

The original probate files of Hendricks County, some from as early as 1823, are very fragile and are in storage. You are encouraged to use these digital images instead of seeking the originals as they are as complete, and more readable in many cases, than the originals.

ABSALOM B. GARDNER

ESTATE

1839

HENDRICKS COUNTY, INDIANA

Served as Mayor as commanded and
the within named Nelson bail Bond. re.
and Matlock is not bond

Edmund Black 31/11

1846

B. Dec 19 1857

Milose

107

Heinrichs Probate Court
May Term 1857

Madison H. Gardner

28 1/3 Hfs sub

311
Hudson, N. York

Roll Nelson Esq.

Whitney

Adel Nelson

Hudson N.Y.

Peter Kohl

John C. Gardner

William T. Wattoek

Oct to May Term
1829

State of Indiana } The State of Indiana to the Sheriff
Henricks County } of Henricks County, Indiana

Yours are hereby commanded that
you summon Joel Nelson Hudson M Vay, John
W. Gardner, Peter Hoil & William L. Matlock to personally
be and appear before the Honorable the Judge of the Henricks
Probate Court on the first day of his next term to be
held at the Court House in Danville on the second
Monday in May (instant) to testify in a certain
matter of Captivity there pending, and undetermined,
wherein Abraham S. Gardner is plaintiff, and Joel
Nelson & Hudson M Vay Executors of the last Will
and testament of Abraham S. Gardner deceased, are
defendants. And this they may in so well omit
at their peril. And have you then there this writ
Witness my hand M. Gregg Clerk of the said
Court at Danville this 10th day of May
A D 1829

M. Gregg Clerk

Madison's Wardens
vs ²/₃ subpoena
Hudson M Varyo
Joll Nelson Exec.
of A B Gardner's estate

Witness

John Tucker ^{and}

Subscribed & sworn to
at New York 1838

I have served this
process as within
commanded the 19th
January 1839

Shff Fees—

Serving — 37 1/2
Outlay — 6 — 36
Return — 10 3/4

Joseph Howard
Shff

State of Indiana & The State of Indiana to the
Hendricks County ³ Sheriff of Madison County
Greeting, you are hereby
Commanded that you summon John Tucker
if he may be found in your County to personally
be and appear before the Honorable the Judge of
the Hendricks Probate Court on the first day
of the next term of said Court, to be holden
at the Court House in Danville on the second
Monday in ~~November~~ ^{February} next to testify of and
concerning a certain account filed in said Court
by Madison W. Gardner against the estate
of Absalom P. Gardner deceased. And
this he may not omit at his peril. And have
you then return this writ.

Witness James M. Gregg clerk
of said Court this 30th day of
October AD 1838

J. M. Gregg clerk

(200)
(June 3rd)

Nelson & McKee
at
Lewis & Clark

Two pleas

(Frank)

Nov Term 1833

Filed in open court - Nov 16th
1833
D. McKee atty

Proctors for debt

State of Indiana — Hendricks Probate
Hendricks County, Court Nov Term 1833

And the said defendants
vacant as aforesaid come and defend or
and say that they ought not to be charged
with the said debt by virtue of said writ-
ting obligatory, because they say, that the
said writing obligatory in the said declara-
tion mentioned was obtained from the said
Absolom Gardner deceased in his lifetime
by the said plaintiff, and others in collu-
sion with him, by fraud, covin, and
misrepresentation, that is to say by the
said plaintiff and others in collusion
with him, falsely, commonly, and fraud-
ulently representing to the said Absolom
Gardner deceased in his lifetime, that as
one Christian Brum deceased, had by
his last will and testament, willed to
Rosannah Gardner wife of the said Ab-
solom Gardner deceased and to her heirs
one equal part of his the said Christian
Brums estate, which was to be paid to
the said Rosannah or her heirs at the death
of the wife of the said Christian Brum
and that as the said Absolom Gardner
was at the time of the making of the said
writing obligatory in great need of money,
and if the said Absolom would make
and execute his writing obligatory to the
said plaintiff for the sum of twenty five
dollars with legal interest, the said plain-
tiff would advance the said sum of mon-
ey to the said Absolom, which he the said
Absolom was to receive as so much of
his share of the estate of the said Chris-
tian Brum, and the said plaintiff

was to receive the said sum of twenty
five dollars ~~with~~ legal interest from
the Estate of the said Christian Brum and
that the said Absalom was not to be call
ed upon by the said ^{plaintiff} to pay the said sum
out of his estate, and the said writing was
to be executed merely for the purpose of
showing that the said Absalom had
received the said sum of twenty five
dollars as a part of his share of the
Estate of Christian Brum as aforesaid
and to enable a correct settlement to
be made with the said Absalom
and the said defendants Executors
as aforesaid, say that the said Abso
lom Gardner deceased in his lifetime
rely with full and entire confidence
on the statements and representations
thas made by the said plaintiff as afo
resaid, executed the said writing obligatory
in the said declaration mentioned,
wherefore the said defendant say that the
writing obligatory in the declaration
mentioned was and is void in law
And this they the said defendants are
ready to verify, wherefore they pray
Judgment &c

And for a further plea
in this behalf the said defendants say perari
non) because they say that the said writing
obligatory in the said declaration ment
ioned was obtained of the said Absalom
Gardner deceased in his lifetime by the said
plaintiff, by fraud, coorn and misrepresen
tation, wherefore the said defendants say
that the said writing obligatory was &
is void in law, And this they are ready to
verify, wherefore they pray judgment &c

