

No. 14654

Supreme Court of Illinois

Hayward

vs.

Hopkins

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
THIRD GRAND DIVISION.

No. 29

J. W. Middleton & Co., Stationers, 186 Lake St.

Hayward
vs

Hopkins

1864

14654

Circuit Court of Grundy County,

October Term, A. D. 1857.

State of Illinois, }
Grundy County, } ss.

Pleas before the Hon. Charles R. Starr
Judge of the Judicial District on exchange
with the Hon. Jesse C. Norton, Judge of the Eleventh
Judicial District of the State of Illinois, and resid-
ing Judge of the Circuit Court of said Grundy
County, at a Term of said Court begun and held
at the Court House in Morris, in said County, on the
first Monday in October, being the fifth day of October
in the year of our Lord one thousand, eight hun-
dred and fifty seven, and of the Independence of the
United States, the eighty-second.

Present: the Hon. Charles R. Starr, Judge.

J. A. Bartleson, States Attorney.

A. C. Wallace, Sheriff.

Attest: J. M. Reading, Clerk.

Be it remembered, That on the seventh
day of October, in the year of our Lord one thou-
sand eight hundred and fifty seven, it being
one of the regular days of the October Term of said
Court for said year, and the Court being then
duly organized and judicially sitting for the tran-
saction of business, the following proceedings, a-
mong others, were had and entered of record by
the said Court, in words and figures following,
to wit:

" John L. Haywood,
 " Henry S. Burchsted &
 " George H. Veiburn &
 " Alexander Strong,
 " Trading as
 " Haywood, Burchsted & Veiburn
 " vs.
 " William S. Hopkins.

Assumpsit.

" And now at this day come the said
 " Plaintiffs, by their Attorney, B. H. Atherton, Esq. and the
 " said Wm. S. Hopkins in his own proper person & enter
 " an amicable suit. And the said Plaintiff having
 " filed his declaration, as by the agreement of said
 " parties, a Rule was entered on mo of Kiffs that
 " said Defendant plead thereto instant. And said
 " Defendant failing so to plead Judgment by De-
 " fault is entered against him for want of said
 " plea, with order that Kiffs damages be assessed by
 " the Clerk. Whereupon the said Clerk assess the dam-
 " ages sustained by said Plaintiffs at the sum of
 " three hundred & Twenty one Dollars & fifty seven cents.
 " Whereupon on motion of Plaintiffs Attorney, he enters a
 " remittance for the sum of one dollar and fifty cents
 " costs of protest, and Judgment final is entered for
 " the sum of three hundred and Twenty Dollars and
 " seven cents in favor of said Plaintiffs and against
 " said Defendant, besides their costs to be taxed."

And afterwards, to wit: On the fourth
 day of May, in the year of our Lord one thou-

and, eight Hundred and Fifty nine, it being one of the regular days of the May Term of said Court for said year, and the Court being then duly organized and judicially sitting for the transaction of business, the following proceedings, among others, were had and entered of record by the said Court, in words and figures, following, to wit:

" Hayward, Banchsted & Seiburn }
" as. } Motion.
" Mrs. S. Hopkins.

" Now on this come the Plaintiffs by
" Atherton, their Attorney, and move the Court that
" the Levy made by A. C. B. Wallace on the first
" execution in this case, be set aside, and that a
" second execution do issue on said Judgment.
" And the Court being fully advised in the premises do consider & order that said motion be granted."

Hayward, Burchstead &
 "Reiberher
 vs.
 William S. Hopkins.

In Grundy Circuit Court
 October Term, 1857.

"I do hereby enter myself security for
 costs in this cause, and acknowledge myself bound
 to pay, or cause to be paid, all costs which may
 accrue in this action, either to the opposite party
 or to any of the officers of this court in pursuance
 of the laws of this state. Dated this twenty-fifth
 day of September, A. D. 1857. "B. M. Atherton."

[Indorsed on back]

"Hayward, Burchstead & Reiberher

vs.

"Wm. S. Hopkins"

"Security for Costs."

"Filed Sept 25th 1857. G. M. Reading, clk."

Hayward, Burchstead & Reiberher
 vs.
 "Wm. S. Hopkins.

"On Sept Rate 19. Nov 1856

"for \$316~ and costs of protest \$1.56.

"Suit amicably entered at Oct Term of Circuit
 Court, Grundy County Illinois.

"Left waives issuing & service of process and
 will plead to declaration if filed on or before 30 Sep. 1857

"25 Sept 1857"

"W. S. Hopkins."

