



Minnesota District Court (Carver County)
Civil and criminal case files

Copyright Notice:

This material may be protected by copyright law (U.S. Code, Title 17). Researchers are liable for any infringement. For more information, visit www.mnhs.org/copyright.

No. 1209

*Beer
sold*

DISTRICT COURT,
CARVER COUNTY, MINN.

Berthold Hertz
Plaintiff.

vs.

John Etzell
Defendant.

Frank Wainer
Plaintiff's Attorney.

W. C. Bull
Defendant's Attorney.

Date of Entry *April 7th*, 1879

Register of Actions *"A"* Page *240*

Term Tried *1*

Judgment for *Defendant*

Amount of Judgment \$ *27.90*

Date of Judgment *November 14th*, 1879

Minute Record "A"
Judgment Book Page *580*

Default Judgment Book Page

Date of Docketing *November 14th*, 1879

Judgment Record "A" page - 296 -

State of Minnesota,

} ss.

County of _____

THE STATE OF MINNESOTA,

To the Sheriff or any Constable of said County:

You are hereby commanded to summon

John Etzel

if he shall be found in your county, to be and appear before the undersigned, one of the Justices of the Peace in and for said county, on the 15th day of March 1879, at 1 o'clock, in the afternoon, at my office, in the Village of Carver, to answer to Berthold Wertz

in a civil action; and have you then and there this writ.

Given under my hand this

7th

day of

March

A. D. 1879

Charles Johnson,

Justice.

STATE OF MINNESOTA,

County of

Carver

88.

I hereby certify and return, that at the Town of Laketown in said County and State, on the 8th day of March 1879, I served the within summons upon the within named defendant, by reading the within and leaving him a true copy.

And further that I know that the person so served as aforesaid, is the identical person named as defendant herein.

My fees:—Service 15
Costs, copy 15
Mileage, 160
190

W. J. Jerny

Constable.

No. 1.

IN JUSTICE COURT.

Bentley W. B. B. B.

vs.

John E. B. B.

SUMMONS.

Filed April 1st 1879,
W. J. Jerny Constable

Returned and filed this 22th

day of March 1879

Peter M. B. B.

Justice.

State of Minnesota
County of Carver

In Justice Court before
Chas. Johnson, Justice.

Berthold Leroy } Plaintiff
vs }
John Etzel } Defendant

The Complaint
of the Plaintiff respectfully
states and shows to this
Court, that on divers
times between the 21st
day of July A.D. 1873 and
the 18th day of December
A.D. 1873 the defendant
above named became
indebted to this Plaintiff
for Beer sold and
delivered to said defendant
at his request to the
amount and value
of two hundred and
nine and 25/100 dollars
as will more particularly
appear by bill of particulars

hereto annexed and made
a part of this Complaint
and marked "A"

And the Complaint
of the Plaintiff further states
and shows that this
Plaintiff has received
on said ^{Bea} from said
defendant the sum
of one hundred and
sixty and 5/100 dollars
and no other or greater
sum than such sum
being a balance
due and owing to
this Plaintiff in the
sum of forty eight
and 5/100 dollars. That
in the month of January
A.D. 1874 said Plaintiff
and defendant settled
and accounted together
and it was then and
there mutually agreed
by and between said
Plaintiff and defendant
that said balance of
\$48.50 was due and

proving by said defendant
to said Plaintiff that
payment thereof has
often been made by
said defendant but
that no part or portion
of the same has been
received

Wherefore the Plaintiff
demands judgment against
said defendant for
the sum of forty eight-
een 57/100 dollars with
interest at seven per
cent per annum from
and since the 1st day
of February A.D. 1874 and
the costs of this action
Dated at Carson
March 15th 1879

Wm. H. Garner
att'y for Plaintiff
Carson
County of Carson
State of Nevada
Being first day of said
defendant and says
that he is the Plaintiff

in the foregoing Enthalp
action that the facts
set forth in the foregoing
Complaint are true
of his own knowledge

Done to me

Subscribed before

me this 15th day

of March A.D. 1879

13th July
7

Charles J. Smith

Justice of the Peace

"A"
John Elger

To Bartholomew

1873.

July 21 st	-	To 12 Rep. Bur.	\$ 30.00
Aug 4 th	"	9 " "	22.00
" 17 th	"	9 1/8 " "	23.75
" 31 st	"	7 " "	17.50
Sept 6 th	"	20 " "	50.00
" 14 th	"	4 " "	10.00
" 17 th	"	4 " "	10.00
" 29 th	"	4 " "	8.00
Oct 3 rd	"	10 " "	20.00
" 10 th	"	5 " "	10.00
Dec 18 th	"	4 " "	8.00

Total \$ 209.25

160.75

for Ballance \$ 48.50

1873 Oct 3 rd	by Cash	\$ 89.25
1874 Jan	" "	56.00
"	Drinks	50
"	Cash	15.00

Total \$ 160.75

No 2.

In Justice Ecce

Berthold Hertz

vs
John Elgel

Complaint

Filed April 14th 1899
By Gray & White Clerk

Filed this 22nd the
day of March A.D.
1899 Peter Michels
Justices of the
peace

Frank Warner
att'y for Plaintiff
Carson

State of Minnesota }
County of Carver. } ss.

In Justice Court
Before Charles Johnson
Justice of the Peace.

Berthold Hertz
Plaintiff.

To
John Etzell
Defendant.

The above named Defendant for
answer to the complaint of the
Plaintiff in the above entitled action
denies each and every allegation in
said Complaint contained except
such as are hereinafter admitted.

Said Defendant further answering
said complaint and as answer for a
defense thereto, admits that in the
year 1873 he purchased at various
times in said year beer from
said Plaintiff. But this Defendant
avows that as to whether the beer
so purchased was worth and of
the value of the money charged therefor
or was of the quantity herein set forth
in said Complaint, this Defendant
has no knowledge sufficient to
form a belief and he therefore denies

the allegations in said Complaint
in reference thereto, and the Defendant
further avers that long prior to the
commencement of this suit he
fully and completely paid said
Plaintiff for all the beer purchased
of him by the Defendant during
said year 1873 ~~and during~~ ^{at} any other
time.

Wherefore the Defendant asks
that the action be dismissed with
costs

Dated March 15th 1879

W. C. Odell

Atty for Deft

State of Minnesota }
County of Carver }

W. C. Odell of said County
being first duly sworn says that
he is attorney for the Defendant
in the foregoing Answer named,
and that said answer is true to
the best of his affiant's knowledge
information and belief.

Subscribed & Sworn to } W. C. Odell.
Before me this 10th day
of March 1879

Charles Johnson

Justice of the Peace

-
-
Defendant by his Attorney W. C. Odell
appeared specially and for the purpose
of the motion only, and moves to
dismiss the action on the ground
and for the reason

1st that this Court has never ac-
quired jurisdiction of the person
of the defendant in the manner
prescribed by law. and
2nd. This Court has no jurisdiction
to try and determine this action.

Filed April 1st ad 1879.
G. W. Weyenbrock
Salem, N. H.

B. Hertz vs. J. Abel.

Filed in my office
this 22nd day of March
A. D. 1879.

Peter Michels
Justices of the
peace.
No 4

State of Minnesota }
County of Carver. }
In Justice Court
Before Peter Michel.
Justice of the Peace
Berthold Hertz }
Plaintiff. }
vs
John Etzell }
Defendant. }

Sir.

Please to take notice that the
above named Defendant John Etzell
appeals to the District Court Eighth
Judicial District in and for said
County of Carver from the judgment
rendered by said Justice of the Peace
in the above entitled action on the
22nd day of March 1879, against said
John Etzell Defendant therein, and
that the said appeal is taken upon
questions of both law and fact.
Dated Chaska April 1st 1879
Yours Respy

H. C. Odell

Atty for Deft.

To

The above named Plaintiff
And to Frank Warner Esq
Atty for Plff.

No 5

Justice Court
before

Peter Michels

Barthold Hertz
Plaintiff

vs

John Edgell
Defendant

Defendant

Notice of appeal

Subscribed and
sworn to this 1st
day of April 1899
P. Michels
Justice of the
Peace

W. B. Odell
Atty for Deft

Filed April 1st 1899
C. H. H. H. H.

State of Minnesota }
County of Carver }

W. B. Odell of said County
being first duly sworn says that
on the 1st day of April 1899 he served
the written notice of appeal on
Frank Warner Esq the attorney
for the Plaintiff in the within
entitled action by leaving a true
copy thereof at the residence of
said Frank Warner in the Village
of Carver in said County and
State with Mrs Warner the daughter
of said Frank Warner and a
person of suitable age and
discretion.

W. B. Odell

~~Subscribed and sworn to before me this 1st day of April 1899~~

State of Minnesota,
County of Carver } ss.

IN JUSTICE COURT.

Before Peter Michels.

Justice of the Peace.

Berthold Herz
Plaintiff.

John Eggell
Defendant.

State of Minnesota,
County of Carver } ss.

John Eggell

came personally before me, and being duly sworn, he doth depose and say, that he is

John Eggell
Defendant
in the above entitled cause; that said Defendant said
appeals to the District Court in and for said County, from
the judgment rendered by said Justice of the Peace, in this cause on the 22nd
day of March A. D. 1879 in favor of said Plaintiff therein;
and that the said appeal is made in good faith, and not for the purpose of delay, and further
saith not.

Subscribed and sworn to before me, on this 22nd day of
March A. D. 1879

J. F. Willey
Justice of the Peace

John Eggell

3

1

1

1

State of Minnesota,

IN JUSTICE COURT,

County of

Carver

Before

Peter Michel Justice.

Barthold Hertz
Plaintiff

vs
John Etzell
Defendant

BOND ON APPEAL.

KNOW ALL MEN BY THESE PRESENTS, That we

John Etzell

as principal, and

Leonard Van Sloun and

Joseph Williamson as sureties are held and firmly bound unto

above named

in the sum of

One Hundred

Dollars, to be paid to the said

Barthold Hertz

for the payment whereof, well and truly to be made, we jointly and severally bind ourselves, our heirs, executors and administrators, firmly by these presents.

Sealed with our seals and dated this

22nd

day of

March

A. D. 1879

The condition of this obligation is such that, whereas the said

John Etzell

appeals to the District Court for said county from that certain

judgment rendered by said Justice of the Peace, in the above entitled action, in favor of said

Barthold Hertz

and against said

John Etzell

on the

22nd

day of

March

A. D. 1879

NOW THEREFORE, if the said Appellant

John Etzell

shall prosecute his appeal with effect and abide the order of the Court therein, then this obligation shall be null and void, otherwise of force and effect.

In testimony whereof, we have hereunto set our hands and seals the day and year aforesaid.

Signed, Sealed, and Delivered in Presence of

J. F. Dilluy
N. C. Odell.

John Etzell
Leonard van Sloun
Joseph Williamson

SEAL

SEAL

SEAL

STATE OF MINNESOTA.

County of

Carver

ss.

Be it Known, That on this

22nd

day of

March

A. D. 1879,

came before me personally

John Etzell

Leonard Van Sloun and Joseph Williamson

to me well known to be the same persons who executed the foregoing Bond, and they severally acknowledged the same to be their own free act and deed.

J. F. Dilluy
Justice of the Peace

State of Minnesota,

County of

Carver

ss.

Joseph Willmann

Leonard Van Slou and

being by me first duly sworn, doth say, each for himself, that he is the surety above named; that he is a resident and freeholder of and in this State of Minnesota, and worth the amount of Dollars, specified in the foregoing Bond, above his debts and liabilities, and exclusive of his property which is exempt from execution.

Subscribed and Sworn to before me, on this
A. D. 1879

Leonard Van Slou
Joseph Willmann
2nd day of March

J. F. Dilly
Justice of the Peace

Apr 7

IN JUSTICE COURT

Carver

County

Peter Michels

Justice

Perthold Herz

AGAINST

John Bergelt

BOND ON APPEAL.

I hereby approve the within Bond and the
sureties thereon.

Dated and filed April 1st

A. D. 1879

Peter Michels

Justice of the Peace.