By Brenton their Atty

(106)

Lewis Crum
by declaration
Joel Nelson &
Hudson M. Vey
Executors of the last
will & Testament
of Absalom Gordon
deceased

dett furnished
upon a note for \$2500
executed on the 11th
day of January 1823
showing interest from
the date thereof
Interest up to 11th
day of November 1825
damages \$100.00

The Court will order
a citation in the above
entitled cause to be
served on said debtors
E. C. Norcross

Filed in open Court Novemb
15th 1834
J. N. Huggitt

State of Indiana, Hendricks Probate Court
Hendricks County November Term 1889
Lewis Green Plaintiff in this suit By and
his attorney, complains of J. C. Nelson
and Hudson W. Perry Executors of the last
will and Testament of Abraham Gordon
late of Hendricks County and State of Indiana
deceased defendant in this suit of
a plea of debt that they render unto
him the sum of Seventy five dollars
of lawful money ^{which he is entitled to} which they unlawfully
detain from him &c

For that whereas the said
Abraham Gardner, with One Rassamuck Gardner
(wife of the said Abraham Gardner) by the
description of Rassamuck & Abraham Gardner
in the lifetime of the said Rassamuck and the
said Abraham ^{Gardner} the lawful husband of the
said Rassamuck Gardner deceased) to wit
on the 11th day of January 1823. at the
County and State aforesaid by their
certain writing obligatory, sealed with
their ^{joint} seals, and now to the Court shew
the date whereof is a certain day and year
therein mentioned to wit the day and
year aforesaid acknowledged themselves
to be indebted to the said Plaintiff in the
sum of Twenty-five dollars with lawful
interest from the date thereof which writing
obligatory is in the words and figures
following, to wit, ^{2d} With legal interest from
this date we promise to pay Lewis Annan or
order or assigns the just and full sum
of Twenty-five dollars, It being so
valued received of him as Witness our
hands and seals this 11 of January 1823
Rassamuck & Abraham Gardner Seal
which was to be paid to the said Plaintiff

The said Plaintiff avers that the said Rosamuck
was at the time of the execution of the aforesaid
writing obligatory the lawful wife of the said
Abraham Gardiner and that the said
Rosamuck Gardiner departed this life about
about the day of 1824 or 1825. Previous
to the death of the said Abraham Gardiner
the said Rosamuck Gardiner was in
the lifetime of the said Rosamuck
Gardiner did not pay and the said Abraham
Gardiner did not pay nor had the said
defendants & Executors as aforesaid
since the death of the said Abraham Gardiner
as yet paid the said sum of twenty-five
dollars, with lawful interest thereon
from the 11th day of January 1823,
above demanded on any part thereof
to the said Plaintiff although often
requested so to do to wit on the 16th day
of November 1838, but the said Rosamuck
and Abraham Gardiner in the lifetime
of the said Rosamuck Gardiner nor the
said Abraham Gardiner since the death of the
said Rosamuck and previous to his death
during his lifetime so to do wholly refused
and the said defendants & Executors as
aforesaid ever since the death of the
said Abraham Gardiner hitherto have
wholly refused and still do refuse to
pay the said or any part thereof to the
said Plaintiff to wit at the county and
state of New York to the damage of the said
Plaintiff of One hundred dollars
and therefore he sues &c

C. C. Nov 1840
for Plaintiff

Litwa Lemun

Wilson & McCoy

Exceptions to the
Disposition of a Town
& Surround

(4th)

Filed in open court
August 12th 1840

E. M. Gandy att.

Lewis Green

173

Joel Nelson & Nelson & Nelson
Executors of the estate of A. Gordon

In the Honorable Probate
Court,
dist. &c

Objections taken to the

depositions of Philip Stow and John Green
taken in said cause by the dist. 1st the deposition
of Philip Stow is argumentative, and uncertain
and conjectural, 2^d It does not identify the
note on which suit is brought. 3^d there
being a subscribing witness to said note one
which this suit is brought proof of its execution
and for what said note was executed cannot
be made by any other witness than the original
subscribing witness unless he is dead &c 4th
the deposition is contradictory, it purports to have
been sworn to in the first instance and lastly
it shows that it was only approved of by
the witness and lastly it proves nothing but
is put in issue and therefore should
be suppressed.

And the deposition of John Green
should be suppressed first Because it is
argumentative, 2^d Because it does not identify the
note on which this suit is founded 3^d Because
there is a subscribing witness viz George Furboss
to the note on which this suit is founded therefore
the proof of its execution must be made that
witness and none other 4th by the deposition
is contradictory &c And because they are not
sufficiently authenticated C, C, have City free Press

State of Indiana, Jackson County Probate Court August
Term 1840

Lewis Green

vs
Joel Nelson & Hanson McVey

Executors of A. Gardners deceased } debt &c
Estate

As it is remembered
that on the 12th day of August 1840 at being the
third Juridical day of the August Term of said
Court, This cause came on to be tried and
was submitted to the Court to wit J. M. McClure
Judge of said Court without the interven-
tion of a Jury by agreement of the parties to try
and determine the issue herein joined between the
parties, and the defendant having the
affirmative of the issue herein, offered the
following depositions herein taken to prove
the issue joined as this Court to wit