[Indorsed on back]

"Hayward, Burchstead & Niebuhr"

vs.

"William G. Hopkins."

"Amicable suit"

"Filed Sept. 25th 1857. J. A. Reading, clk."

"Attention for Ref."

" United States of America.

" Be it known, that on the day of the date
" hereaf, G. Adolphus Bates, Notary Public, by authority
" of the Commonwealth of Massachusetts, duly commis-
" sioned and sworn, in and for the county of Suffolk,
" and practicing in the City of Boston, in the said
" Commonwealth, at the request of the Cashier of the
" Bank of Commerce, exhibited the original Prom. Note
" which is hereto annexed, the time limited and grace
" having elapsed, to the paying teller at the Bank of
" Commerce, in Boston, and demanded payment
" thereof, which was refused. The said Note remaining
" unpaid, I duly notified the Indorsers by notices sent
" them per mail to Morris, Gls. and in each notice re-
" quiring payment. Whereupon I, the said Notary, at
" the request aforesaid, have Protested, and do hereby
" solemnly protest against the drawer and indorsers
" of the said Note, and all others concerned, for all ex-
" change, re-exchange, costs, damage and interest, suffered
" and to be suffered, for want of payment thereof.

" Thus done and Protested and Boston,

" the Twenty second day of July, 1857.

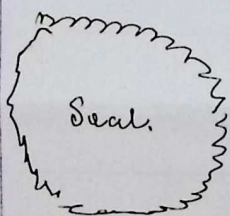
" In testimony whereof, I have herewith
" set my hand, and affixed my Notarial
" Seal, the day and year above written.

" G. Bates, Notary Public."

" Fees. \$1.50"

" Postage 6 "

" 1.56 "



\$316—

Moore, Nov. 19th, 1856.

"Eight months after date I promise to
" pay to the Order of Lewis J. Gasselyn Three Hundred
" Sixteen $\frac{1}{10}$ Dollars, at either Bank in Boston.
" Value received. R. M. P. July 22^d 1856 Mr. J. Hopkins."
" So. — due — ^{Notice to indorsers}
 a. B. M. Pub.
 Fees 1.50
 Post 6
 1.56

[Date endorsed on back]

"Lewis J. Gasselyn." "A. H. Bishop."

~~"Pay to the order of B. H. Atherton, Esq.
Hayward, Burchstead & Seaborn."~~

[Endorsed on back]

"Hayward &c

vs.

Mrs. J. Hopkins."

"Filed Oct. 17th, 1857. Reading, Ckr."

In Gundy Circuit Court,

" of the October Term, A. D. 1857.

" State of Illinois, }
" Gundy County, } ss.

" John B. Hayward, Henry F. Burchstead,
" George H. Niebuhr and Alexander Strong, copartners un-
" der the firm of Hayward, Burchstead & Niebuhr,
" Plaintiffs in this suit, by B. H. Atherton, their Attorney,
" complain of William S. Hopkins, Defendant, who
" waives process and enters amicable suit of a plea
" of trespass on the case on promises: For that whereas
" the said Defendant heretofore, to wit: on the nineteenth
" day of November, in the year of our Lord one thou-
" sand, eight hundred and fifty-six, at Morris, to wit,
" at said county of Gundy, made his certain prom-
" issory Note in writing, bearing date the day and year
" aforesaid, and then and there delivered the same
" to Lewis S. Gosselyn, in and by which said Note
" said Defendant, by the name, style and description
" of W. S. Hopkins, promised to pay the order of the
" said Lewis S. Gosselyn, at either Bank in Boston,
" eight months after date, Three Hundred and sixteen
" Dollars, for value received. And the said Lewis
" S. Gosselyn, to whom or to whose order said Note
" was payable, afterwards, to wit, on the day and year
" aforesaid, at Morris, that is to say, at the County of
" Gundy aforesaid, endorsed said Note in writing, by
" which said endorsement the said Lewis S. Gosselyn
" then and there ordered and appointed the said
" sum of money in said Note mentioned to be paid