W. C. Cull

Attorney for Defendant.

Filed April 1st 1879
W. C. Cull

No 1.

State of Minnesota }
County of Carver } ss. Justices Court before
Berthold Hertz Charles Johnson
Justice

vs
John Etzel Civil action
To the District Court of Carver County.

An appeal having been made from the
Judgment, made by me in said cause.

I hereby make return, of the proceedings
had before me, the undersigned, and the above
named Chs Johnson Justices therein, pursuant
to Statute as appears in my Docket vs
Transcript

State of Minnesota }
County of Carver } ss. Justices Court before
Berthold Hertz Charles Johnson Justice
Civil Action

vs
John Etzel
Summons issued March 7th 1879 delivered
to Alf Tory Constable, and returnable
March 15th 1879 at one O. Clock in the afternoon
March 15th 1879 Summons returned, served
by Alf Tory Constable, as appears by his
return indorsed thereon, Suit called at
one O. Clock in the afternoon, parties pre-
sent. Plaintiff appeared by Frank Warner
Esqr Attorney. Deft appeared W C Odell
Attorney. Plaintiff filed his complaint
see No 2.

No 2.

duly verified, the Deft. filed his answer duly verified, whereupon, the defendant asked for an adjournment for one Week whereupon, the Court adjourned untill March 22nd 1879 at 10, O'Clock in the forenoon.

March 22nd The Suit called in accordance with adjournment parties present. The term of Office having expired of Charles Johnson, by reason of Election and qualification of Peter Michels, this action with papers was turned over to said Peter Michels for trial

March 22nd Case called, by Peter Michels Justices Plain-
at 10, O'Clock tiff and Defendant appeared.

Defendant by his Attorney W. C. Odell appeared specially, and for the purpose of the Motion only and moved, to, dismiss the action on the Ground, and for the reason, first, that this Court has never acquired Jurisdiction of the person of the Defendant in the manner prescribed by Law, and 2nd the Court has no jurisdiction to try and determine this action. motion overruled, and the decision of the Court, overruling such motion, and Defendant duly except.

The plaintiff was sworn, and then called, and testified, as the matter stated in the Complaint, the Defendant offered no evidence, the cause was then sub-
mitted

No 3.

No 3.

to this Court whereupon this Court
orders and adjudges and determines
that said Plaintiff recover of said De-
fendant, the Sum of forty eight $\frac{50}{100}$ Dollars
besides the cost of this action amounting
in all to fifty two $\frac{35}{100}$ Dollars ($\$52 \frac{35}{100}$)

Justice cost for	Constable cost
As Johnson Justice	Service Summons 15 cents
Sum 25 cent	Copie 15
filing 3 papers 15	16 Miles Travel 1.60
2 Cots 30	$\$1.90$
one adjournment 15	85
Total 85 cents	1.10
	$\$3.85$

Justice fees for P. Michels	Peter Michels
Entering Judgment 25	Justice of the
Satisfaction 25	peace
taxing cost 15	
entering Order 15	
Entering acceptance 15	
one Cat 15	
	$\$1.10$

see also 4

No 4

I hereby certify that I have compared the foregoing with the original Entries in my Docket and that the same is a correct transcript had before me in said cause that ~~that~~ the affidavit and notice of appeal together with all the papers had before me therein are herewith returned and attached and numbered from 1. to No 7 inclusive and that together with said Transcript they contain a full and perfect statement of all the proceedings had before me in said cause.

Given under my hand this 5th day of April
A.D. 1879

Peter Michels

Justices of the peace

7 papers besides the Transcript making
eight P. M. J. of the Peace

Filed April 4th 1879
J. H. Wray, Clerk

State of Minnesota
Justice Court
County of Carver,

Berthold Berthz
vs
John Etzel.

Transcript of Justice Booklet,

filed April 14th 1889.
Geo. Krueger
Clerk.

940

State of Minnesota
District Court
Eight Judicial District
County of Carver
Barthold Hertz,
Plaintiff.

^{vs}
John Etzell,
Defendant.

County of Carver, S.S.

W.C. Odell of said
County being first duly sworn.
says that he is the attorney for
the Defendant in the above
entitled action: that said Defendant
has fully and fairly stated to this
~~Defendant~~^{affiant} the case and the
facts which he expects to prove
by one Joseph Schaaf, and from
such statement which this
affiant believes to be true, this
affiant says that said Joseph
Schaaf is a material witness
on the trial of said action
on behalf of said Defendant.
and that without the testimony
of said witness, said Defendant
cannot safely proceed to the
trial of this cause; that said

Joseph Schaaf resides at Murdock
in the County of Swift in this
State: That on the 2nd day of
October Inst this affair caused
to be issued ^{out of this court} a Subpoena directed
to the said Joseph Schaaf. com-
manding him to attend the
present term of the Court as
a witness in said case on
behalf of said Defendant which
Subpoena was made returnable
on the day of the term; that this
affair immediately thereafter
forwarded said Subpoena to the
Sheriff of said Swift County by
mail, and instructed said
Sheriff to serve such Subpoena
upon said Schaaf: that said
Sheriff has not returned such
Subpoena to the Court, nor
has said Schaaf put in an
appearance as a witness
hereto; that this affair has
been informed by his clerk
that said Schaaf expressly raised
the payment of his fees as
a witness hereto in advance
and signified his willingness

to attend without the payment
of such fees.

This affidavit further says that
from the statement of the
case made to him as afore-
-said by said Defendant and
which the affiant believes to
be true. the affiant says
that said Defendant has a
good and substantial defense
to said action on the merits.

That the testimony of said
Schaaf can be procured at
a subsequent term of this
Court as the affiant verily
believes.

Subscribed & sworn to } W. C. Odell,
Before me this 14 day
of October 1879

Wm. H. H. H.
J. R. R. R.
C. R. R. R.

District Court

8th District

Barthold Herz

vs

John Etzall,

aff for con

Filed October 14th 1896
Gestrenge unter
Uelund

Wto

State of Minnesota, In District Court
County of Carver } 8th Judicial District
Berntson & Co. Plaintiffs }
- 75 - } Affidavit
John Ethel Defendant }

State of Minnesota }
County of Carver } 12

John Ethel being first
duly sworn says that he is defendant
in the above related action, that one
Joseph Schauf is a material witness
for the defense in said action without
whose testimony he cannot safely
proceed to the trial of said action,
And affiant says that if the said
Joseph Schauf were present as a witness
he would testify
in behalf of the defendant as follows,
1. That the twenty (20) Keys of beer
mentioned in plaintiffs bill of particulars
as having been delivered to their
defendant on the 4th day of September
A.D. 1873 were delivered to him for the
use and benefit of him the said
Joseph Schauf, ^{and} Leonard Braker, and
M. Boumgarthner as a committee
for a picnic held for a charitable
purpose, that said beer was taken
and used by them as such committee

and was not used by said defendant,
That on ~~at~~ or about the 20th day of
September 1873 he said Joseph
Schauf paid to the said plaintiff
Berthold Hertz the sum of forty five
(\$45.) dollars in account of the aforesaid
beer, and thereafter he paid to the said
Berthold Hertz the further sum of five
dollars in full payment of the
aforesaid twenty (20) kegs of beer,
so delivered to said defendant as
aforesaid.

And affiant further says that
said plaintiff has now given him
credit for the forty five dollars so
paid for said beer by the said
Schauf as aforesaid, and that
the said Joseph Schaaf promised
affiant to attend and be present as
a witness on defendant's behalf on the
trial of this action at this term of
this court, and expressly waived
the payment of his fee as such
witness. Affiant further says that
he has fairly and truthfully stated
his cause to his counsel and is
informed by him that he has a
good defense herein upon the

merits, and further affiant saith
not except that he makes this
affidavit for the purpose of
obtaining a continuance of the
trial of said cause,

Subscribed and sworn to

before me this 14th day of

October A.D. 1879

Georgetown

301 27

Alfred H. H. H. H.

Alfred H. H. H.

John E. H.

State of Minnesota
District Court
County of Carver.

Berhold Hertz

^{vs}
John E. Hertz,

Affidavit of Debt.

Filed October 14th 1899,
Gibbs & Hertz
Clerk

Not

State of Minnesota
Dist. Court 8th Dist.
County of Carver

Berthold Hertz

vs.

John Etzell

We the jury in the above
entitled action find
for the defendant.

Chas Stone

Foreman

State of Minnesota
District Court
Hennepin County.

Benjamin M. Smith
vs
John E. Smith.

Verdict.

Given, October 14th 1879
Eschmayer & Co.
clerk

True

State of Minnesota.

District Court.

Eighth Judicial District

County of Carver.

Berthold Hertz.

Plaintiff.

vs
John Etzall.

Defendant.

It is hereby stipulated by and between
the Attorneys for the respective parties to
the above entitled action that the Defendants
costs and disbursements in said action
may be taxed by the Clerk of the above
entitled Court and inserted in the judgment
in said action without notice to either
party as per the annexed bill of costs
and disbursements.

Dated Nov 12th 1879

Frank Warner

Atty for Plff.

W. C. Odell.

Atty for Deft.

	1
	2
	3
	4
	5
	6
	7
	8
	9
	10
	11
	12
	13
	14
	15
	16
	17
	18
	19
	20
	21
	22
	23
	24
	25
	26
	27
	28
	29
	30
	31
	32

Stipulation up Portation
of Costs,

Filed November 14th 1899
C. W. Maynard
Clerk

State of Minnesota, } District Court 8th Jud Dist.
County of Carver

Bershold Hertz Plaintiff.
AGAINST
John Etzell Defendant.
Affidavit of Disbursements.

Plaintiff's Costs and Disbursements.

Statute Costs, - - - - - \$ 10.00.

Disbursements.

3 Affidavits, - - - - - .75.
Sheriff's Fees, Service of Subpoena, - - - - - 3.40.
Clerk's Fees to be added, - - - - - 7.96
Costs in Justice Court as per Return.
Justice Johnson, .85
Justice Nichols, 1.10
Constable, 1.90 3.85
Justice - Return to appeal, 2.00.
Total costs, \$ 27.90

Amount Claimed in Summons.

Principal, - - - - - \$

Interest, - - - - - \$

State of Minnesota, } ss.
County of Carver

W. C. Odell came personally before me, and
having been first duly sworn, he doth depose and say, that he is
the Attorney of said Plaintiff in the above entitled cause; that the above
bill and items of Costs and Disbursements therein, are just and correct
and have been necessarily incurred therein.

Subscribed and Sworn to before me, on
this 12th day of Nov A. D. 1877

W. C. Odell
J. P. Sully
Justice of the peace

State of Minnesota, }
County of _____

Court _____

AGAINST

Affidavit of No Answer.

State of Minnesota, }
County of _____

_____ came personally before
me, and having been first duly sworn, he doth depose and say, that he is
_____ the Attorney for the Plaintiff in the above entitled action:

and that no answer or demurrer, or copy of either has been received by
the Plaintiff's Attorney in this cause, and prays judgment according to
law.

Subscribed and Sworn to before me, on
this _____ day of _____ A. D. 187 _____

Dick East 8th Jud Dist
Barver. County.

Berthold Fertz
Plaintiff
Against
John Etzell
Defendant.

Dicks costs etc.
Affidavit of No Answer, &c.

W. L. Odell
Attorney for Plaintiff.
Printed and for sale at the St. Paul Pioneer Office.

Filed November 14th 1874
J. H. Weyenbach
Clerk

State of Minnesota
District Court Eighth Judicial District
County of Le Sueur.

Berthold Herth
against
John Webb.

This Cause having been brought
on for trial at the General Term of said Court on the
14th day of October A.D. 1879, before a jury duly impaneled
and sworn and the said jury having returned a
verdict in favor of Defendant and against the
Plaintiff.

Now therefore on motion of W. C. Odell
Attorney for said Defendant, It is hereby adjudged
and determined that said Defendant recover
of said Plaintiff the Sum of Twenty Seven dollars
and ninety cents Costs and disbursements taxed
as per Stipulation in said Action and that said
Defendant have his lawful process therefor.