Deposition of

witnesses taken in a cause pending in the
Jackson County Probate Court Indiana
wherein Lewis Green is Plaintiff & Nelson
& McVey & Joel Nelson Executors of the late
A. Gardner's estate are defendants, in
pursuance of the notice hereto attached
and at the time and place therein mentioned
Philip Stans of the County of Highland
State of Ohio of lawful age and being
swoth duly sworn by me as hereafter
certified deposes and says that, he the
deponent & John Green were the Executors of
the estate of Christian Green decd that a legacy
was left by said decd to his daughter Rosanna Gardner
seventy-five dollars of said legacy had
been paid to Gardner & his wife sometime
previous to the date of the note upon which this
suit is founded. The balance of twenty
five dollars was sent by said Carl Stans
and Green, by Lewis Green to Gardner & his
wife for which said Lewis Green gave to
said Carl Stans & Green his own note
and when the same, B. Gardner & his wife
received the twenty five dollars of said

Sum which had been thus sent to hand as the
remainder of one hundred dollars & part
of the legacy left them, they paid the money
and questions, which was intended to be
a receipt for the same, & to enable Lewis
Crum to lift his own obligation, which he had
given to said Stone & Crum Esqrs for said twenty
five dollars so that it will be seen that the
note in dispute given by A. B. Goodhue & wife
to Lewis Crum for twenty five dollars and
which appears to be dated in Jan'y 1828 is in
truth and in justice nothing more nor less
than a receipt to the Executors of C. Crum
estate for the part of a legacy left to Goodhue &
wife, Dependant further says that Lewis
Crum has no claim in justice or equity
to said twenty-five dollars that he sets up no
claim for it whatever, that he does not even know
where the notes or what became of it, and that he
never had any intention of collecting said note
off of Goodhue's estate; as upon the presentation
of Goodhue & wife's note to the Esqrs Stone & Crum he
lifted his own obligation the intention of which
was simply to bind ^{him} safely to deliver the said twenty
five dollars to Goodhue & wife,

Witness further says
that when he & J. Crum as Esqrs settled with John
Goodhue who was authorized all to make settling
that note or note ^{was} given to him, & as soon as
the balance due from the estate to Goodhue & wife
were paid over note for the money, which has
been since paid off in full & the business
finally closed with them. Philip Stone
read to witness & approved }

Also John Crum of the County of Suffolk
and State of Ohio, and of lawful age being
first duly sworn as hereinafter certified,
deposes & says, That, he together with Philip
Stone was Executor of the estate of his late
father, Christian Crum dec'd that he had read
and heard the foregoing statement of Philip Stone
relating to the matter in controversy that the
disposition of the same is substantiated by him, Philip
Stone & myself Esqrs, as above stated, had determined
to pay Goodhue & wife one hundred dollars
part of a legacy left them by my father and
or money on hand, this twenty five dollars
was the last payment of said hundred dollars
and as stated by Mr Stone was sent to this

to Gardner & wife by Lewis Crum and for
 the safe delivery thereof & as a receipt for the same
 he gave us his obligation - and when
 he gave Gardner & wife the money, he
 took from them the note upon which this
 suit is founded, - afterwards Lewis
 Crum presented this said note of Gardner
 & wife which we ^{viewed} ~~viewed~~ only as a
 receipt, for the money agreeably to the
 intention of all parties. Thomas and myself
 gave up his L. Crum's own obligation,
 the condition of which had been fully
 explained, - viz - no. part of the Twenty five dollars
 ever belong to Lewis Crum, he was only the person
 who was made the depositee of money from Thomas
 myself as Executors of L. Crum's estate, to Gardner
 & wife, as Legatees } John Crum
 read to witness I approved

I William Hays, a Justice of the Peace in and for
 the Township of Liberty, in the County of Highland
 Ohio do hereby certify that the above named
 Philip Stone and John Crum were by me ^{first} ~~and~~
 sworn to testify the truth ^{the whole truth} & nothing but the truth,
 and that the foregoing depositions by them respectively
 respectively subscribed were by me reduced to
 writing and were taken at the time and place
 specified in the enclosed notice in testimony whereof
 I have hereunto set my hand, this 27th day of
 July 1860.

William Hays, J. P.

and to the introduction of which and admissibility
 of which depositions the Plaintiff objected at
 the time the same was offered. But the Court
 overruled said objection and suffered the
 same to be read as evidence on the trial
 of the Issue hereto joined, and the above
 evidence being all that was offered by
 said defendant, to prove the Issue on their
 part, the Plaintiff thereupon offered
 the following testimony to wit, the note
 upon which this is founded, viz With bond
 In trust from this date, we promise to pay
 Lewis Crum or his order or assigns
 the just and full sum of Twenty five
 - five dollars, it being for value received

off him as witness over hands and seals
this 11 of January 1823

Test
George Ambrose) Rosmah & Abolaw Bondair
and James M. Gregg) Clerk of said Court
Court after being first duly sworn
deposed and said that the above note had
not to his knowledge been taken from
the files of said Probate Court since
the last term thereof (to wit) May Term
1840) and the above being all the
testimony, given on the trial of said
cause, thereupon the Judge of said
Court found a verdict in favor
of the deft against the said Plaintiff
and costs of suit herein accrued and
thereupon the said Plaintiff moved
the Court in arrest of said verdict
because the same was contrary to law
and evidence, and to grant to him
a new trial, which motion was over-
ruled; To the introduction and admis-
sibility of the aforesaid depositions of Rosmah
& Bondair and refusal to arrest said ver-
dict and grant a new trial the said
Plaintiff ^{excepted} ~~objected~~ and prays that
this his bill of exceptions may be
signed and sealed and made a
part of the record herein which
is done accordingly

James M. McClure
Judge of the Probate Court
San Diego County Indiana

Recd
11/11/23

James M. McClure
W. H. H. of exceptions
the 11th of Nov

(No 2)

Filed in my Office
August 13th 1840
Chas. H. Gregg

L. Conrad
Hall of Expositions
Sail at 10:00 AM. Monday Aug 13th

(4th)

(No 1)

Filed in my office
August 13th 1840
L. Haldey M.