to Albert H. Bishop, or order, and then and there delivered said note, so endorsed, to the said Albert H. Bishop. And the said Albert H. Bishop, afterwards, to wit, on the day and year last aforesaid, at Morris, that is to say, at said county of Grundy, endorsed said note in writing, by which said endorsement the said Albert H. Bishop then and there ordered and appointed the said sum of money in said note mentioned, to be paid to the said Plaintiffs, and then and there delivered the said note, so endorsed, to the said Plaintiffs. Of all which the said William T. Hopkins had notice. By means whereof, and by force of the statute in such case made and provided, the said Defendant became liable to pay said Plaintiff said sum of money mentioned in said note, and being so liable, in consideration thereof, then and there undertook and promised to pay the same to the said Plaintiff according to the tenor and effect of the said note, and of the endorsement aforesaid, to wit, at the place aforesaid. And the Bks aver that they were ready on the day that the said note became due and payable according to its tenor and effect at the the Bank of Commerce, the same being a Bank in Boston, to receive payment of the contents of said note according to the tenor thereof, but neither the said Defendant, or any other person on his behalf, did or would then, or at any other time pay the contents of said note to the Plaintiffs.

"And whereas, also, the Defendant, afterwards, to wit, on the first day of September, in the year of our Lord one thousand, eight hundred and fifty seven,

. 0 0 . 1 0 .

" to wit, at said bounty, became and was indebted unto
" the Plaintiffs in a large sum of money, to wit, five hun-
" dred dollars, for money before that time lent and advan-
" ced to said Defendant by said Plaintiffs, at said De-
" fendant request; and also in the like sum, for money
" before that time paid, laid out and expended for said
" Defendant by the said Plaintiffs, at the like special
" request of said Defendant; and in the like sum for
" money before that time had and received by said De-
" fendant to and for the use of said Plaintiffs; and al-
" so in the like sum, for goods, wares and merchandise,
" before that time sold and delivered by said Plaintiffs
" to said Defendant, at the like special instance and
" request; and also in the like sum for the labor, care
" and diligence of said Plaintiffs before that time done
" and performed by said Plaintiffs for said Defendant,
" and at the like instance and request of said Defen-
" dant; and also in the like sum, then and there
" found to be due and owing to said Plaintiffs on an
" account stated between them; and being so indebted
" said Defendant in consideration thereof, then and there
" undertook and promised to pay said Plaintiffs said
" several sums of money above mentioned, when therein-
" to afterwards requested.

" Yet the said Defendant, not regarding
" his said promises and undertakings, but contriving,
" &c. although often requested so to do, has not paid
" said Plaintiffs either of said sums of money above
" mentioned, or any part thereof, but so to do has hith-
" erto wholly neglected and refused, and still does

" neglect and refuse, to the damage of said Plaintiffs of
" five hundred dollars, and therefore they bring this suit, &c.

" B. H. Atherton,

" Plaintiffs Attorneys.

" Copy of Instrument and Account sued on.

" \$316~

" Morris, Nov. 19th 1856.

" "Eight months after date I promise to pay to the order
" of Lewis S. Gasselyn Three hundred sixteen dollars at
" either Bank in Boston. Value received.

" Mr. S. Hopkins

" "Endorsed "Lewis S. Gasselyn." "A. H. Bishop."

" Mrs. S. Hopkins

" To Hayward, Burchstead & Niebuhr Dr.

" To money lent and advanced,	\$500 —
" To money paid, laid out and expended,	\$500 ~
" To money had and received to and for the use of said Plaintiff,	\$500 ~
" To goods, wares and merchandise sold and delivered,	\$500 ~
" To labor and services,	\$500 ~
" To balance due on account stated,	\$500 ~ "

[Endorsed on back]

" Hayward, Burchstead & Niebuhr

" vs.

" William S. Hopkins."

" vsr. "

" Filed this 29th day of Sept. 1857. Reading, Ct.

" Atherton, Plaintiffs Attorney."

" _____ Clerk."

Hayward, Hinchsted & Niebuhr } County Circuit Court
vs. } May Term, 1859.
"Mrs. B. Hopkins.

"Now comes the Refs. by B. H. Atherton,
"their Attorney, and move the Court here, that the levy
"made by A. C. B. Wallace on first execution in this
"case be set aside and that a second execution do
"issue on said Judgment. And the said Atherton, At-
"torney, &c. states that said first execution was in the
"hands of said Wallace, Sheriff, when he absconded.
"That he the said Atherton saw said execution several
"times in the hands of Hiram C. Gould, Esq. one of
"the Sheriff's bail, but that now the said execution is
"not among the files of executions in the hands of
"said Gould, who says he can give no account of
"it; that it does not appear to have been returned to
"the Clerk's office, and that the undersigned knows
"not where it is. According to the recollection of the
"undersigned, the said Wallace did not sign his
"name officially or otherwise to the words inclosed on
"the execution, purporting to describe a levy. And the
"undersigned is informed and believes that the said
"Hopkins had no title to the lands described in the
"said inchoate return of said Sheriff. The under-
"signed makes this application in accordance with
"a stipulation signed by said Hopkins and herewith
"presented, and for the purpose, if practicable thereby,
"to relieve the Sheriff's bail.