Dated November 14th A.D. 1879.

By the Court: C. Krayenbuhl
Clerk.

State of Minnesota
District Court
County of Carver,

Berthold Herth
vs
John E. Bell,

Judgment Roll.

Judgment for Defendant
for costs \$24.90

Filed November 14th 1879
Guthrie & Co.
Clerk

W. C.

W. C. Odell atty for Defendant
Charles Amundson

No.

1710

Money
Losed

DISTRICT COURT,
CARVER COUNTY, MINN.

Phillip Henk
Plaintiff.

vs.

Lucius Howe & Emma Howe
Defendant.

L. L. Patter & Samuel Patter
Plaintiff's Attorney.

H. J. Beck
Defendant's Attorney.

Date of Entry *April 7th* 1879

Register of Actions "A" Page 246

Term Tried *At the General* 1879

Judgment for *Plaintiff*

Amount of Judgment \$ *364.69*

Date of Judgment *January 7th*, 1881

Judgment Book "B" Page 46

Default Judgment Book Page

Date of Docketing *January 7th*, 1881

See presentment "A" page 328-

State of Minnesota
County of Carver

District Court
Eighth Judicial District.

Philip Henk, Plaintiff
vs.
Lucius Howe, Defendant.

The complaint of the Plaintiff in the above entitled action respectfully shows to the Court, that between the 1st day of December A.D. 1875, and the commencement of this action the above named Defendant became and is now, indebted to the above named Plaintiff in the sum of One hundred and seventy five dollars for money paid said out and expended by the Plaintiff for the Defendant at his request and that no part of said sum has ever been paid.

Wherefore the Plaintiff demands judgment against said Defendant for the sum of one hundred and seventy five dollars (including the costs and disbursements of this action).

L. H. Baxter & C. Fowler
Plaintiffs Attorneys
Charles, Minn.

State of Minnesota } ss.
County of Carver }

Philip Henk being first duly sworn deposes and says that he is the Plaintiff in the foregoing entitled action; that the

foregoing complaint is true of his own knowledge,
except as to those matters which are therein stated on his
information and belief and as to those matters he believes
it to be true.

P. Hunt

Subscribed and sworn to
before me this 10th day of
August A.D. 1884.

Samuel Fowler
Justice of the Peace.

Warner County
District Court

Philip Henk
vs
Lucius Howe.

Complaint and Verification.

Filed August 16th A.D. 1881.
G. H. Hagenbuhl
Clerk.

1881

Chas. H. Baxter and G. Fowler
Plaintiffs Attorneys.

State of Minnesota District Court
County of Carver Eighth Judicial District

Philif Hank }
 } against
Lucius H. Hove } 3

The plaintiff in the above
entitled action for complaint against
the defendant therein respectfully states
and shews to the Court that on the 4th
day of December 1887 the above
named defendant made executed duly
acknowledged and delivered to the
above named plaintiff a good and
sufficient deed of conveyance of
the following described pieces and
parcels of land situated lying and being
in the County of Carver and State
of Minnesota to wit Lots one and two
in Block thirty seven, the undivided
half of Lots three four five six seven
eight nine and ten in Block Eighteen
and Lots three four and ten in Block
Nineteen all in the Village and Township
of Chaska in said Carver County accor-
ding to the recorded plat of said Village
and Township in the Office of the Register
of Deeds of said County. That from
and since the day and year aforesaid

under and by virtue of said deed of
conveyance which was on the 1st day of
January AD 1876 duly recorded in the
Office of the Register of Deeds aforesaid
in Book "R" of Deeds on page 84. The
said ~~defendant~~ ^{Plaintiff} has been and now
is the owner of said above described
premises in fee. That said conveyance
so as aforesaid made by defendant
to plaintiff was made in consideration
of a debt which the said defendant
~~the said~~ ^{and the} owed to the plaintiff and in satisfaction
thereof the amount of which debt
then and then amounted to and
was of the sum of $539 \frac{59}{100}$ - dollars.
That thereafter and on the day and
year aforesaid the said defen-
dant desired to purchase and how
or conveyed to him said above
described property, ~~and~~ under took
and promise in consideration of said
conveyance to pay said plaintiff
for said premises as purchase money
therefor the sum of five hundred and
thirty nine and $59/100$ dollars, and then
and then conveyed with said plaintiff
for such conveyance to him of said
premises for the price and sum
aforesaid.

State of Minnesota
County of Carver
District Court

Philip Henk
against
Lucius Howe

Complaint

Filed August 25th 1849
C. Kraenbuhl
Clerk,

= 229 =
L. C. Baister and Son
Atty Atty

State of Minnesota
County of Carver

ss. Philip Henk being first duly sworn says that he is the

Plaintiff in the foregoing entitled action. And that he has heard read the foregoing complaint and knows the same to be true of his own knowledge except as to the matters which are therein stated on his information and belief and as to those matters he believes it to be true

Subscribed and sworn to before me
this 4th day of August A.D. 1879

P Henk

Geo. A. DuToit
Notary Public Minn.

Whereupon the said plaintiff in con-
sideration of such bargain, made the
8th and on the said 4th day of De-
cember A.D. 1875 made certain deed
delivered to the said defendant his bond
bearing date of that day, conditional
for the conveyance by him said plaintiff
to said defendant of said premises
upon being paid by said defendant
within one year after the date thereof
the sum of five hundred and
thirty nine and 59/100 dollars, ~~with~~
with interest thereon at the rate of
twelve per cent per annum accor-
ding to the conditions of a certain
promissory note made and executed
by said defendant to said plaintiff
and bearing date with said bond
^{although after repudiation so to do}
That said defendant has not com-
plied with the conditions of said bond
or promissory note but ever has
and still does neglect and refuse
to pay the said sum of five hundred
and thirty nine and 59/100 dollars
or any part thereof, although by the
terms and conditions of said bond
and promissory note the same
became due and payable long
before the commencement

of this action. And the plaintiff further
says that although civil deed of
conveyance from defendant to plaintiff
purports to convey to plaintiff the
whole of Lots three four five six seven
eight nine and ten in ^{Section} Block Eighteen
the only interest owned therein by civil
defendant at the time of the execution
of civil deed or since, and all that
is claimed therein by civil plaintiff
is the undivided half thereof.

Wherefore the plaintiff demands
judgment that the said bond be
dismissed up and cancelled upon
~~the surrender~~ by the plaintiff of
said promissory note and that
the title to said premises as above
claimed by the plaintiff be de-
clared to be in said plaintiff free
and clear from any right of
redemption in said defendant
or other persons. And for such other
and further relief ^{including the costs of this action} as the court
shall deem just and proper.

L. L. Banta and
Snyder

Plaintiff's Attorney
Chaska Minnesota

fol 1

State of Minnesota,
County of Carver }

District Court
Eighth Judicial District

Philip Henk

against

Lucius Howe and

Emmons L. Howe

Complaint

The complaint of the
Plaintiff respectfully shows to the Court
For a first Cause of action:

fol 2

That on the fourth day of December
A.D. 1875 the above named Defendant
Lucius Howe was the owner in fee simple
of the following described pieces or parcels of
land situate lying and being in the County
of Carver and State of Minnesota, to wit:
Lots one and two in Block thirty seven
and the undivided half of Lots three four five
six seven eight nine and ten in Block
eighteen and Lots two three four and ten in
Block nineteen all in the Town site of
Chaska according to the plat of said
Townsite on file and of record in the
office of the Register of Deeds of said County
of Carver, and that said Defendants
Lucius Howe and Emmons L. Howe on the
said fourth day of December A.D. 1875 were
the owners in fee simple of the following

fol 2

described piece or parcel of land situate lying and being in the County of Carver and State of Minnesota, to wit:

fol 3 The South West quarter of the South West quarter of Section twenty one in Township one hundred and sixteen of Range twenty three.

That on the fourth day of December A.D. 1875 the above named Defendants Lucius Howe and Eunome L. Howe for the purpose of securing the payment to the above named Plaintiff of the sum of three hundred dollars and interest thereon, made executed and delivered to said Plaintiff a certain

fol 4 Warranty deed bearing date on that day and sealed with their seals whereby the said Defendants granted bargained and sold unto said Plaintiff the said West above described piece or parcel of land with the appurtenances therunto belonging. And that said Warranty deed was on the 19th day of January A.D. 1876 duly recorded in the office of the Register of Deeds of Carver County aforesaid in Book "R" of deeds on page 83.

fol 5 That the above named Defendant Lucius Howe for the purpose of securing the repayment to said Plaintiff of the sum of Five hundred and thirty nine and $\frac{59}{100}$ dollars on the said fourth day of December A.D. 1875

fol 6

Made executed and delivered to said Plaintiff a certain warranty deed bearing date on that day whereby the said Defendant Lucius Howe granted bargained and sold to the said Plaintiff Philip Henk the following described premises with the appurtenances thereto, that is to say: all that parcel of land situate lying and being in the County of Carver and State of Minnesota, known and described as follows: to wit:

fol 7

Lots one and two in Block thirty seven and the undivided Lots three four five six seven eight nine and ten in Block eighteen and lots two three four and ten in Block nineteen all in Townsite of Chaska according to plat on file and record in the Registry of Deeds of said Carver County; and that said Warranty deed was on the 19th day of January A.D. 1876 duly recorded in the office of the Register of Deeds of Carver County aforesaid in Book "R" of Deeds on page 84

fol 8

That at the time of the execution and delivery of said last mentioned Warranty Deed it was understood and intended by both of the parties to said conveyance that said deed should and would convey the entire interest of the said Defendant Lucius Howe in

fol 9 said Lots three four five six seven eight nine and ten in Block number eighteen in said Townsite of Chaska and that the interest held and owned by said Defendant Lucius Howe on said 4th day of December A.D. 1875 was an undivided half of said lots as hereinbefore stated.

That by an error mistake and omission ^{the word half was omitted from drawing said deed} in the description of said lots in said Deed and the said conveyance does not specify or show the interest held by said Defendant Lucius Howe and by him on said day conveyed to the above named Plaintiff.

fol 10 That on the said fourth day of December A.D. 1875 the above named Plaintiff made executed and delivered to the said Defendants Lucius Howe and Eunice L. Howe a certain Bond bearing date on that day sealed with his seal whereby the said Plaintiff did bind himself his heirs executors and administrators in the penalty of three hundred (300) dollars upon condition that the same should be void if the said Plaintiff his heirs executors administrators or assigns should upon the payment to said Plaintiff ^{of the sum of three hundred dollars} within one year from the date of said bond by the said Defendants or their executors administrators or assigns according to the condition of a certain

fol 11

promissory note for said sum with interest
~~at the rate of twelve per cent per annum~~
thereon, made by the said Defendants payable
one year after date to the said Plaintiff with
interest at the rate of twelve per cent per
annum and bearing even date with
the said bond, make execute and deliver
to said Defendants Lucius Howe and
Immanus C. Howe a good and sufficient
warranty deed of the following described
premises, ~~Situate~~ lying and being in
Carver County aforesaid, to wit:

The South West quarter of the South West
Quarter of Section twenty one Township
one hundred and sixteen of Range
Twenty three

And that on the said fourth day of December
A.D. 1875 the above named Plaintiff made
execute and delivered to the said Defendant
Lucius Howe - a certain other Bond
bearing date on that day sealed with his seal
whereby the said Plaintiff did bind
himself his heirs executors and administrators
in the penalty of Five hundred thirty nine and $\frac{59}{100}$
dollars upon condition that the same
should be void if the said Plaintiff his heirs
executors administrators or assigns should,
upon the payment to said Plaintiff of the the

fol 16

Sum of Five hundred thirty nine and $\frac{57}{100}$ Dollars
within one year from the date of said Bond
by the said Defendant or their Executors
Administrators or assigns according to
the condition of a certain promissory note
for said sum with interest thereon at the
rate of twelve per cent per annum made
by the said Defendants payable one year
after date to the said Plaintiff and bearing
even date with said last-mentioned Bond,
make execute and deliver to said Defendant

U3

fol 17

Lucius Howe a good and sufficient
Warranty Deed of the following described
piece or parcel of land situate lying and
being in Carver County aforesaid, to wit:

Lots ^{one} and two in Block thirty seven The undivided
one half of Lots three four five six seven eight nine
and ten in Block eighteen - Also lots three four and
five in Block nineteen in the Townsite of
Chaska according to plat of same on file and of
record in the Register of Deeds office in said Carver County

And the said Plaintiff further shows that
the said Defendants and each of them
have failed to comply with the conditions
of said promissory notes and bonds by omitting
and neglecting ~~the~~ to pay the several sums
which by the terms and conditions of
said promissory notes became due on the

fol 18

seventh day of December A.D. 1876 and
there is now justly due ^{to said Plaintiff} upon the said
promissory notes so secured as aforesaid
fol 19 the sum of eleven hundred and seventy - - dollars.
And the Plaintiff further shows that no proceedings
have been had at law or otherwise for the
recovery of the said sum secured by the said
Promissory notes and Warranty deeds, or any
part thereof

And said Plaintiff further shows that since
the execution of the above mentioned Warranty
Deeds said Plaintiff has paid laid out and
fol 20 expended in payment of taxes on said above
described lands the sum of one hundred and
Eighty dollars and that there
is now due to said Plaintiff from said Defendants
the sum of two hundred and twenty five dollars on
account of said money ^{and interest thereon} so paid as aforesaid.