In the Hendricks Probate Court August Term 1840
Lewis Crinn
vs
Jas. H. Bond, H. C. Bond, H. C. Bond } debt,

Be it remembered that on
the 18th. day of August 1840 it being the 2^d. Judicial
day of the August Term of the Hendricks Probate
Court, the said Plaintiff by ^{his} attorney
moved the Court to suppress the depositions of and
Philip Stone taken and published herein here
insert the same and thereupon filed the following
causes (here insert the same) which motion was
overruled to which ~~opinion~~ ^{opinion} and judgment
of the Court the Plaintiff excepted at the time
and thereupon the said Plaintiff moved
the Court to suppress the depositions of John
Crinn taken and published herein (here insert
the same) and filed the following written
exceptions to the same here inclosed which
motion was also overruled, by the Court
to all of which opinions and judgments
of the Court the Plaintiff excepted at
~~the time~~ and prays that ^{his} his bill of
exceptions may be signed sealed and
made a part of the record ^{herein} which is done
accordingly.

James Hobbs (Seal)
Judge of the Probate Court
of Hendricks County Indiana

Lewis Green

vs

Earl Nelson &

Houston McVay

Cost Bond \$50.00

filed in open court May
13th 1840

J. M. Buzzell

Know all men by these presents that I
Christian, of Shaws of Hendricks County and
State of Indiana am held and firmly
bound unto Andrew Mery and well
chebon Exrs of the estate of A. B. Gordon
deceased in the sum of fifty dollars
lawful money, for the payment of which
well & truly to be made I do and I bind
myself my heirs & jointly & severally
firmly by these presents, in witness whereof
I seal this 18th day of May 1840

The condition
of the above obligation is such that whereas
^{Lewis}
~~Andrew~~ Lewis, being his heretofore instituted
a suit in the Hendricks Probate Court
against the said Mery, & relies upon a
claim against the Estate of A. B. Gordon
deceased, now if the said Christian, &
son shall well & truly pay and satisfy
to the said Mery & he have all the costs
which may accrued in the due prosecution
of said cause in the Hendricks
Probate Court, or pay the same to the officers
of said Court, provided Judgment
shall be rendered against the said
Lewis being in the said Court, then &
in that case the above obligation to be well
& void otherwise to be & remain in full
force & virtue in law & in equity

Christian
Seal

Lewis Green
vs
Ed Nelson &
Hudson May

Bill of Exceptions

filed in open court
May 13th 1840
Wm. Briggs atty

State of Indiana } In the Hendricks Co
Hendricks County } Probate Court May
Lewis Green } Term 1840

vs.

Hudson McVey & } In debt

Isaac Nelson Executors of the Estate of Wm. Gardiner deceased

Be it remembered that on this 18th day of
May 1840 the same being the 8th Judicial
day of the May Term of said Court, Hudson
McVey one of the above named depts
made & filed his affidavit of the non
residency of the said Deft, Green
and thereupon the Court ruled the
said Plaintiff to surity. for costs, in said
cause, to which opinion and judgment
of said Court the Plaintiff ^{excepts} ~~objects~~
and prays that this his Bill of exceptions
be signed sealed & made a part of the
record in this cause which is done
accordingly.

Samuel Webster Seal

Judge of the Probate Court
Hendricks County

Returned by order of the Probate Court

Madison W. Gardner
Apr 2^d Defts sub
Joel Nelson &
Hudson May, Es.

Witnesses
Jane Gardner
Edward Strong

Returnable to Probate
Court May Term
1839

State of Indiana }
Hendricks County } The State of Indiana to the Sheriff
of Hendricks County, Greeting

You are hereby commanded to summon James Gardner
and Edward Strang to personally be and appear
before the Honorable the Judge of the Probate Court
of Hendricks County on the first day of his next
Term to be holden at the Court House in Danville
on the second Monday in May (Instant)
to testify in Behalf of the defendants in a certain
matter of Controversy then and there pending
and undetermined wherein Madison H. Gardner
is plaintiff and Joel Nelson and Hudson M. Vay are
defendants And this they may not omit at their
peril And have you then these this writ

Witness James M. Gregg Clerk of our said
Court this 11th day of May 1837

J. M. Gregg Clerk

State of Indiana = In the Hendricks Circuit Court
Hendricks County = April Term Anno Domini 1841

