that said deed purports to have been executed by William F. Watson and Jackson Farrar, by William F. Watson attorney, and is executed under their seals; and the deed itself does not show that said Watson had the authority to sign and seal said deed for said Farrar as attorney, nor was it shown that said Farrar authorized said Watson to make and seal said deed for him.

4th. Said deed should not have been introduced and read to the jury because it showed that the consideration of the deed was fully paid.

5th. The said deed ought not to have been read to the jury to prove the consideration of the notes, and to lay the foundation for other evidence, with the view of showing, if possible, that said patent right mentioned in the deed, and also a mill to be delivered by Watson to Eveleth, were the considerations of the said notes. Because, even if we allow that said Watson and Farrar were in partnership in the sale of said patent rights mentioned in said deed, yet it nowhere appears by said deed that they were in partnership in the sale of said patent rights and of mills; and, unless it so appeared, a sale by Watson of a right and mill by himself, in the name of such firm and for such firm, could not affect Farrar. See Story on partnership, 3d Edition, page 184, section 117.

As to the 2nd error, the evidence of A. W. Hamilton ought not to have gone to the jury, to prove the statements of the plaintiff in regard to plaintiff's partnership with Watson in sale of patent rights to defendants intestate and to Bruce. Because such evidence was irrelevant and calculated to mislead the jury. And, in this cause, the defense is not the sale of patent rights, but of patent right and a mill together, and said Hamilton's evidence only shows a partnership in sale of patent rights to defendants intestate and to Bruce, and does not show any partnership in sale of any rights and mills—and unless the partnership in sales, spoken of by witness, included a partnership also to sell mills, and rights—see Story on partnership, 3d Edition, pages 177, 178, & 179, Sections 110, 111 & 112—the evidence ought not to have gone to the jury.

In regard to the 3d error assigned, Stephen R. Rowan should not have been allowed to testify to the jury to what he had heard Eveleth speak, as regards said Rowan's not having heard Eveleth speak of any other transaction with Watson except the patent and mill transaction. Eveleth is the defendants intestate, and what said Eveleth said could not be given in evidence on the part of the defendant. 1st. Because if Eveleth was living, and a party defendant to the suit, he could not testify in his own behalf. 2nd. Because hearsay evidence in such case is not admissible—7 Cranch 290. 3d. Because the evidence was irrelevant and only calculated to mislead the jury by assuming that there had been a patent and mill transaction proven, when in fact and truth no such proof had been made in the trial. Irrelevant evidence will be rejected, as well for its irrelevancy as for its incompetency. 11 Mass 140, Walker vs. Leighton, 4 Litt, 272.

On the fourth grounds of error, in respect to Stephen R. Rowan's testifying to Eveleth's pecuniary affairs, with the avowed intention to prove that in all probability Eveleth could not have paid the consideration in the deed mentioned, and to prove circumstances from which the jury might infer the consideration expressed in the deed was never paid, and that the notes sued on were given therefor. This evidence should have been excluded from the jury, for the reasons: 1st, That its object being to impeach the evidence proven by said deed introduced by defendant, it ought not to have been allowed on the general principle of evidence that a party is not allowed to impeach his own witness. 2nd, Because said deed is a sealed instrument, and parol evidence is not allowable to disprove such deed. See U. S. Digest, Vol. 2, page 294, section 2059 and 2069—page 295, section 2089 and 2090; 1 McCord 209; 7 J. J. Marshall 367; 4 J. J. Marshall 583; 13 Peck 121; 6 Mass 435; 5 Mass 411.

The first instruction asked by defendant, and given by the court to the jury, was improper and not warranted by the evidence, and had a tendency to mislead the jury. There is no evidence in the case proving that said Farrar was in partnership with Watson in the mill contract made with Eveleth. But, on the contrary, all the evidence went to show that said Farrar was not in partnership with said Watson in the sale of mills. It was proven by T. S. Hazen that said Farrar was, in 1852, a Pawnbroker in St. Louis, and the said deed introduced by defendant only shows Watson and Farrar to own, jointly, interests in a certain patent right mentioned in said deed, and shows no joint interest in any mill or mills. D. T. Hazen, the subscribing witness to said deed, also testified that Watson was to send a mill