Wherefore said Plaintiff prays
for judgment of this Court as follows:

1st That an order may be made
ordering said ~~Defendant Lucius~~
~~Howe~~ to the correction of said deed
from said Defendant - Lucius Howe to
this Plaintiff so as to make said
deed convey ^{to said Plaintiff} the entire interest held
by said Defendant Lucius Howe
on said 4th day of December A.D. 1876

fol 21

in the lands described in said
deeds

2nd That both of the above described
bonds may be ordered by this Court
to be delivered to said Court for
cancellation or that said

Defendants may be required to
pay the moneys due upon said
promissory notes within such time as to
the Court may seem just.

3rd For such further and other
relief as to the Court may seem
just.

L. L. Bantier and S. Fowler
Plaintiffs Attorneys
Chaska Minn

State of Minnesota
County of Carver }

Philip Henk
being first duly

sworn Says that he is the Plaintiff in
the foregoing entitled action,
and that the foregoing complaint is
true of his own knowledge except as
to those matters which are therein
stated on his information and belief
and as to those matters he believes it
to be true -

Subscribed and sworn to
before me this 7th day of
March A.D. 1899

W. C. Odell

Notary Public

Carver Co. Minn.

P Henk

COUNTY OF CARVER.

District Court,
EIGHTH JUDICIAL DISTRICT.

SUMMONS.

Philip Henk
- against -
Lucius Howe and Summons L. Howe

The State of Minnesota to the above named Defendant:

You and each of you are hereby summoned and required to answer the Complaint of the Plaintiff in the above entitled action, a copy of which is herewith served upon you, and to serve copy of your answer to said Complaint on the subscribers, at their office in the Village of Chaska, in the County of Carver and State of Minnesota, within twenty days after the service of this Summons upon you, exclusive of the day of such service, and if you fail to answer the said Complaint within the time aforesaid, the Plaintiff in this action will apply to said Court for the relief demanded in said complaint

together with the costs and disbursements of this action.

Dated at Chaska,

A. D. 187

L. L. Baxter and S. Fowler
Plaintiff's Attorney.

DISTRICT COURT,

COUNTY OF CARVER,

Philip Hawk

vs

Lucius Howe et al.

SUMMONS.

Filed April 25th 1879.
Wm. W. W. W. W. W.

L. L. Hawk vs J. J. Hawk

Plaintiff's Attorney.

Chaska, Minnesota.

Davison & Henderson, Print, Minneapolis.

2 246 =

State of Minnesota ss. I hereby Certify and Return
County of Carver ss. that I did at the village of Chaska, in the
County of Carver, Minnesota, on the 7th day of
March A.D. 1879, serve the within Summons
and annexed complaint on each of the
within named defendants, Lucius Howe and
Emmus Howe by handing them & each of
their true & correct copies of the within
named papers 42 00 F. E. DeTact.
Recd 2 copies 2 00 Sheriff Carver
2 00

Fol 1

State of Minnesota }
County of Carver }

District Court
Eighth Judicial District

Philip Henk }
 } against
Lucius Howe }

Reply.

The Plaintiff in the
above entitled action for reply to the answer
of the Defendants therein

As to the first defense set up in said answer
the Plaintiff denies the same and each and
every allegation statement matter and thing
therein contained except the statement therein
"That heretofore to wit on the 10th day of March
1879 an action was commenced in the District
Court of the County of Carver in said State wherein
Philip Henk the above named Plaintiff was
Plaintiff and Lucius Howe and Emmons L. Howe
were the Defendants and that a summons
therein was duly served upon said Defendants
which statement the Plaintiff admits is
true.

As to the second defense in said answer
contained the said Plaintiff denies the same
and each and every allegation and
statement of new matter therein contained.

L. L. Baxter and S. Foster
Plaintiffs Attorneys
Chaska

Fol 2

District Court
Carver County

Philip Hunk
- vs. -

Lucius Howe
- 1879 -

Reply

Due service of a copy of this
written reply is hereby admitted
this day of September 1879

Witness my hand & seal
this 1st day of September 1879
J. H. Hunk

L. A. Baxter & Son
Plffs Attys

State of Minnesota,

County of Cannon

ss:

Philip Henry

came before me personally, and being duly sworn, doth say that he is the Plaintiff
in the above entitled action; that the foregoing pleading is true to his own knowledge, except as
to the matters which are therein stated on his information and belief, and as to those matters that
he believes it to be true.

Subscribed and Sworn to before me

On this First day of September

A. D. 1879

E. A. Lewis Court Commr

P. Henry

No. 19.

District Court,

Eighth

Judicial District,

County of *Camer*

Philip Heuck

AGAINST

Lucius Howe
Reply &

VERIFICATION.

Due service of a copy of the
within reply is hereby admitted
this day of September 1879

L. Barker & S. Barker
Plaintiffs Attorneys
Chaska Minn.

For sale at Williams' Book Store, Minneapolis.

Mailed Sept 8th to Teck & H. H. Skakoppan

State of Minnesota
District Court, 8 Dist.
County of Cass.
Philip Hark } Plffs.
- vs -
Lucius How &
Gerrard L How. } Defs

The dependants for damages to
the complainant of the plaintiff states
and claims to the Court.

#

That several causes of action
are improperly united in this.
That the Complaint states a
separate and distinct cause of
action entirely unconnected with
each other against each of said depend
ants

- II -

That there is a defect of parties
dependent, in this: That the
causes of action do not affect the
dependants in the same right.

III.

That the said Complaint does not
state facts sufficient to constitute
a cause of action. H. Prob

Attys for defendant

District Court
Linn County

Shirley Lunt

- 221 -

Linn Howard

Deerhaven.

sent by mail
March 19 - 1849.

Filed April 18 1849
Chas. Mayhew
Clerk
= 246 =

H. J. Beck
Att'y

District Court
Carver County.

Philip Henck
vs.

Lucius & Edmunds How.

It is clear that there are ~~two~~ separate and
entire causes of action ~~set~~ up in the complaint,
one against the defendants jointly, and
the other against the defendant Lucius; and
it is just as clear ^{that} they cannot be main-
tained in the present form.

The demurrer is sustained with ten
dollars costs to the defendants to abide the
event of their action. The plaintiff may dis-
miss as to either cause of action, or may
amend his complaint as he may be advised,
at any time within twenty days after notice
of this order.

Dated April 28th / 1879.

John H. Brown
Dist. Judge.

District Court
Carver County
Philip Fench
vs.
Lucius How et al.

Order Sustaining
decrees to complainant

Filed May 2^d 1884
G. W. Rayenbuhl
clerk

Just Court
Lynn County.
Phillip Hook
or
Lucas Hunt
Ormos L How.

Phillip Hook
or
Lucas How.

L. L. Bixler &
J. Fowler
attys for Plffs.

You are hereby requested
to enter judgment in the above entitled
action in said Court within five
days after receipt of this notice
or if you do not, we will enter judgment
therein pursuant to rule 37 Dist
Court of this State.

H. J. Beck
attys for Def.

Service through
copy admitted to
3rd day of June 1881.
J. Foster
City & Co. Buff.

Filed June 3rd 1881.
G. Kreymbuhl
Clerk

Fol 3

the said plaintiff then promising note
whereby for value received they promised to
pay to the said plaintiff in one year after
the date thereof the sum of then hundred
dollars with interest thereon at the rate
of twelve per cent per annum, which
said promising note was executed and
bears date on the 4th day of October
1885. That thereafter and on the day
and year aforesaid the said defen-
dants to secure the payment of said
promising note and the interest thereon

Made ^{and} ~~the~~ ^{by} ~~the~~ ^{and} acknowledge and
delivered to the said plaintiff a deed of
conveyance of the above described
premises conveying thereby to the plaintiff

Fol 4

said premises in fee which said deed
was duly ~~recorded~~ ^{filed} in the office of the Register
of Deeds of said County in
in Book "R" of Deeds on page 83

That thereafter and on the day
and year aforesaid said plaintiff
made and executed under his hand
and seal and delivered to said
defendants his bond conditions for
the recovery of the said defendants
of said premises upon the terms and
conditions in said bond stated and
specified, which bond was duly acknowledged

Fol 5

signed and delivered to said
defendants, and was through the court
on the 3rd day of ^{September} 1887 & duly recorded
in the office of the Register of Deeds
of said Curran County in a book
of ~~A~~ ^{a copy of} which was bound in letter
Attaching hereto Exhibit A and
made a part of this complaint.

And the plaintiff further says that
the said defendants ^{although often requested to do} have not paid the
said sum of three hundred dollars, or
the interest thereon or any part of
said principal or interest, but have
been and still do refuse to pay the
same or any part thereof.

That ~~said~~ no proceedings at law
or otherwise have been instituted to
collect said the said sum of three
hundred dollars or the interest thereon
or any part ^{thereof}, although the same
became due and payable on the
1st day of December 1887. That
the full amount now due on said
promissory ^{note} as principal and interest
is four hundred and twenty four dollars
which said sum is fully equal
to the value of said premises.

Wherefore the plaintiff demands judgment
that the bond be delivered up to
said plaintiff for satisfaction, and that

Fol 6

7067

the same and the same record thereof
be cancelled and that the same should
be declared to be void and of no force
or effect what ever and that the
said defendants be released both
before and forever of and from
all liability of redemption or ^{any} interest
what or that whatever in or to
said mortgage.

And for such further and other
relief as to the Court may seem just.

L. A. Baxter & S. Stahr

Plaintiffs Attorneys

Chaska Minnesota

State of Minnesota
County of Carver } ss.

Philip Stark being first
duly sworn says that he is
the Plaintiff in the foregoing entitled action
and that the foregoing complaint is true of his
own knowledge except the matters which are
therein stated on his information and belief
and that as to those matters he believes it to be
true.

Subscribed and sworn to
before me this 2nd day of May
A.D. 1879 Geo. A. Sutcliffe
Notary Public

J. H. W. R.

Exhibit A

Philip Henk
to
Lucius and Sumner L. Howe

Bond for deed

Know all men by these presents that Philip Henk of Chaska in the County of Carver and State of Minnesota is held and firmly bound unto Lucius Howe and Sumner L. Howe in the sum of three hundred dollars lawful money of the United States to be paid unto said Lucius Howe and Sumner L. Howe their heirs executors administrators or assigns for which payment well and truly to be made I bind myself my heirs executors and administrators firmly by these presents

Whereas the said Philip Henk has this day bargained and sold unto the said Lucius Howe and Sumner L. Howe their heirs executors administrators and assigns all certain lots or parcels of land situate lying and being in the County of Carver and State of Minnesota designated and described as follows, to wit:
The South West quarter of the South West quarter of Section Twenty one Township one hundred and sixteen of Range twenty three

Now therefore the condition of this obligation is such that if the said Philip Henk his heirs executors administrators or assigns make default and deliver a good and sufficient warranty

State of Minnesota
County of Carver
District Court

Philip Hank
- vs -

Lucius Howe et al

Amended Complaint

Due service of a copy of the
within amended complaint is
hereby admitted this 24th day
of May A.D. 1879

H. J. Peck

Filed June 9th A.D. 1879
J. H. Maymühl Clerk

L. L. Baxter & S. Fowler

Attys Plaintiffs Attorneys

State of Connecticut
District Court & also
County of Litchfield
Philip Hark

— vs —

Lucius Howe &
Gerrard L. Howe.