Tuesday April 6th AD 1841

Present the Honorable James Morrison President

Judge Willson Associate }
Judge }
James Muccorn Associate }

Seems Ours

vs
Doel Nelson & Anderson & Co
Executors of Abolom B Gardner dec'd

Come now the parties by their Attorneys and the Court being sufficiently advised in the premises give the following opinion and Judgment pronounced by Judge Morrison, to wit: "The plaintiff in error sued the defendant in error in the Probate Court of Hendricks County, on a writing obligatory for the payment of **D^c 25.00** executed by the defendant's testator and his wife dated 11 January 1823. The defendant after craving oyer of the instrument, filed two pleas of fraud to the action, the one general, the other special: to each of which issue was taken, and upon the trial verdict was for the defts in error, and judgment was rendered accordingly. The testimony is spread upon the record by Bill of exceptions. The Special plea is defectively drawn and would, we think have been bad on general Demurrer. Taking it however as it stands: the facts which it discloses and those adduced in its support by the testimony are altogether dissimilar in every essential feature. The plea in substance sets forth that Gardner being in great need of money, the plaintiff agreed to advance him the amount mentioned in the note, with the understanding and agreement that it was not to be collected from Gardner, but that it was merely to be advanced to the Executors of Christian O'Connell estate, that Gardner and his wife had received so much in part of a legacy due them from that estate, and to

enable a correct settlement to be made, with the Executors in regard to the legacy. Although there is some Verbiage in the plea about "bad & fraudulent representations" made by the plaintiff, yet wherein they consist is difficult to discover in the plea itself, and much more so to find from the testimony. The depositions do not sustain that plea, nor do they sustain the general plea. A general plea of "fraud, covin and false representation" is good, but such defence only relates to fraud, covin, & false representation in the execution of the writing obligatory, and not to the consideration or inducement to it. 3 Blackford's Reps. p. 170. The depositions show that the witnesses were not present when the instrument was made. The general plea is therefore out of the question, as regards the any testimony in its support. The Special plea is not only bad and unsupported by the testimony but is contradicted by the defendants own witnesses. The depositions of the Executors of Christian Crum's estate show the whole transaction - that the plaintiff and their agent received the money to pay to Carden and wife on account of their legacy: - that in doing so he took the obligation in question to indemnify himself and to satisfy the Executors that he had acquitted himself of the trust, - he having at the time he undertook the agency, given to the Executors a similar obligation; that he afterwards delivered this obligation of Carden & wife to the Executors thereby redeeming and taking up his own; that the plaintiff had not only no claim to this obligation but knows not even whence it is; and one of the defendants, Stone, accounts for the existence of this debt, showing that upon a final settlement with Christian Crum's Executors, the obligation was passed over to one John Turner who was appointed to settle the estate, as evidence of the payment of so much to Carden and wife by the Executors. This state of facts is surely most convincing that nothing like fraud or misrepresentation can be imputed to the nominal plaintiff, for in that light only can we view him; and we have no hesitancy in pronouncing his conduct in the whole matter, not only to be und suspicious, but fair, open and honest; and as it is only his conduct that the Special - is designed or calculated to affect, it fol-

shows that the verdict and Judgment of the Probate Court are erroneous and must be reversed. The plaintiff has relied upon various other points for the reversal of the Judgment, and as the cause must be remanded to the Probate Court for another trial, those of them that are deemed of any importance will be noticed. The plaintiffs counsel moved to suppress the depositions for several reasons, amongst which are the following, viz. Because there being a subscribing witness to the obligation he is the best and only competent witness as to the consideration, if his testimony could be procured. We think the plaintiff is in this mistaken. The rule as we understand it is peculiarly applicable to the proof of instruments. There was in this case no controversy in regard to the execution of the obligation. It was the Plaintiffs cause of action, and its execution was admitted by the pleadings, and any other disinterested witness was as competent as the subscribing one, to prove the consideration. Another objection to the admissibility of the depositions is, that they are not properly authenticated. They are properly certified by a Justice of the peace of the County of Highland in the State of Ohio, and if a dedimus was duly issued, either to the Justice by name, or to any Justice of the Peace of that County and State, it would be sufficient according to the rule on that subject recognized as we understand by the Supreme Court; and in the absence of any thing in the Record to the contrary, we are bound to presume there was such dedimus. It is also contended that the witnesses were incompetent on the score of interest, but we can see none. Whilst the Court are therefore bound by the rules of pleading and evidence to reverse ~~to reverse~~ this Judgment, they regret the necessity of doing so: for it is quite manifest from the testimony, that there is no meritorious cause of action against the defendants. But as every wrong must be redressed by the appropriate remedy, so must every pleading and every ^{material} allegation be sustained by the appropriate proof. It is therefore considered by the Court, that the Judgment of the said Probate Court be reversed, and the proceedings do, and including the verdict, be set aside at the costs of the defendants in error; and that the cause be remanded

Appendix of Stut
don Key

State of Indiana
Hoonersville County

Jewis Brown
vs
McVey & Nelson

Be it remembered that on this
13th day of May 1840, ^{Be it remembered that on this} personally appeared Hootson McVey one of the defendants
his oath says that the said Lewis Brown plain-
tiff in this suit is not an resident of the State
of Indiana as he is informed and verily
believes and further with his