"B. H. Atherton,

"Ref's Attn."

[Foregoing endorsed on back]

"Hayward, et. al.

vs.

Mrs. M. Hopkins."

"Filed May 4th 1859. Mr. A. Kiersted, clk."

"Hayward, Niebuhr & Co.

Oct. Term, 1857.

"Bunchsted, Niebuhr & Co.

vs.

"William M. Hopkins.

"Agreed that the supposed levy made
by A. C. B. Wallace be set aside and that an alias
execution do issue. This is intended, if possible, to
save the Sheriff's Bail.

"B. M. Atherton for Reps.

"Mr. M. Hopkins."

"3 May, 1859."

[Endorsed on back]

"Hayward

vs.

Hopkins."

"Filed May 4, 1859. Mr. A. Kiersted, clk."

State of Illinois,
Grundy County, } ss.

I, John B. Davidson, clerk of the Circuit Court in and for the County of Grundy and State of Illinois, do hereby certify, the foregoing to be a full, true and perfect copy of the records of the proceedings, and of the papers filed, in the cause wherein Hayward, Buchstead & Niebur were Plaintiffs and William T. Hopkins was Defendant, in the Grundy County Circuit Court, as appears from the records now in my office.

In testimony whereof, I have hereunto signed my name and affixed the Seal of my office, at the City of Morris, in said County and State, this 10th day of April, A. D. 1862.

John B. Davidson, clerk.

S. P. Satt, Deputy

State of Illinois ss.

Supreme Court

Third Grand Division

William T. Hopkins
Plaintiff in error

To the April Term 1863.

vs.

John D. Hayward
Henry F. Buchstead
George H. Niebur
Alexander Strong
Defendants in error

Error To

Grundy County
Circuit Court

And the said William T. Hopkins now comes and says that in record and proceedings aforesaid there is manifest error in this. To wit:

The Court erred in ruling said William T.

Hopkins, defendant in the Court below, to plead.
The Court erred in finding that the said
William T. Hopkins had entered his appearance
in said cause.

The Court erred in defaulting the said William
T. Hopkins, in said cause.

The Court erred in rendering judgment
against the said William T. Hopkins by
default for want of a plea in said cause.

The Court erred in rendering judgment for
the amount of the protest fee of the note, and
too large a sum in said cause.

The Court erred in finding the law for the
plaintiffs, in the Court below, in said cause.

The Court erred in rendering judgment
for the plaintiffs in the Court below in
said cause, whereas by the laws of the land
judgment ought to have been given in
favor of the said William T. Hopkins, defen-
dant in the Court below; wherefore the said
William T. Hopkins prays that a citation
and supersedeas may issue, and that
the said judgment may be reversed, annulled
and held for nothing, and that he may be
restored to all things he has lost by reason
thereof.

J. W. Newport
Atty for Dfnd in Error

85729
Gundry & Co. Cin. Court

McCoyward, B. in Chancery
& Merchants

do.

William T. Hopkins.

Presno exhibit.

Filed Sept. 29, 1842
J. Deane Clerk

STATE OF ILLINOIS,
SUPREME COURT, } ss.

The People of the State of Illinois,

To the Clerk of the Circuit Court for the County of Grundy Greeting:

Because, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of Grundy County, before the Judge thereof, between John D Hayward, Henry F. Buchstead, George W. Niebuhr & Alexander Strong

plaintiff, and William T. Hopkins

defendant, it is said manifest error hath intervened, to the injury of the aforesaid.

Defendants

as we are informed by his complainant _____ and we being willing that error should be corrected, if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the first Tuesday after the third Monday in April next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

Witness, The Hon. John D. Eaton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 29th day of September in the Year of Our Lord One Thousand Eight Hundred and Sixty Two

L. Island

Clerk of the Supreme Court.

183 29
John D Hayward et al

No.

185

William T Hopkins

WRIT OF ERROR.

FILED

Sept 29

A. D. 1862

L. Selander

Clerk.