The defendants for answer to
the amended complaint of the
plaintiff in the above entitled
action states and shows to the
Court:

— II —

That they admit that at
at the time stated in said
complaint they were indebted
to said plaintiff in the sum
thirteen hundred, and more
at the same time ever since
have been and still are
the owners and kept in full
of the premises described in
said complaint.

— III —

Defendants further avow and
that to secure the payment of the
said sum of three hundred

dollars the said defendants made and executed to said Plaintiff a deed of the premises described in said Complaint and as a part of the same transaction the said Plaintiff executed and delivered to said defendants the bonds described in said Complaint, and for the purposes of record and not otherwise.

- III -

Defendants further aver: That they admit the recording of said ^{deed and} bond at the time and place stated in said Complaint.

- IV -

Defendants further aver: That through and between the said 4th day of December 1875, and the 4th day of December 1876. they sold and delivered to said Plaintiff in the village of Cherokee in said County of being ninety seven thousand bricks at the agreed price of six dollars per thousand, amounting to the sum of \$582.00, which sum was then and there applied in payment of said sum as above

said notes and which seem fully
paid and satisfied said sum
due before the maturity of said
note.

—V—

Defendant further avers, that
he denies that he is indebted to
said Plaintiff, upon said note as to
sum of three hundred dollars or in
any sum whatever, and even that
before the commencement of this action
he fully paid and satisfied the amount
due on said note principal and
interest, and demanded of and
from said Plaintiff that he
execute to him a deed of
said premises pursuant to
the conditions of said bond
which said Plaintiff refused
to do and has not done.

—VII—

Defendant avers, that he denies
each and every allegation in said
complaint contained, not before
mentioned.

Wherefore defendant demands judgment
against said Plaintiff, that he
take nothing by said action and

that there is nothing clear from
said defendants, and that said
plaintiff be required to execute and
deliver to said defendants a
bill of said premises according
to the terms and conditions of said
bond, and for such other or
further relief as shall be just
and equitable in the premises,
with costs of suit.

H. J. Peck
Att'y for Defts.

State of Minnesota }
County of Scott }

H. J. Peck being duly
sworn that he is the attorney for the
above named defendants, that
the foregoing answer is true to
the best of his knowledge and belief,
that the answer to this answer
is not sworn by said capt
& that they are bound by
the County of Scott within their
official duties.

Witness my hand and
seal this 7th day
of July 1879.

H. J. Peck

Best Court
Cann County,

Phillip Hunt

— 75 —

Lucius Howard

Answer,

Filed November 15th 1879.
G. H. Hargenbuhl
Clerk.

— 116 —

157,

H. J. Puck
Att'y for Debt's

1 Philip Henk.
2 vs.
3 Lucius Howe and
4 Eunous L. Howe } Amounts. litigated and
passed upon in judgment

7 Promissory note - Dated Dec 4th 1875 \$300 Int. 12%
8 Promissory note to R. Melvin 19th Nov 1874 ~~300~~ Int. 12%
9 " " 4th Dec 1875 ~~434~~ Int. 12%
10 " " 4th Dec 1875 ~~750~~ Int. 12%
11 Book account to June 15th 1876 106.85
* 12 Book a/c to Oct 27th 1877 \$ 47.75
13 Orders paid to work men on
14 Hardware building } ~~233.45~~

17 Philip Henk
18 vs
19
20 Lucius Howe

21 Promissory note Dec 4th 1875. \$539⁵⁹ Int

* 25 March 7th 1879.
26 Laneo paid on property
27 After making of warranty deed \$180.00
28 Int. on same -
29 Laneo. to date

* 31 Birmingham note

781

State of Minnesota
County of Carver }

District Court
Eighth Judicial District

Philip Henk
- against -
Lucius Howe and
Sumner L. Howe }

Reply

The Plaintiff in the
above entitled action for ~~answer~~ reply to
the answer of said Defendants denies each
and every allegation in said answer
contained, except such of said allegations
as admit the statements heretofore made by
the Plaintiff in the complaint in this action.

L. Bantley and
Stowley

Plaintiff's Attorney

State of Minnesota
County of Carver }

ss. Philip Henk being first duly
sworn says that he is the Plaintiff
in the foregoing entitled action. That he has
heard read the foregoing reply and knows the
same to be true of his own knowledge.

Subscribed and sworn to
before me this 4th day of

August A.D. 1879

E. A. Dubois
Notary Public
Minn.

P Henk

State of Minnesota
County of Carver
District Court

Philip Heuk
against
Lucius Howe et al.

- 146 -

Reply

Due service of a copy of
the within reply is hereby
admitted this 9th day of
August A.D. 1879

Beck & W. H. Hall

Def't's Atty.

Filed, Nov. 14th A.D. 1879,
Clerk of Court

L. L. Banta & F. Fowler

Plaintiff's Atty.

State of Minnesota
County of Carver

District Court
Eighth Judicial District,

Philip Herrick, Plaintiff
against
Lucius Horne, and Immens, & Howe
a Partners doing business under
the name and style of
L. Horne and Son, Defendants.

The Complaint of the Plaintiff in the
above entitled action respectfully sheweth to the Court, for
a first Cause of action.

That between the 4th day of December AD 1875, and the
commencement of this action the above named Defendants
became indebted to the above named Plaintiff in the sum
fifty seven and 50/100 dollars for moneys paid said
out and expended by the Plaintiff for the Defendants
at their request, and that no part of said sum has
been paid.

For a second Cause of action

That between the 24th day of October AD 1874, and the
commencement of this action the above named Defendants
became indebted to the above named Plaintiff in the
sum of fifty three and 90/100 dollars for goods wares
and merchandise reasonably worth and of the value
of fifty three and 90/100 dollars, sold and delivered
by the Plaintiff to the Defendants at their request, and
that said Defendants became also indebted to said
Plaintiff for moneys paid said out and expended
between said 24th day of October AD 1874, and the

Commencement of this action in the Sum of Forty
dollars by the Plaintiff for the Defendants at their request
and that no part of either of said Sum have ever been
paid.

For a third Cause of Action

That on the 20th day of September A.D. 1875 the above named
Defendants made and executed and delivered their certain
promissory note in writing whereby for a valuable
consideration they promised to pay to the order of one
L. H. Baxter ninety days after the date thereof the
sum of one hundred dollars, and that on or about
the month of November A.D. 1874 the said promissory
note was for a valuable consideration paid by the
Plaintiff therefore duly assigned sold and transferred to
the said Plaintiff who is now the owner and holder
of said promissory note and that no part of said promissory
note has ever been paid, but there is now due and
owing to said Plaintiff for principal and interest on
said note the sum of one hundred and forty dollars.

Wherefore the Plaintiff demands judgment against
said Defendants for the sum of Three hundred
and two dollars besides the costs and disbursements
of this action.

L. H. Baxter and S. Fowler
Plaintiffs Attorneys
Charles Minn

State of Minnesota *My* ss.
County of Carver *My*

Philip Hensel being first duly
sworn deposes and says that he is the Plaintiff in the
foregoing entitled action; that the foregoing Complaint

is true of his own knowledge except as to those matters
which are therein stated on his information and belief,
and as to those matters he believes it to be true.

Subscribed and sworn to
before me this 10th day of
August, AD 1881.

Samuel Fowler
Justice of the Peace

J. Henk.

Warner County
District Court,

Philip Hunt
vs
L. Howe and Son,

Complaint and Verification.

Filed August 16th AD 1881.
G. Krayenbuhl
Clerk,

Chas. H. Baxter and S. Fowler
Plaintiffs Attorneys.

State of Minnesota
Dist. Court 8th Dist.

County of Carver

Phillip Henk

vs.

Lucius Howe

This cause came on to be heard and for trial, at the October Ad. 1879 term of said court. Both parties appeared in person and by attorneys.

The case was tried jointly with another action in said court, wherein said plaintiff is plaintiff, and this defendant and Emmons D. Howe are defendants, upon the stipulation of all of said parties that the evidence then taken should apply to each of said two suits so far as applicable.

After considering the proofs and allegations

of the parties, I find as facts:

"That the allegations and statements of fact in said plaintiff's complaint in this action are true.

"That the allegations of new matter and defense in said defendant's answer in this action are not true.

These findings of fact will be fully explained, and my reasons therefor understood, by referring to my findings in the other case heretofore mentioned as tried with this, and herewith filed with the clerk of said court.

Therefore, as conclusion of law, I find, that said plaintiff is entitled to have judgment ^{and decree} herein as follows:

1. For the amount of

the note described in the complaint herein, and interest therein, as therein stated, and costs and disbursements of suit.

2. That the deed and bond described in the said complaint herein ^{are} (jointly) a mortgage ^{secure} to said note, upon the premises therein described, and,

3. That the said mortgage (so called) be foreclosed and said premises sold to satisfy said debt interest and costs, as provided by statute.

But, following Wilder vs. Hughes, 21 Min. 101, this is not to be a "strict foreclosure".

Ordered, That judgment and decree be entered herein in accordance with the foregoing findings.

March 19th 1881.

J. S. McDonald
Judge 9th Dist.

State of Minnesota
Dist. Court 8th Dist.
County of Carver

Phillip Henk
vs.

Lucius Howe

Findings

Filed March 21st A.D. 1881,
Gibbs & Co. Clerk,

279

Folio 1 State of Minnesota
District Court 8th Dist
County of ~~Cannon~~
Philip Hunk } Plff.
- 41 -
Lucius How. } Def.

The defendant for answer to
the Complaint of the plaintiff
in the above entitled action
states and shows to the
Court: That heretofore
to wit: On the 10th day of March
1879, an action was commenced in
the District Court of the County
of Cannon, in said State, wherein
Philip Hunk the above named Plff
was plaintiff and Lucius How
and Emory L How were the
defendants. That a summons there
" 2 was duly served upon said defend-
-ant. That the subject matter set
up and alleged in the Complaint
in said action, was the same
and identical as that set up and
involved in this action, that the
demand for relief in said action
was the same and identical as

that set forth and claimed in
this action, and not otherwise.

11 3 Defendant further says: That the
said action so commenced as aforesaid
was in all respects the same as this
action, and that said action so
commenced on the 18th day of
March 1879, is still pending in the
said District Court of said County
undisturbed and that the same
has never been dismissed or in
any manner abandoned.
Defendant for another and separate
defense to said action, says:

That he admits that at the time
stated in said Complaint he was indebted
to said Plaintiff in the sum stated in
said Complaint and that to secure
the payment thereof and not otherwise he
did execute and deliver to said
Plaintiff a deed of the premises in
said Complaint described and as a
part of said transaction, the said
Plaintiff did execute and deliver to
said Defendant the bond for
a deed described in said Complaint
and of the amount and considerations
in said Complaint set forth.

Defendant admits that said deed
and bond were recorded as stated
in said Complaint.