Hootson McVey
witness

Sworn to in open court
May 13th 1840

L. M. Buzzell attn

After having
at Chatham 11th Regt
for a continuation

Leaves Given
to 1

at Chatham 11th Regt

State of Indiana } Hendricks Probate
Hendricks County } Court May Term 1840

Be it remembered that
on this 13th day of May 1840 personally ^{appeared} Butson
M^r Vey one the defendants in a suit now pen-
ding is ~~said~~ ^{this court} wherein Lewis Brown is plaintiff
vs Joel Nelson and Butson M^r Vey executors
of the estate of Absalom Gardner deceased
are defendants, and being duly sworn upon
his oath says, that Philip Stone and Christian
Brown of Highland County and State of In-
~~dia~~ ^{Ohio} are material witnesses in this
case, and that ~~they~~ ^{he is supposed that they can} expect to prove by
them, that said note was given by the said
Absalom B Gardner and Rosannah his wife
as a part of a legacy coming to them the said
Absalom B Gardner and Rosannah his wife
from the estate of Christian Brown de-
ceased, and that it was never the intention
of the said Lewis Brown to demand and
collect said note, and that the said Abs-
alom B Gardner and Rosannah his wife, gave
said note, with this understanding, and he fur-
ther states in consequence of the absence of Chris-
tian B. Vey Attorney for said Lewis Brown
it was not in the power of the defendants
to serve a notice on either of them so as to
take the depositions of said witnesses in
time for a trial at this term of the court
and that they cannot safely go to trial
without their testimony, there being no other
person or persons by whom they can prove the
said facts, and that they expect to be able
to procure the depositions of said witnesses
by the next term of said court to be there-
upon asked a continuance of said cause until
further says not Butson M^r Vey

Subscribed to in open court
May 13th 1840 • Joel Nelson

Nelsons Mc Vey
at
Gardner

Probate court
Feb'y Term 1839

General issue

Filed in open court
February 11th 1839
J. M. Gregory clk
" "

Braunton atty
for plff

Joel Nelson & Ezer
Hudson McVey
at
Madison B. Gardner

And the said defendants
Executors do come and say, that the said
Absalom B. Gardner deceased did not
assume and promise in manner
and form as the said plaintiff hath
declared against him; and of this
he puts himself upon the
country;

And the Plff by
his attorney doth
the Lk to C. C. Wood
atto for Plff

Joel Nelson &
Hudson McVey
Ezer & dist

Josel Nelsons & McVay
Executors of
Lewis ^{att} Baum

I plead
General issue
Nedwines Executor

filed in open court
November 27th 1839
J. M. Drugg atty

Brenton for debts

State of Indiana =
Randolphs County = November Term 1833
Joel Nelson & Rodson McVey,
Executors of Absalom B. Gardners
Estate at Debt
Lewis C. ...

And the said defend-
ants Executors as aforesaid by their Attorney
come and defend ~~se~~ and say that the
said Absalom B. Gardner deceased in his
life time did not owe the said sum of
money or any part thereof in manner
and form as the said plaintiff hath a-
bove complained against them and of this
they put themselves upon the country &c

Sam Brenton

Atty for debt

And for a further plea in this behalf
the said defendants Executors as aforesaid
come and say action non because they say
that they are not nor ever have been
Executors of the last will and testament
of Rosannah & Absalom Gardner, in
manner and form, as the said plaintiff
hath above in that behalf alleged

And thus they are ready to verify
wherefore they pray judgment if the
said plaintiff ought to have or main-
tain their action aforesaid against them

Sam Brenton Atty for
debt

I have examined a one of the within named
debtors, A. S. Wilcox with the same company
and the balance of the within named
debts is not found in my debt book.

5th last
to Debitors 972
11th last 60
Total - \$1032

Madison H. Gardner
vs $\frac{2}{3}$ Defts Debt
Hudson M. May &
Loel Nelson ad^{vs} 1/6

Witnesses

William T. Maltlock
Joseph Hall
John C. Gardner
Amos L. Willy
George W. Barnes
James Borders

Ret to 1st day Feb Term
1827 Probate Court

State of Indiana } The State of Indiana to the Sheriff of
Hendricks County }
You are hereby commanded that
you summon William T. Atstock, Joseph Heatt, John
McGardner, Amos S. Wills, George W. Barnes and James
Borders if they may be found in your county, to be
and appear before the Honorable the Judge of the
Hendricks Probate Court on the first day of his
next Term to be holden at the Court House in Danville
on the 3rd Monday in February (next) to testify in favor
of the plaintiff in a controversy wherein Madison St
Gardner is plaintiff and Hudson W. Day & Joel Nelson
Executors of the last will and testament of Absalom B. Gardner
decd are defendants. And this they may not omit at their
peril And have you there this writ

Witness James M. Gregg, Clerk of said Court, this
11th day of February 1839

J. M. Gregg clk

State of Indiana)
Hendricks County,) The State of Indiana to the sheriff
of Hendricks county, Greeting.

you are hereby commanded that you
summons William T. Matlock, Anne Mills and Hudson
McVay to be and appear before the Honorable the Judge
of the Hendricks Probate Court, on the first day
of his next term to be holden at the Court House
in Danville on the second Monday in November
next to testify of and concerning a certain account
filed and exhibited in said Court by Madison H.
Gardner against the estate of Absalom B. Gardner
dec'd. And this they may not omit at their peril. And
have you then there this writ.