State of Illinois ss

Supreme Court

Third Grand Division

April Term 1864

William Hopkins
Plaintiff in Error

vs

John D Hayward
Henry F Buchstee
George A. Korbuehr &
Alexander Strong

Defendants in Error

Error to

Grundy County

Circuit Court

The Defendants in the above Error
in the above stated suit by J. N. Reading
their Attorney hereby enter their appearance
for the purpose of moving to dismiss the same
and hereby file their Motion to Dismiss
said suit for the following Reasons

1st

Because the said Plaintiff in Error
has under his hand & seal & for valuable con-
sideration Released to the said Defendants in
Error all and all manner of Error in the
 rendition of the said judgment. if any. ~~that~~ in
the said Circuit Court of Grundy ^{County} and judgment,
said writ of Error was brought to reverse

2^d

Because ^{no service} of said writ of Error has been made
upon the said Defendants or either of them and no
Publication thereof has been made as required by
Law -

J. N. Reading
Atty. of Defs in Error

29

Supreme Court

Hopkins

vs

Hoyward et al

}

Filed Apr. 21. 1864

L. Leland Clerk

In the Circuit Court of Grundy County
and state of Illinois - at the Term of October
1857 In and sent there and there fore
- doing wherein Hayward Buschsted and
Niebuhr. were Plaintiffs and William T.
Hopkins was defendant. Judgment was
in default of appearance of the defendant
rendered for the plaintiffs for the sum of
three hundred twenty one dollars & sixty seven
cents together with costs of suit and now where
- as in the said judgment it is found
that the sum of one dollar twenty five
cents is included for notarys fee in proce-
ding the note on which said judgment
- ent is founded and whereas the said
Hopkins alleges that in including the
said one dollar and twenty five cents as
well as on other grounds the said Court erred
in the rendition of said judgment.
Now in consideration that the said
Hayward Buschsted & Niebuhr have by
B. Mc. Ckerton their Attorney relinquished
and released to the said William T. Hopkins
the said sum of one dollar and twenty
five cents, and whereas the said judg-
- ment is in all other respects just in fact
the said William T. Hopkins does by these
present do here to the said Hayward
Buschsted and Niebuhr. all and all.

manner of error in the rendition of the
judgment aforesaid.

Given under my hand and seal
this 25th day of March, A.D. 1858.

W. T. Hopkins ©

State of Illinois }:

Supreme Court Third
Grand Division

In the April Term, 1863

William T. Hopkins
Plaintiff in error

vs

John D. Hayward
Henry S. Buckstead
George H. Niebuhl &
Alexander Strong

Defendants in error }

Error to Grundy &
County

Circuit Court.

State of Illinois }

St. Louis County }

ss. James N. Reading being duly
sworn on his oath saith ^{that} he is well acqu-
ainted with the record writing of William
T. Hopkins the above named Plaintiff
in error and has frequently seen
him write. That the signature W.
T. Hopkins subscribed to the Paper
purporting to be a release of
error in the above stated case is
in the paper hand writing of him
the said William T. Hopkins and
which ~~the~~ said Paper writing is hereto
attached.

Sworn & subscribed this
21st day of April A.D.
1864. before me

James N. Reading

J. Leland clerk

State of Illinois S.S. - I, Lorenzo Seland Clerk of the
Supreme Court of said State, 3^d Grand
Division, do hereby certify that the foregoing
are true copies of papers filed in my office
April 21st 1866 in the case of William T. Hopkins
vs John D. Hayward & others & that the same
are now on file in my said office

Witness my hand & the seal of said
Court, at Ottawa, this 2^d day of
August A.D. 1866.
L. Seland Clerk.

Original paid Aug 10th 1867
E. Sanford

29
Supreme Court
Hops vs
Hayward et al

Filed April 21. 1864
L. Seland Clerk.

Dec. 1.00

State of Illinois H. ³

Supreme Court
Third Grand Division

William L. Hopkins

To the April Term 1863.

Plaintiff in error

vs.

John D. Hayward

Henry F. Burchstead

George H. Niebuhr &

Alexander Strong

Defendants in error

Error to

Grundy County

Circuit Court.

Please issue *scire facias* to hear
errors in the above entitled cause
directed to the Sheriff of Grundy County.

To L. Leland esq.

Clerk Sup. Court

W. Newport

Atty for

Plff in error.

Enclosed please find \$ 5.00 docket fee.

W. Newport

No. 1000000

125

No. 1000000

Filed Sept. 29, 1862

L. L. L. L. L.