[0431-67]

to Eveleth, when he, Watson, returned to St. Louis. If Farrar had been in partnership with Watson in sale of mills, W. would have certainly used the word we will send a mill, &c., for it is in proof Farrar was then residing in St. Louis. Said Hazen further testified he, himself, bought a right from said Watson and a mill also, but that the right and mill were separate and distinct contracts; and further, said D. T. Hazen testified that Bruce also bought a right but got no mill, and that he never knew of Watson throwing in a mill with the purchase of a right. Job Smith testifies that Watson was to furnish a mill of the largest size, and that Eveleth, on the delivery of the mill, was to pay, he thought, $300, and that he thought Eveleth had paid Watson some on the contract. All the evidence which bore on the mill contract had a tendency to show the right and the mill were separate and distinct trades. Even Eveleth's letter to Farrar would show that he did not complain of not getting a mill—and A. W. Hamilton's evidence, before referred to, conduces to prove that Farrar could not have been in partnership in the mill sale, as he was proven by Hamilton to have been in partnership in the sale of the right to defendants intestate and to Bruce—and it is proven by Hazen that Bruce got no mill with his purchase of a right, and that Watson was making no such sales as selling rights and mills in one contract. It is fair to infer from the whole evidence that said Watson and Farrar were not in any such partnership of selling patent rights and mills—and the said 1st instruction was apt to mislead the jury, and was against evidence and law, and ought to have been refused by the court.

The second instruction is both against law and evidence. There was no evidence in the case proving that said notes were executed for the patent right and mill purchase, as pretended by defendant. No witness saw the notes executed, nor did any witness testify any thing of proof in regard to the consideration of the notes. Yet, if the jury could believe Farrar was in partnership with Watson in the sale of the patent rights, still, unless it also appeared in evidence that Watson and Farrar were in partnership in the sale of mills as well as rights, it is not the law that the mere fact of Watson and Farrar being in partnership in the sale of said patent rights, would bind said Farrar as such partner by any contract made by said Watson as one of such firm in the manner this matter was transacted, unless said Watson acted in the premises within the limits and scope of such partnership—See Story on partnership, 3d Edition, pages 177, 178 & 179, sections 110, 111 & 112—and the evidence of the defendant clearly shows that Farrar was not concerned with Watson in sale of mills, and that Eveleth knew the fact. The deed proves this, and Hazen's and Hamilton's evidence corroborate the fact that if Watson and Farrar were in partnership, in the sale of said rights, that that partnership did not extend to the sale of mills.

The third instruction of the court for the defendant is not against the law, but is, for the reasons stated in the objections to the 1st and 2nd instructions, not warranted by the evidence in the cause, and so calculated to mislead the jury. There was no evidence in this cause, tending to prove what the consideration of the notes were, nor to prove Farrar a partner of Watson in such consideration—and so the instruction is not warranted by the evidence, and ought to have been refused by the court.

The court should have given the 1st instruction asked for by the plaintiff. The instruction embraces the law in such case. See Story on partnership, 3d Edition, pages 177, 178 & 179, sections 110, 111 & 112—

Story on contracts, pages 211 and 212, section 218, 3d edition—Kent's commentaries, 5th Edition, top page 45, side page 46.

The court should have granted a new trial. The verdict of the jury was against the evidence and the law, and not warranted by the evidence. It was contended on the trial, that the said deed, supported by the evidence of A. W. Hamilton, proved Watson and Farrar in partnership in the sale of patent rights—and that the testimony of Rowan and others, proved that the consideration mentioned in the said deed was not paid as evidenced by the deed, by reason of Eveleth's circumstances in life. The evidence of the deed was not rebutted, nor impeached, neither directly nor by implication. Rowan, Fletcher, and all who testified as to Eveleth's condition in life with the view of letting the jury guess or presume that Eveleth was unable to have paid the $1500 mentioned in the deed at the time the deed was made —also, on cross examination, swore that Eveleth at that time had good credit—had a farm in White County—could and might have, for ought witnesses knew, borrowed $1500, by mortgaging said farm—and Fletcher stated that Eveleth had, at the time, many debts due him, and might have collected the amount of $1500, for all he knew. Hamilton's evidence only proved that Farrar admitted he was a partner of Watson's in the sale of patent rights to Eveleth and to Bruce. But that evidence does not prove, nor connect any other evidence to the fact, that the notes here sued on by Farrar, as assignee of Watson, were executed by Eveleth to Watson, for and on account of the consideration of the sale of patent rights to Eveleth, made by Watson as such partner of Farrar, nor does any of the evidence in the cause prove for what consideration the notes were made. The letter of Eveleth to Farrar repelled any mere presumption of fraud in the obtaining of the notes by Watson—and Farrar, being the assignee of Watson, and the assignment being without date, Farrar held the notes as an innocent assignee, and stood as such, and is so presumed to be in law, unless the contrary appears by evidence—and the consideration of the notes could not be inquired into in this case, unless defendant had proved him a partner with Watson in the consideration of the notes sued on, and it was incumbent on defendant to have made the proof. In absence of such proof the verdict is against evidence, and should have been set aside by the court, and the court should not have entered judgment on the verdict.