Witness James M. Guffy clerk of said court
this 30th day of October A.D. 1838

J. M. Gregg clerk

Serena May 12th 1840 as
Commanded
Edmund Clark Sff

Sff least
Dial .75
Diagn .60
Net .90

Winters claim
2 days \$10.00
\$1.40

William L. Mallock
vs 3 Sffs Sub
Sol. Nelson &
Hudsonell Day

Winters

William L. Mallock
James Wright

Oct forthwith

State of Indiana } The State of Indiana to the Sheriff of Hendricks
Hendricks County } County Greeting

You are hereby commanded
that you summon William L. Matlock & James Wright
if they may be found in your county, to personally be & appear
forthwith, before the Judge of the Hendricks Probate Court
now sitting at the Court House in Danville to testify in behalf
of the plaintiff in a certain Matter of Controversy now pending
and undetermined in said Court wherein William L. Matlock is
plaintiff & William H. May & Joel Nelson Executors of the estate
of Abraham D. Gardner are defendants. And this they may not omit
at their peril. Witness James M. Sugg Clerk of said Court
this 11th day of May 1840

J. M. Sugg Clk

Henry & Leonard & Leonard
& J. Hadley Adams
Agreement to

filed in open court May
15th 1811

J. M. Luzz alk

State of Indiana } In the Hendricks Probate Court
Hendricks County } May Term 1841

It is agreed by and
between, John Cronin & Philip Stone Executors of Christian
Cronin deceased, and Simon J. Hadley Administrator
debours none of the estate of A. B. Gardner late of
Hendricks County deceased that a suit now pending
in the Hendricks Probate Court wherein Lewis Cronin
is Plaintiff and S. J. Hadley and Joel Nelson
Executors of the last will & testament of A. B.
Gardner deceased are defendants, is to be dismissed
at the costs of said defendants to be paid by
S. J. Hadley Adm. debours none as aforesaid
out of the moneys of said estate; and the
said Stone & Cronin Executors as aforesaid on their
part further give up and surrender two other
writings obligatory to said S. J. Hadley one
for fifty dollars executed by Abraham Gardner
in his lifetime to said Stone and Cronin Executors of
the estate of Christian Cronin deceased on the 13th day
of November 1821. and one other note for \$25⁰⁰ at
executed by Rosanna & Abraham Gardner to the
said Stone and Cronin Executors as aforesaid
on the 5th day of November 1822. And the said
Hadley as such Administrator debours none
of the estate of A. B. Gardner deceased agrees
to pay, said Lewis Cronin ~~for the use~~ over to
C. C. Stone the attorney of Philip Stone & John
Cronin Executors of the estate of Christian Cronin deceased
and Lewis Cronin ^{in full discharge} fifty dollars, in full discharge
and release of said ^{deceased} demands against the estate of
the said A. B. Gardner deceased ~~him~~

May 18th 1841 } Philip Stone & John Cronin Executors
Lewis Cronin By C. C. Stone atty
S. J. Hadley administrator de bonis non

Lewis & Clark

Post Nelson's
Hudson's Bay

Record

Deposition of witnesses taken in a cause pending
in the ^{2d} Hendricks County Probate Court Indiana, wherein
Lewis Crum is plaintiff & Hutton McVey & Joel Mil-
lan Executors of Abner B. Gardiner's estate, are
Defendants, in pursuance of the notice hereto attached,
and at the time and place therein mentioned.

Philip Stone of the County of Highland and State of Ohio, of lawful age, and being first duly sworn by me as hereafter certified, deposes and says, that, he, the Defendant, & John Green were the executors of the estate of Christian Green dec'd. - That a legacy ~~of~~ ^{of} ~~was~~ ^{was} ~~made~~ ^{was} was left by said dec'd to his Daughter Betannah Gardiner - twenty five dollars of said legacy had been paid to Gardiner & his wife some time previous to the date of the note upon which this suit is founded. The balance of twenty five dollars was sent by said Exors Stone & Green, by Lewis Green, to Gardiner & his wife for which said Lewis Green gave to said Exors Stone & Green, his own note - and when Abraham B. Gardiner & ~~his~~ his wife received the twenty five dollars of Lewis Green, which ~~had~~ ^{has} been thus sent to them as ^{an hundred dollars, & part of} the remainder of the legacy left them, they paid the note to him in question, which was intended to be a receipt for the same, & to enable Lewis Green to lift his own obligation, which he had given to said Stone & Green Exors for said twenty five dollars - So that it will be seen that the note in dispute given by A. B. Gardiner & wife to Lewis Green for twenty five dollars, and which appears to be dated in Jan'y 1822 - is, in truth & in justice nothing more nor less than a receipt to the Executors of C. Green's estate for the ~~payment~~ ^{part} of a legacy left to Gardiner & his wife.

Defendant further says that Lewis Green has no claim in justice or equity to said twenty five Dollars, that he sets up no claim for it what ever, that he does not even know where the note is, or what became of it. And that he never had any intention of collecting said note off of Gardiner's estate, as upon the presentation of Gardiner & wife's note to the Exrs Stone & Green, he lifted his own obligation - the intention of which was simply to bind him solely to deliver the said twenty five Dollars to Gardiner & wife.

Witness further saith that when he & J. Green as Exrs settled with John Gardiner (who was authorized to make settlement) that note or rec^t, was given to him, & after apportioning the balance due from the estate to Gardiner & wife, we gave our note for the money, which has been since paid off in full. & the business finally closed with them.

Philip Stone

Read to witness & approved.