Defendant further avers, that thereafter
and between the date of said bond and
deed and the first of Oct. 1877, the
said Defendant furnished for and
delivered to said Plaintiff at Muskegon
in said County in payment of ~~an~~
in cancellation and satisfaction of
said indebtedness the sum of
Ninety Seven thousand brick at the
agreed price of \$5.50 per thousand
and One hundred and two thousand
and brick at the agreed price of
\$9.50 per thousand which said
brick were laid in the wall, which
said brick and laying said brick
was reasonably worth said sum
which Plaintiff promised to pay.
That during the time aforesaid
the said Defendant did in payment
of said indebtedness ~~do~~ and
perform work labor and service
for said Plaintiff ~~and~~ and in
addition to the aforesaid work
which was reasonably worth and of the
value of \$95.00 consisting of

filling up old doors in his building
putting up the stone and two columns,
and cutting holes in old building for
the purpose of putting in joice, ~~the~~
Defendant further says that the labor
and material and work done
by said Defendant for said Plaintiff
was applied in payment of said
indebtedness and that it all
amounted to the sum of \$15,97.50
which fully paid and discharged
the said sum so due as ofore said
and has overpaid said Plaintiff
on said indebtedness the sum of
\$800. And that said sum of
\$800 is now due said Defendant
from said Plaintiff as ofore said.
Defendant further says that he
denies each and every allegation
and statement in said Complaint
contained not hereinbefore expressly
admitted or implied,
Defendant further says that he
has demand of and from said
Plaintiff that he ~~bring~~ to said
Defendant the said premises, so
described in said Complaint as
by the conditions of said bond he

is required to do. Which was
by said Plaintiff refused.

Wherefore defendant demands
judgment against said Plaintiff
that he take nothing by said action,
and that Plaintiff be barred from
the further prosecution of said action.

2. That the said sum, so far as
as aforesaid be applied in payment
of said indebtedness and the same
in full satisfaction thereof, and
that Plaintiff be required to
convey to said defendant the
said premises, according
to the Conditions of said bond.
And that defendant have
judgment against said Plaintiff
for such sum as shall be paid
due ~~upon~~ him said defendant
and for his costs and dis-
bursements of suit, and for
such other or further relief as
shall be just and equitable in
the premises.

Dick & Co. Holl
Attys for Deft.

Verifed.

District Court
Leam County.

Philly Bank

— 1 —

Lucius How.

Answer.

Filed Nov: 14th 1849.
J. H. Graymuhl
Clerk.

— 199 —

Pres. M. C. Hole
Atty for Loft

State of Minnesota,
County of *Cannon* } ss.

DISTRICT COURT,
Eighth Judicial District.

Philip Houk

Plaintiff

vs.

Lucius Howe

Defendant

At *General* Term, held *October* 187*9*

This cause having been brought on to be heard upon the motion of plaintiff for Judgment pursuant to the prayer of the complaint herein, and the decision of the court on file in this cause; and it appearing satisfactorily to the court that the summons has been duly served on all the defendants herein; that more than twenty days have elapsed since such service, and that no answer to plaintiffs complaint has been served on plaintiffs attorney except the answer of defendant

Lucius Howe

and the issues made by said answer

having been duly tried by the court, and the decision of the court thereon having been made and filed, whereby it is found among other things that there is due plaintiff from defendant *Lucius Howe*

upon the note and mortgage mentioned and described in the complaint, the sum of *Five hundred and thirty nine and 59/100* DOLLARS and interest thereon, from the *Fourth* day of *December* 187*5*, at the rate of *Twelve* per cent. per annum, *until paid*

and _____ Dollars for attorney's fees, as stipulated in said mortgage, and that due notice of the pendency of this action was duly filed and recorded in the office of the Register of Deeds, in and for the County of *Cannon* on the _____ day of _____ 18____

Now, on motion of *Luther L. Banta and S. Fowler* plaintiffs attorneys herein, IT IS ADJUDGED AND DECREED, that there is due said plaintiff from defendant *Lucius Howe*

upon the note mentioned and described in the complaint herein, the sum of *nine hundred and forty nine and 72/100* Dollars,

and _____ Dollars attorney's fees as aforesaid, and *Twenty six and 92/100* Dollars costs and disbursements of this action.

And it is further ordered, adjudged and decreed, that the mortgaged premises mentioned in said complaint, as hereinafter set forth and described, or so much thereof as may be sufficient to satisfy the amount due to the plaintiff as aforesaid, with costs of this action, which may be sold separately without material injury to the parties interested, be sold in *separate* parcels at public auction, within the County of

Cannon where said premises are situated, by the Sheriff of *Cannon* County, according to the provisions of law relating to sales of real estate on execution. That the said Sheriff give public notice of the time and place of such sale, according to law. That either or any of the parties to this action may purchase said mortgaged premises at said sale. That the said Sheriff shall execute and deliver to the purchaser or purchasers at such sale, the usual certificate as provided by law. That out of the proceeds of said sale, after deducting the amount of his fees and disbursements on said sale, the said Sheriff pay to the plaintiffs attorney the sum of _____ Dollars, the attorney's fees aforesaid, and the further sum of

Twenty six and 92/100 Dollars costs and disbursements aforesaid, with interest on said sums from date hereof. And also the amount adjudged to be due plaintiff upon said note and mortgage as aforesaid, with interest thereon from date hereof,

or so much thereof as the purchase money of said mortgaged premises will pay of the same. That he bring the surplus moneys arising from said sale after said payments as aforesaid, if any there be, into court to abide the further order of the court in the premises, and that he make report of said sale and all his proceedings in the premises, and file it with the clerk of this court, with all convenient speed,

And it is further ordered, adjudged and decreed, that the defendant and all persons claiming under *him* subsequent to the filing of said notice of the pendency of this action, be

forever barred and foreclosed of all right, title, and equity of redemption, in and to said mortgaged premises so sold, and every part thereof, (except only the right of redemption allowed by statute for one year after the date of the order confirming the sale made under and by virtue of this judgment.)

And it is further ordered, adjudged and decreed, that if the moneys arising from such sale shall be insufficient to pay said Sheriff's fees and disbursements, and the amounts adjudged to be due plaintiff as aforesaid, with interest, then said Sheriff shall specify the amount of such deficiency in his report of said sale; and that on the confirmation of said report, the defendant Lucius Howe who is personally liable for the payment of the debt secured by said mortgage, pay to the plaintiff the amount of such deficiency, with interest thereon from the date of said report, and that the plaintiff have execution therefor.

The following is a description of the mortgaged premises hereinbefore mentioned:

Lots numbers one and two in Block number thirty seven and the undivided half of Lots number three four five six seven eight nine and ten in Block eighteen and Lots numbers three four and ten in Block nineteen all in the Village and Townsite of Chaska in said Carver County and State of Minnesota according to the ~~repor~~ recorded plat of said Village and Townsite in the office of the Register of Deeds of said County.

Dated this Seventh day of June A.D. 1881

ATTEST:

Wm. H. Hunt

Clerk of the District Court.

Wm. H. Hunt

Deputy

District Judge.

Wm. H. Hunt

DISTRICT COURT,

County of Carver

Philip Hank

Plaintiff
against

Lucius Howe

Defendant

Decree on Trial in Foreclosure.

L. L. Bentler & S. H. Foster

Plaintiffs Attorneys

Chaska Minn.

Pioneer Press Co., St. Paul, Minn.

State of Minnesota
Dist. Court 8th Dist.
County of Carver.

Phillip Henk

vs.

Lucius Howe &
Emmons L. Howe

This action came on for trial at the October 1879 term of said court, and was tried by the court, both parties being present in person, and by attorneys, and taking part in the same. The case was subsequently submitted upon written arguments, and taken under advisement.

After considering the proofs and allegations of the parties I find: That on the 4th day of December 1875 the ^{defendants} were the owners of the land described in the complaint herein.

That on that day they were indebted to said plaintiff in the sum of three hundred dollars as stated in said complaint.

That to secure the payment

of the said defendants executed on that day their joint promissory note for the said sum of three hundred dollars, payable one year after the date thereof, with interest thereon at the rate of twelve per cent per annum until fully paid, which said note bears date on said 4th day of December - A.D. 1875.

That said defendants to secure the payment of said note, made executed and delivered to plaintiff the deed mentioned in said complaint; and as therein stated.

That said plaintiff made executed and delivered to said defendants, the bond mentioned in said complaint; and as therein stated.

That on the 19th day of November 1874 the said defendants, for value received, made executed and delivered to one Reuben Melville

their joint promissory note, whereby they promised to pay to him ^{or order} twelve months thereafter the sum of three hundred dollars, with interest thereon at the rate of twelve per cent per annum until paid; and that thereafter and on the 14th day of August A.D. 1876 the said Reuben Melville, for a valuable consideration sold transferred and delivered said last mentioned note to this plaintiff; and that ever since said transfer thereof, said plaintiff has been, and now is, the owner and holder of the same.

That on the 20th day of September A.D. 1875, the said defendants made executed and delivered to one L. S. Baxter their joint promissory note, whereby, for value received, they promised to pay to said L. S. Baxter, or order, one hundred dollars; ^{in ninety days} thereafter and in due course of business, and for a good and

valuable consideration said plaintiff did, in November A.D. 1877, become, and ever since has been, and now is, the owner and holder thereof.

That on the 4th day of December A.D. 1875 the said defendants made executed and delivered to said plaintiff their joint promissory note, whereby, for value received they promised to pay to said plaintiff, or order, ^{one year thereafter} the sum of one hundred and thirteen dollars, with interest thereon at the rate of twelve percent per annum until paid; and that said plaintiff ever since the making and delivery thereof has been, and now, is the owner and holder of said last mentioned note -

That on the 4th day of December A.D. 1875 the said defendants made executed and delivered to said plaintiff their joint promissory note, whereby for

value received, they promised and agreed to pay to said plaintiff on order, the sum of three hundred dollars, one year thereafter, with interest thereon at the rate of twelve per cent per annum until paid; and that said plaintiff has ever since the making and delivery thereof been, and now is, the owner and holder of the same. That said last mentioned note was erroneously dated December 4th 1874, when in truth and fact it should have been dated December 4th 1875.

That said last mentioned note, for \$300., is the note for which said deed was given to ^{the payment thereof} secure, in connection with the ^{said} bond, as hereinbefore stated.

That on the 4th day of December A.D. 1875 the said defendants made executed and delivered to said plaintiff their joint promissory note, whereby, for value received, they

promised to pay to said plaintiff
on order the sum of five
hundred and thirty nine dollars,
one year thereafter, with interest
thereon at the rate of twelve
per cent per annum until
paid; and that said plaintiff
has ever since the making
and delivery thereof, been,
~~the~~ and is now the owner
and holder of the same.

That on the said 4th day of December
A.D. 1875, and for the purpose of securing
the payment of said last mentioned
note for the sum of \$539.59, the
said defendant Lucius Howe,
made executed and delivered
to said plaintiff, a good and
sufficient deed of convey-
ance to plaintiff of certain
real estate therein de-
scribed; which said last
mentioned deed was ^{as is} duly
recorded in the office of Register
of Deeds, in and for said county,
in book R. of deeds on page 84
thereof, and was made with the
understanding and agreement

* That on the 4th day of December A.D. 1875 the said defendant Lucius Howe for value received signed, executed and delivered to said plaintiff his promissory note whereby he promised to pay to said plaintiff one year after the date of the making of the said promissory note the sum of five hundred and fifty dollars with interest thereon at the rate of twelve per cent per annum until paid; and that said plaintiff is now the owner and holder thereof.

between said plaintiff and said defendant Lucius Howe that in case the said Lucius Howe should desire a reconveyance to him of the land and premises therein described, and would pay to said plaintiff the said sum of \$539⁵⁹ according to the terms of said note, he said plaintiff would reconvey said premises to said defendant Lucius Howe; and that to secure to said Lucius Howe the performance of said agreement on his part he said plaintiff made executed and delivered to said Lucius Howe, his good and sufficient bond for such deed of reconveyance.

That the property conveyed to said plaintiff, to secure the payment of said note for \$539⁵⁹, as aforesaid was, and is good and sufficient security for said last mentioned note.

*

That none of said notes ^{or any part thereof} have been paid, except as hereinafter stated.

That in the month of June A.D. 1876 the said defendants sold and delivered to said plaintiff eighty thousand brick, at the agreed price of five dollars per thousand; said ^{brick} being so sold to said plaintiff by an accepted order upon Gregg & Griswold, and delivered to plaintiff at their brick yard, and hauled by plaintiff himself, and at his expense to where used by him.