The 9th and 10th errors have been referred to herein before, as to irrelevant evidence, and the impeachment by defendant of his own evidence. This evidence by defendant, to-wit: the evidence of Rowan and others, to rebut or disprove the evidence of the deed, was referred to herein before, and Starkie on evidence, Vol. 2, side pages 757 and 758, and notes p and q thereunder referred to, as the law showing that written instruments, nor instruments under seal, cannot be rebutted by parol evidence. The court erred in allowing parol evidence to go to the jury, to rebut or impeach said evidence of the deed, because such a course was against law, and further because the defendant ought not to have been allowed to impeach his own proof.

J. W. EDWARDS, PRINTER, SHAWNEETOWN.

36

Brief of Pltff

in case Farrar

vs

Finch adm &c

Filed Nov. 13. 1858

N. Johnston Clk

Shawneetown Ills Oct 12 1838

N Johnson Esqr.

Dear Sir

I again send you the Record in the Cause of Jackson Turner assignee of William F Watson vs Benjamine D Smith admr &c I have assigned the errors we wish to rely on and attach them to the Record. I here send you $5.00. hoping you will file the Record and issue Scire facias to said Smith directed to the Sheriff of Gallatin county Ills and mail it to me at your earliest convenience and I will see that it be served in time. Yours truly

Milton Bentley

[8431-70]

Filed October 15. 1858.

A. Johnston Clk

Jackson Farrar - Assignee of
William L. Watson -

vs

Benjamin P. Hinck - Adm^r} De bonis non
Sylvester Everett Dec^d

Pltff. Below Plff in er

Filed (?)

{8431-71}

In Supreme Court 1st division

Mt Vernon Ills

Jackson Tanar assignee &
William F Watson Plaintiffs in error
vs Enor L Gallatin
Benjamin D Hinch administrator &c
of Sylvester Coulette deceased.

I hereby enter myself security
for costs in the foregoing
cause and bind myself to pay
all costs that may be awarded
by this Court against the
Plaintiffs. Mt V 7th Nov 1838

Milton Barkley

[illegible]

L
361

Lost Bond

Julia Nov 11. 1858.

A. S. Johnston Col

STATE OF ILLINOIS } ss. 1st Grand Division WRIT OF ERROR.
SUPREME COURT, } THE PEOPLE OF THE STATE OF ILLINOIS;

To the Clerk of the Circuit Court for the county of Gallatin 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 Gallatin county, before the Judge thereof, between

Jackson Farrer - assignee of William F. Watson

plaintiff, and Benjamin P. Birch - Admr. De bonis non of Sylvester Everleth

defendant it is said manifest error hath intervened, to the injury of the aforesaid Jackson Farrer - assignee of William F. Watson as we are informed by his complaint, and we being willing that error, should be corrected if any there be, 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 the 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 2d Monday of 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:

John D. Caton

Witness, the Hon. ~~WALTER B. SCATES~~ Chief Justice of our said court, and the seal thereof, at Mount Vernon this fifteenth day of October in the year of Our Lord One Thousand Eight Hundred and Fifty-eight.

Noah Johnston
~~Clerk Supreme Court.~~

L 8431-73

86

Jackson Farrer assignee
of William F. Watson
Plff in Error
vs
Mtf in Error

Benjamin P. Kinch
Adm &c.
Dft in Error

Issue & filed 15th Oct. 1858.
A. Johnston Clk

STATE OF ILLINOIS, SUPREME COURT. } ss. 1st Grand Division

THE PEOPLE OF THE STATE OF ILLINOIS,

To the Sheriff of Gallatin **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 Gallatin County, before the judge thereof, between Jackson Farrer assignee of William F. Watson, Plaintiff - and Benjamin P. Hinch - Adm'r &c - of Sylvester Endicth ——— defendant, it is said that manifest error hath intervened to the injury of said Jackson Farrer - assignee &c - - - - as we are informed by his 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 Mt. 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 Benjamin P. Hinch Adm'r &c - - - - - - - - - - that he be and appear before the Justices of our said Supreme Court, on the first day of the next term of said Court, to be holden at Mount Vernon, in said State, on 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 Benjamin P. Hinch notice, together with this writ.

John D. Caton

Witness, the Hon. ~~SAMUEL H. TREAT~~, Chief Justice of our said Court, and the seal thereof, at Mount Vernon, this Seventeenth day of October in the year of our Lord, one thousand eight hundred and fifty-eight.

Noah Johnston

Clerk of Supreme Court.

LP431-747

Executed by reading the within to B P Hinch in the presents of John Doe + Richard Roe two good + Lawfull men of my Bailwick October 25th 1858

John J Walters Sff

By George W. Baker Depty

Jackson Farrer assignee of Wm H. Watson

Pltff in Error

vs } Sci fa

Benjamin P. Hinch Admr &c

Defts in Error

Serving	50
Returning	10
Mileage	1.00
	1.60

36

8431

1858 — s

Farrer — assg

Watson

vs

Hinch — Admx

Evelith —

~~8467~~

Error to Gallatin

8431

Reversed and

Remanded —

[8431-75]