Also John Green of the County of Highland & State of Ohio, and of lawful age, being first duly sworn as hereafter certified, deposes & says, that, He together with Philip Stone was executor of the estate of his late father, Christian Green dec^d. That he had heard read the foregoing statement of Philip Stone, relating to the matter in controversy. That the 1st deposition of Stone is substantially true - Philip Stone & myself Exrs as above stated, had determined to pay Gardiner & wife one hundred Dollars, part of a legacy left them by my father, out of money on hand. This twenty five Dollars was the last payment of 2^d hundred Dollars - and as stated by Mr. Stone, was sent to Ohio, to Gardiner & wife by Lewis Green, and for the safe delivery thereof, & as a rec^t for the same he gave us his obligation - and when he gave Gardiner & wife the money, he took from them the note upon which

This suit is founded, — afterwards Lewis Croom presented
ed this same note of Gardiner & wife (which we viewed
only as a receipt, for the money agreeably to the inten-
tion of all parties) Stone and myself gave up his ^{L. Croom's} own
obligation, the condition of which had been fully com-
plied with. — No part of the twenty five dollars e-
ver belonged to Lewis Croom, he was only the person
who was made the bearer of the money from Stone &
myself, ~~as~~ executors of C. Croom's estate, to Gardiner
& wife, as legatees.
Read to witness & approved.

John Croom

I William Kepp, a Justice of the peace in and for
the Township of Liberty, in the county of Highland Ohio,
do hereby certify that the above named Philip Stone and
John Croom were by me first duly sworn to testify the
truth, the whole truth, & nothing but the truth, and that the
 foregoing depositions by them respectively subscribed, were
by me reduced to writing, and were taken at the time and
place specified in the inclosed notice.

In testimony whereof I have hereunto set my hand, this 27th
day of July 1840.

William Kepp J. P. Sealed

Justice fees \$1.10
do postage 27^{cts}
two witness 1.00
Clerk's fee \$ 2.37



Deposition of Philip Stone and
John Crum, in a cause pending in the
Hendricks Probate Court, Indiana.

Sworn to by

Antony McVey and } Executors A. B. Gardiner Dec?
Jacob Nelson

Filed in office Probate August
11th 1840 J. H. Gregg atty

State of Indiana
Hendricks County

Lewis Brown

vs

Hutson McVay &
David Nelson Executors
of Sheldon B. Gardner's estate

Sheldon B. Gardner's estate
vs
Christian C. Nave Esq. Attorney of
Record for Lewis Brown

And you are hereby
notified that on the twenty seventh day
of July 1840 at the Town of Hillsboro High
land County Ohio before William Keys
Esq. a Justice of the peace, we will pro
ceed to take the depositions of Philip
Stone Christian Brown (jun) Lewis Brown
and others to be read in evidence in
a suit now pending in the Hendricks
Probate Court, wherein Lewis Brown is
plaintiff, and we as executors of the
estate of Sheldon B. Gardner deceased
are defendants, to be read in behalf
of the defendants, said depositions to
be taken commenced between the
hours of 10 o'clock A.M. and five P.M.
and continued from day to day
until closed at which time and
place you may attend and cooperate
amine if you please

July 14th 1840

Hutson McVay
David Nelson
Executors &c. &c.

Came to Land July 16th 1810 and found
the same day by reading and by copy
on the low water

Edmund Clark off

off Coast
S. 10th 372
copy 25-
Return 10

72.5

and from
" "
written by Mr. V. &
John Wilson
John to G. B.
Went

State of Indiana
Kendricks County

The State of Indiana to William
Kepp Coquina, a Justice of the Peace
in and for the County of Highland in the State of Ohio
Greeting

Know ye that we trusting to your fidelity and
prudent Circumspection in diligently examining of Philip
Stone, Christian Green, Jr Lewis Green and others, intru-
sors for Weston McVay and Joel Nelson Executors of the
Estate of Absalom W. Gardner deceased, in an action
at Law now pending and undetermined in the Kentucky
Probate Court in the State of Indiana wherein the said
Weston McVay and Joel Nelson Executors as aforesaid are
defendants and Lewis Green is plaintiff; Command
ye that at such time and place as you may appoint,
that you cause to come before you the intrusers aforesaid
and them diligently examine upon their oaths, touching
the matter in Controversy between the parties, and their
examination so taken that you send and certify enclosed
together with this writ, to the Clerk of our said Court at
Danville in the County and State first aforesaid.

Given under my hand and the seal of our
said Court at Danville this 17th day of June
A. D. 1840

W. H. Gregg cly

A Ganner
Not

425

Intrest up

to 11th Aug 44

Accont 6439 to 425 25

£ 50 25

Filed in my office

Nov 1st 1883

J. Mc Kinnon

STATE OF OHIO, }
HIGHLAND COUNTY, } 88

SAMUEL BELL, Clerk of the Court of Common Pleas, in and for said County, do hereby
certify, that *William Kuyt* Esq.
before whom the foregoing *depositions* was
Taken is, and was at the time of taking said
depositions an acting Justice of the Peace in and for said
County, duly commissioned and qualified as such, and full faith and credit
is justly due, and of right ought to be given to all his official acts as such as well in Courts of justice
and therout

IN TESTIMONY WHEREOF, I have hereunto set my hand,
and affixed the seal of said Court, this *27th* day
of *July* - 18 *40*

fee \$50 - 50

Samuel Bell CLERK.

With bequee Intimus from this date we prom
ise to pay Lewis Brown or his or clan or assigning
The just and full sum of twenty five dollars it
Being for Value received of him as Witness our
Hands and seals this 11 of January 18 23
Jest George Andrew Brown and J. M. Salomon
Seal

the 1st John Gibson brod in sept 20 The 1831

ABSALOM B. GARDNER

ESTATE

1839

HENDRICKS COUNTY, INDIANA