That in the Fall of the year A.D. 1877 said defendants built and erected for plaintiff the brick walls of the building in Chaska known as plaintiff's hardware store, said defendants doing all the work ^{and labor} and furnishing all the material for said brick walls, and that for erecting said walls and furnishing the material therefor, said plaintiff agreed to pay, and said defendants agreed to accept therefor the sum of eight hundred and

Twenty five dollars, which said brick walls were completed on the 27th day of October A.D. 1877.

That while said defendants were engaged in the erection of said brick walls of said building, as aforesaid, the said plaintiff paid to workmen employed thereon, and upon the account and orders of said defendants, the sum of two hundred and thirty three dollars and forty five cents.

That all of said eighty thousand brick at five dollars per thousand, and said \$825⁰⁰ for building said brick walls as aforesaid, less said \$233⁴⁵ paid as aforesaid, were delivered, and furnished said plaintiff, in payment of said notes, or a portion thereof, and a book account which said plaintiff then had against said defendants, but that when said brick was so furnished, and said brick walls were so erected said defendants, or either of them, made no specific application of the same, on any part

thereof, in payment of any or either of said notes, or book account, or any part of either, and that said Plaintiff took and accepted said 80,000 brick, and said brick walls - less said \$238⁴⁵ - in payment of said notes and book ^{account} then due, but did not ^{then} make any particular application of said payments to any or either of said notes or book accounts, or any part of either.

That on the ~~fifteenth~~ day of June A.D. 1876 there was due and owing to said plaintiff from said defendant, upon an open and current account, for goods wares and merchandise sold and delivered to defendants, the sum of one hundred and six dollars and eighty five cents.

That on the 30th day of October A.D. 1877 there was due and owing to said plaintiff from said defendants, and in addition to the \$106⁸⁵ last mentioned, upon ~~an~~ ^{said} open and current account, for goods

wares and merchandize sold and delivered to said defendants at divers times between the said ~~fifteenth~~ day of June and said 30th day of October A.D. 1877, the sum of ninety seven dollars, and seventy five cents.

That no part of either of said last mentioned sums due upon said book account has been paid except as herein stated.

The said defendants now claim and seek to have the ^{entire} price of said 80,000 brick, and of the building of said walls as aforesaid, or so much thereof as may be necessary, applied to the payment of said notes for \$300⁰⁰ and \$539⁵⁹ the payment of which is secured as aforesaid, and which claim of payment so made by defendants, is the same claim of payment made and alleged in their answer herein, and is the only payment attempted by them to be proved.

The ^{said} plaintiff claims, and asks to have said ~~prices~~ of ~~\$80,000~~

said 80,000 brick and the amount due defendants for building said brick walls, as aforesaid, be applied to the payment to said unsecured notes, which are the four notes first abovementioned, and said book account; he insisting that, as a matter of law and justice, said sums should be so applied.

That said two notes, for \$300⁰⁰ and \$589⁵⁹ respectively, are the ^{only} notes or indebtedness held by said plaintiff against said defendants, or either of them, ^{as aforesaid} which were secured in any way when said payments of material and work were made, by said defendants to said plaintiff; or that are now secured in any way.

The settled rules applicable to the facts in this case are as follows:

Where a payment is made, to a creditor holding several claims,

"if neither party applies the payment, the court will make the application according to the justice and equity of the case."— Munger on Application of Payments, Chap. 10, p. 81. Solomon vs. Dreschler, 4 Minn., 281. Stone vs. Seymour, 15 Wend. 19; Allen vs. Culver, 3 Den. 284.

Field vs. Holland, 6 Cranch 8.

U. S. vs. Kirkpatrick, 9 Wheat. 720.

"When a debtor makes a general payment, and his indebtedness is in part secured, and in part unsecured, the law, in the absence of any specific appropriation by the parties, will apply the payment first to the liquidation of the unsecured indebtedness." Lash vs. Edgerton, 13 Minn. 210 (218), citing several authorities. See also Munger on Applⁿ of Payments, p. 184.

"In the case of indefinite payments, they will be applied first to the extinguishment of the interest, and then principal." Munger on Applⁿ § 126; People vs. New York, 5 Cow. 33; Lash vs. Edgerton *Ibid.*

From the facts found above, it will be seen that when, on or about June 15th 1876 ^{defendants} delivered to plaintiff the 80,000 brick at \$5. per thousand as aforesaid, said plaintiff held unsecured ~~claim~~ notes and accounts against defendants, as follows:

Note (Ex. "A") for \$150.00 and int. 6% ^{was} \$159.50

Note (Ex. "D") " \$113.00 " " " " 130.15

Book account to June 15/76 106.85

Amount in the aggregate to - \$386.50.

After applying so much of the said payment, in brick, as is necessary to pay said \$386.50 - which I thereby do - there is left remaining from said last mentioned payment, the sum of \$13.50 ~~therefrom~~, to apply on the \$300. note for which the deed mentioned in the complaint herein was given to secure.

The Ruben Melville note (Ex. B) did not come into plaintiff's possession or ownership until August 1876.

When October 27th 1877 the defendant paid to plaintiff

in work, as aforesaid, the sum of \$591⁵⁵, the plaintiff held unsecured notes and accounts as follows:

Note (Ex. "B.") for \$300⁰⁰ $\frac{1}{4}$ p. a. $\frac{1}{2}$ mo. int. \$371.00

Book account to Oct. 27/77 97.75

Amounts in the aggregate to \$468.75

I therefore apply so much of said last mentioned sum and payment of \$591⁵⁵ as is necessary to the liquidation of the said last mentioned sum of \$468.75, the balance of this last payment, after liquidating said \$468.75, is \$122.80, and that, together with said balance of \$13.50, is to be applied upon the said note for \$300. mentioned in the complaint herein; and these two last mentioned sums are credited upon said last mentioned note as of the date when they were paid as aforesaid.

None of these payments are applied to the liquidation of the note (Ex. "C.") made, in the first instance, to L. S. Baxter, because it was shown by plaintiffs

testimony, that it was not trans-
ferred to him until after these
payments were made.

I therefore compute the amount
due upon the said note for
\$300., ~~and~~ mentioned in the complaint
herein, as follows:

Note	\$300.00
Interest to June 15/76	19.10
	<hr/> \$319.10
First payment, applied as above	13.50
Balance	<hr/> \$305.60
Int., on last balance ^{from June 15/76} to Oct. 27/77	\$ 50.14
	<hr/> \$355.74
Second payment, applied as above	122.80
Balance due on said note, Oct. 27/77	<hr/> \$232.94

From the foregoing I find,
as conclusions of law,
That said plaintiff is enti-
-tled to recover ^{judgment} upon said
note mentioned in the com-
-plaint herein, for the
said sum of two hundred
and thirty two dollars
and ninety four cents, and
interest thereon, at the
rate of twelve per cent

per annum from the
27th day of October A.D.
1877—that, ^{sum and interest} being the amount
due upon said note.

That said ~~deed~~ and bond
mentioned in the complaint
herein, and to foreclose ~~the~~
~~which~~ this action is brought,
are inequity, and jointly, ^{of the property then} ~~are~~ ^{decried} ~~that~~ ^{plaintiff should have} ~~judgment~~
and decree of foreclosure ^{and}
~~thereof~~, as provided by title
two of chapter eighty one of
the general statutes of
1878, for said sum due
upon said note and for
plaintiffs costs and dis-
bursements.

Under the rule laid down in
Wilder vs. Humphrey, 21 Minn. 101, a
strict foreclosure cannot be
granted in this case.

Ordered, That judgment
and decree be entered herein
in accordance with the
foregoing.

March 19th 1881.

J. L. Macdonald
Judge 8th Dist.

State of Minnesota
Dist. Court 8th Dist.
County of Carver

Phillip Henk

vs.

Lucius Howe &
Eunous L. Howe

Findings &
Decision

Filed March 21st 1881
G. W. Wray Clerk
= 246 = A

\$100

Sept 20th

1875

Ninety ~~days~~ after date I promise to pay
to the order of L. L. Banta one hundred dollars
at Caven Co. Bank Chaska Minn.
~~with interest from date at the rate of~~ — per cent
per annum until paid.
Value received.

L. Stowe & Son.

Received from G. Krayenbuhl by Clerk of District Court - Caven
County the original note of which the above is a true copy which
was used as Plaintiff's Exhibit "C" in suit of Philip Henk vs.
Lucius Stowe et al. heretofore pending in said Court.
S. Fowler
Attorney for P. Henk

Filed November 7th AD 1879
G. Krayenbuhl
Clerk

Chaska Dec 4th 1888

On your apt date for
note received the
~~note~~ your promise to pay
A. Smith on order on
his account therefor.
Callers with interest at
12 per cent per annum
until paid

Lucius Howe
Emmond L. Howe

Pf. Ex. "D"

Filed November 1st 1899
C. W. Weyenbühl
Clerk



\$ 300 ⁰⁰/₁₀₀

St. Paul, Minn. Nov 19 th/₁₁ 1874

twelve months after date we promise to pay

to the order of Rubin Melvin

the sum of three hundred ⁰⁰/₁₀₀ Dollars
int at ~~twelve~~ per cent until paid

Payable at Chaska

Value received

L. Howe & Son

No. Due

James Davenport, Books & Stationery, St. Paul, Minn.

Puffs Ex "B."

2
14185
469028455

R. A. Melville

Giles Chamberlain Sept 22 1879
Asst. Treasurer
delivered

348
289155
9345

Chas. H. Dec 4th / 1845

On your letter of the 1st inst. for
value received I promise
to pay Philip A. H. on
order one hundred and fifty
dollars with interest at 12
per cent per annum until paid
Lucius Howe

Platz ex A.

Geleit, November 1879
Gefragtenbucht
Celtic

246

\$300.00

Chaska Dec. 4th 1874

One year after date for value received
I promise to pay Philip Neunk or order
Three hundred Dollars with interest
at twelve per cent per annum until
fully paid

E. L. Howe
Lucius Howe

Pflege Ex. E.

Freitag, November 15. d. 1849
Göttingen
Schmidt

\$539⁵⁹/₁₀₀

Chaska Dec. 4th 1875

One year after date for value received I promise to pay Phillip Henk a order Five hundred thirty nine and ⁵⁹/₁₀₀ Dollars, with interest at twelve per cent per annum until fully paid

E. L. Howe
Lewis Howe

987-247

$$\begin{array}{r} 36 \\ 36 \\ \hline 72 \end{array}$$

Filed, November 18th 1889
Catharine M. M. M.

AS1

STATE OF MINNESOTA,

District Court *Night* Judicial District,
County of *Carter*

Philip Hank

against

Plaintiff

Lucius Howe and Summons L. Howe
Defendant

BILL OF COSTS AND NOTICE OF TAXATION.

COSTS BY STATUTE.

\$10.00

DISBURSEMENTS.

Affidavits, <i>2</i>	.50
Sheriff's Fees, <i>Service Summons & Mileage</i>	3.60
<i>Subpoenas</i>	1.00
Clerk's Fees, (to be taxed,)	12.40
Witness' Fees,	
<i>Reuben Melvin 1 days attendance Nov 7th 1879</i>	1.00
<i>" " Mileage 2 miles</i>	.22
<i>Leonard Goates 1 days attendance Nov 7th 1879 & Mileage 2 miles</i>	1.12
<i>L. W. Noble " " " " " "</i>	1.12
<i>John W. Gregg " " " " " "</i>	1.12
<i>Charles Helick " " " " " "</i>	1.12
	<u>\$ 33.14</u>

STATE OF MINNESOTA,

County of *Carter* ss.*Samuel Fowler*

being duly sworn, says, that he is one of the Attorneys of the *Plaintiff* in the
above entitled action, and that the above specified items of disbursements have been necessarily made
or incurred therein by said *Plaintiff*.

Subscribed and sworn to
before me this *21st* day of
April A.D. 1881.

J. F. Dilling
Notary Public & Comm. Co.,
Minn

STATE OF MINNESOTA,

District Court Eighth Judicial District,
County of Carver

Philip Henk

Plaintiff

against

Lucius Howe and Emmons L. Howe
Defendant

Sir: Take notice that we shall apply to the Clerk of said Court on the Twenty-fifth day of April A. D. 1881 at 10 o'clock in the fore noon, to tax and insert in the judgment then and there to be entered in favor of the Plaintiff and against the Defendant the foregoing items of costs and disbursements.

H. J. Peck by
Attorney for the above
named Defendants

L. L. Barker & S. Fowler
Plaintiffs Attorneys

State of Minnesota
County of Carver

ss. Samuel Fowler being first duly sworn says that on the twenty-fifth day of April A. D. 1881 at the City of Shakopee in the

County of Scott in said State he served a true and correct copy of the within notice upon the within named H. J. Peck by leaving said copy at the office and place of business of said H. J. Peck.

Subscribed and sworn to before me
this 25th day of April A. D. 1881
G. W. Heyenbuck
Clerk District Court
Carver Co. Minn.

Fowler

STATE OF MINNESOTA.

County of Carver
District Court.

P. Henk

agst.

Lucius Howe et. al.

NOTICE OF TAXATION OF COSTS.

Due service of the within notice is admitted

this 2nd day of April A. D. 1881

Atty for Def^{ts}

Filed April 28th 1881

G. W. Heyenbuck
Clerk.

L. L. Barker & S. Fowler
Atty for Plaintiff

Pioneer Press.

State of Minnesota,
County of *Cannon* } ss.

DISTRICT COURT,
Eighth Judicial District.

Philip Henk -
vs.

Plaintiff

*Lucius Howe and
Emmons L. Howe*

At *General* Term, held *October* 187*7*

Defendants

This cause having been brought on to be heard upon the motion of plaintiff for Judgment pursuant to the prayer of the complaint herein, and the decision of the court on file in this cause; and it appearing satisfactorily to the court that the summons has been duly served on all the defendants herein; that more than twenty days have elapsed since such service, and that no answer to plaintiff's complaint has been served on plaintiff's attorney except the answer of defendant

Lucius Howe and Emmons L. Howe

and the issues made by said answer

having been duly tried by the court, and the decision of the court thereon having been made and filed, whereby it is found among other things that there is due plaintiff from defendant *Lucius Howe and Emmons L. Howe*

upon the note and mortgage mentioned and described in the complaint, the sum of *Two hundred and thirty two and 94/100* DOLLARS and interest thereon, from the *Twenty seventh* day of *October* 187*7*, at the rate of *Twelve* per cent. per annum

and Dollars for attorney's fees, as stipulated in said mortgage, and that due notice of the pendency of this action was duly filed and recorded in the office of the Register of Deeds, in and for the County of *Cannon* on the *18* day of

Now, on motion of *L. L. Barker and S. Fowler* plaintiffs attorneys herein, IT IS ADJUDGED AND DECREED, that there is due said plaintiff from defendant *Lucius Howe and Emmons L. Howe*

upon the note mentioned and described in the complaint herein, the sum of *Three hundred and thirty one and 5/100* Dollars,

and Dollars attorney's fees as aforesaid, and *Thirty three and 9/100* Dollars costs and disbursements of this action.

And it is further ordered, adjudged and decreed, that the mortgaged premises mentioned in said complaint, as hereinafter set forth and described, or so much thereof as may be sufficient to satisfy the amount due to the plaintiff as aforesaid, with costs of this action, which may be sold separately without material injury to the parties interested, be sold in *one* parcel at public auction, within the County of

Cannon where said premises are situated, by the Sheriff of *Cannon* County, according to the provisions of law relating to sales of real estate on execution. That the said Sheriff give public notice of the time and place of such sale, according to law. That either or any of the parties to this action may purchase said mortgaged premises at said sale. That the said Sheriff shall execute and deliver to the purchaser or purchasers at such sale, the usual certificate as provided by law. That out of the proceeds of said sale, after deducting the amount of his fees and disbursements on said sale, the said Sheriff pay to the plaintiff's attorney the sum of

Thirty three and 9/100 Dollars costs and disbursements aforesaid, with interest on said sums from date hereof. And also the amount adjudged to be due plaintiff upon said note and mortgage as aforesaid, with interest thereon from date hereof,

or so much thereof as the purchase money of said mortgaged premises will pay of the same. That he bring the surplus moneys arising from said sale after said payments as aforesaid, if any there be, into court to abide the further order of the court in the premises, and that he make report of said sale and all his proceedings in the premises, and file it with the clerk of this court, with all convenient speed,

And it is further ordered, adjudged and decreed, that the defendant and all persons claiming under *Said Defendants* subsequent to the filing of said notice of the pendency of this action, be

never barred and foreclosed of all right, title, and equity of redemption, in and to said mortgaged premises so sold, and every part thereof, (except only the right of redemption allowed by statute for one year after the date of the order confirming the sale made under and by virtue of this judgment.)

And it is further ordered, adjudged and decreed, that if the moneys arising from such sale shall be insufficient to pay said Sheriff's fees and disbursements, and the amounts adjudged to be due plaintiff as aforesaid, with interest, then said Sheriff shall specify the amount of such deficiency in his report of said sale; and that on the confirmation of said report, the defendant, *Lucius Howe and Edmund Howe* who *are* personally liable for the payment of the debt secured by said mortgage, pay to the plaintiff the amount of such deficiency, with interest thereon from the date of said report, and that the plaintiff have execution therefor,

The following is a description of the mortgaged premises hereinbefore mentioned:

The South West quarter of the South West quarter of Section Number Twenty one in Township one hundred and sixteen of Range Twenty three in the said County of Carver and State of Minnesota

Dated this *Seventh* day of *June* A.D. 1881

ATTEST:

W. H. H. H. H.

Clerk of the District Court.

G. H. H. H. H.

Deputy District Judge.

DISTRICT COURT,

County of Carver

Philip H. H.

Plaintiff
against

Lucius Howe et al.

Defendant

Decree on Trial in Foreclosure.

L. P. H. H. H.

Plaintiff's Attorney

Charles

Minn.

Pioneer Press Co., St. Paul, Minn.

State of Minnesota }
County of Carver }

District Court
Eighth Judicial District

Philip Henk - Plaintiff }
- against - } Bill of costs and
Lucius Howe - Defendant } Notice of taxation

Costs by Statute \$10.00

Disbursements

Affidavits 2 .50

Sheriff's fees Service summonses & mileage 1.00

" " Service subpoenas & mileage 1.90

Clerk's fees, (to be taxed) 14.00

Witness fees
\$ 26.40

State of Minnesota }
County of Carver } ss Samuel Fowler being duly
sworn, says, that he is one of the
Attorneys for the Plaintiff in the above entitled
action, and that the above specified items of
disbursements have been necessarily made or
incurred therein by said Plaintiff

Subscribed and sworn to
before me this 21st day of
April A.D. 1881

J. F. Diller
Notary Public for Carver Co.
Minn.

[Signature]

State of Minnesota }
County of Carver }

District Court
Eighth Judicial District

Philip Henk - Plaintiff }
- against - }
Lucius Howe - Defendant }

Sim:

Take notice that we shall apply to the Clerk of
said Court on the 25th day of April A.D. 1881 at
10 o'clock in the fore-noon to tax and insert
in the judgment then and there to be entered in
favor of the Plaintiff and against the Defendant
the foregoing items of ^{Costs and} disbursements.

L. J. Peck Esq

L. L. Banta & S. Fowler
Plaintiffs Attorneys

Attorney for the above named Defendants

State of Minnesota } Samuel Fowler being first duly
County of Carver } sworn says that on the 21st day of April
A.D. 1881 at the City of Shakopee in the County of Scott
in said State he served a true and correct copy of
the within notice upon the within named H. J. Peck
by leaving said copy at the office and place of business
of said H. J. Peck

Subscribed and sworn to before me }
this 25th day of April A.D. 1881 }
Attest my hand and seal of said District Court
this 25th day of April A.D. 1881

S. Fowler

State of Minnesota
County of Carver
District Court

Philip Henk
vs.

Lucius Howe

Notice of taxation of costs
Due service of the within
notice is admitted this
21st day of April A.D. 1881

Def's Atty

Filed April 25th A.D. 1881
Attest my hand and seal of said District Court

L. L. Banta & S. Fowler
Plaintiffs Attys.

Original

SUBPOENA.

DISTRICT COURT,
CARVER COUNTY.

IN THE MATTER OF

Phillip Hunt
Lucius Howe vs. Emma A. Howe.

Subpoena on the part of

Plaintiff

STATE OF MINNESOTA,
CARVER COUNTY

No. 7th 1879

I have duly served the within by reading
the same to the within named *Reubin*
Mellon & also by
handing him copy &
by paying him $\$1.50$ on
part of plaintiff as 1 days attendance
as I am therein commanded.

F. E. DuTait Sheriff

FEES—Service Subpoena \$ 50
Mileage 2 miles \$ 20
Return & copy \$ 30
1.00

Filed in said Court, this *Seventh*
day of *November* A. D. 1879,
Wm. Graymuth Clerk.
Wm. Graymuth Attorney.

L. ED. DAVISON Print., Minneapolis.

Reubin Mellon.

SUBPOENA.

STATE OF MINNESOTA,
DISTRICT COURT.

FOR THE EIGHTH DISTRICT, CARVER COUNTY.

To

Reuben Melvin

GREETING:

IN THE NAME OF THE STATE OF MINNESOTA, you are hereby commanded, that laying aside all and singular your business and excuses, you be and appear before the Judge of the District Court, for the Eighth Judicial District, and County of Carver, at the Court House in said County, on the fourteenth

~~day of~~

~~at~~

~~a'clock, in the~~

~~noon~~, then and there

to give evidence in a cause to be tried between

and

Phillip Hunt
Lucius Howe and Emmaus H. Howe

Plaintiff

Defendant on the part of the

Plaintiff

Hereof fail not, on pain of the penalty that will fall thereon.

WITNESS, The Honorable JOHN L. McDONALD, Judge of the District Court
aforesaid at Chaska, in said County, this fourteenth
day of November in the year 1899.

W. Graymuth

Clerk.

SUBPOENA.

STATE OF MINNESOTA, }
DISTRICT COURT. ss.

FOR THE EIGHTH DISTRICT, CARVER COUNTY.

To

Leonard Grates, W. W. Noble
And John W. Gregg

GREETING:

IN THE NAME OF THE STATE OF MINNESOTA, you are hereby commanded, that laying aside all and singular your business and excuses, you be and appear before the Judge of the District Court, for the Eighth Judicial District, and County of Carver, at the Court House in said County, on the *fourteenth* day of *November* at *10* o'clock, in the *noon* then and there to give evidence in a cause to be tried between

Lucien Howe *Phillip Howe* Plaintiff,
and

Defendant on the part of the *Plaintiff*

Hereof fail not, on pain of the penalty that will fall thereon.

WITNESS, The Honorable JOHN L. McDONALD, Judge of the District Court
aforesaid, at Chaska, in said County, this *fourteenth*
day of *November* in the year 18*99*.

Chas. W. Knapp Clerk.

SUBPOENA.

DISTRICT COURT,
CARVER COUNTY.

IN THE MATTER OF

Phillip Hunk
vs.
Lucius Hunk

Subpoena on the part of

Plaintiff

STATE OF MINNESOTA,
CARVER COUNTY.

Nov. 7th 187*9*

I have duly served the within by reading
the same to the within named *Leovard*
Grates, L. W. Noble
and J. W. Gregg.

as I am therein commanded.

J. E. Duroit Sheriff.

FEEs—Service *3* Subpoena \$ *1.50*
Mileage *4* miles - \$ *.40*
Return - - \$ *1.99*

Filed in said Court, this *seventh*
day of *November* A. D. 187*9*.

G. H. Hunk Clerk.
G. H. Hunk Attorney.