


No. 14306

Supreme Court of Illinois

Mix

vs.

Halsey

71641  7

STATE OF ILLINOIS.

SUPREME COURT.

Third Grand Division.

No. 295.

1866

Mail
vs

Halsing

1862

State of Illinois }
Ayle County } In Ayle Circuit Court

At a term of said Circuit
Court begun and holden in and for the County
of Ayle aforesaid at the Court House in Oregon
on the first Monday of November A.D. 1861 then
and there being present the Honorable J. W. Milks-
inson judge of the ~~5th~~ ^{2nd} judicial Circuit of
Said State

John A. Hughes Sheriff
D. McCourtney Deputy
and J. G. Petrie Clerk

Be it remembered that on the 28th day of
October A.D. 1861 a praecipe was filed in said
Court which is in the words and figures follow-
ing to-wit

State of Illinois } In the Circuit Court of said County
Ayle County } ss. Of the November term A.D. 1861
Anthony P. Hooley }
vs }
Henry A. Pitt }

Issue Summons in the above entitled
Cause made returnable at said term in an action
of Trespass on the Case for said damage
Two thousand dollars and oblige yours &c
J. W. Milksinson
Judge of said Circuit

Which praecipis is endorsed on back as follows
Filed October 23^d 1861 J. G. Petrie Clerk

On the same day was filed Security for Costs
which are in the words and figures following to-wit

State of Illinois } In the Circuit Court of said
Ogle County } County of the November Term A.D. 1861

Anthony T. Hoalsey }
vs

Henry A. West }

Step pass on the case on praecipis

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 pursu-
ance of the laws of this State

Wm. B. Light

Dated this 23^d day of October A.D. 1861

Which is filed

on back as follows to-wit

Filed October 23^d 1861

J. G. Petrie Clerk

And on the same day a summons
was issued in said Cause which is in the words
and figures following to-wit

State of Illinois }
Cyle County } The People of the State of Illinois
to the Sheriff of said County greeting

We Comand you that you summon Henry A. Witt if he shall be found in your County personally to be and appear before the Circuit Court of said Cyle County on the first day of the next term thereof to be and holden at the Court House in Oregon in said Cyle County on the first Monday of November next to answer Anthony Phalacy in a plea of Trespass on the Case in promise to the damages of the said plaintiff as he says in the sum of two thousand dollars and have you then and there this writ

Witness ^{F. G. Petrie} F. G. Petrie Clerk of our said Court and the Seal thereof at his office in Oregon in said County of Cyle this 23rd day of October A.D. 1861

(Seal)

F. G. Petrie Clerk

By B. F. Sheris Deputy

I duly served the within writ on the Cyle County }
I am therein Comanded by recieving the same in his presence and hearing this 24th day of October A.D. 1861.

John A. Conyers Sheriff

By Wm R. Buser Deputy

3 Filed 2nd November 1861

F. G. Petrie Clerk

Declaration

State of Illinois } In the Circuit Court of Ogle County
Ogle County } Of the November Term A.D. 1861
Ogle County to wit Anthony T. Halsey plaintiff in
this Cause by Moiles B. Light his Attorney complains
of Henry A. Post defendant who is summoned etc.
in a plea of Trespass on the Case on promissio
for that whereas the said defendant heretofore to-wit
on the first day of June in the year of our Lord
one thousand eight hundred and sixty one at
Oregon to-wit at Oregon in said County of Ogle
made his certain promissory note in Writing
bearing date the day and year aforesaid and then
and there delivered the same to one Henry Crill
in and by which said note said defendant by the
name style and description of H. A. Post, promised
to pay to the said Henry Crill (by the name and
style of Henry Crill) or order within days after
the date of said note which time has long
since elapsed and the said promissory note is
now due and payable the sum of twelve hundred
and ninety four dollars with interest thereon at
the rate of ten per centum per annum for value
received and the said Henry Crill to whom or to
whose order said note was payable then and there
endorsed and under his hand assigned the
said note to the said plaintiff in Writing
and then and there delivered the same so endorsed
to the said plaintiff 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 effect and true intent and meaning of the said note and of the indorsement aforesaid to-wit at the place aforesaid upon request. And whereas also the said defendant afterwards to-wit on first day of October in the year of our Lord one thousand eight hundred and sixty one to-wit at Oregon in said County became and was indebted unto the plaintiff in a large sum of money to-wit in the sum of two thousand dollars for money before that time lent and advanced to and paid out and expended for said defendant by said plaintiff at said defendant's request and in like sum for money before that time had and received by said defendant to and for the use of said plaintiff and also in like sum for goods wares and merchandise before that time sold and delivered by said plaintiff to said defendant at like special instances and request and also in like sum for the labor care and diligence of said plaintiff before that time done and performed by said plaintiff for said defendant and at the like instances

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And request of said defendant and also
 in like sum then and there found due
 and owing said plaintiff on an account
 stated between them and being so indebted
 said defendant in consideration thereof then
 and there undertook and promised to pay
 said plaintiff said last mentioned sum's
 of money when therunto afterwards requested

Yet the said defendant not regarding
 his said promises and undertakings but
 contriving etc although often requested so to
 do hath not paid said plaintiff either of
 said sums of money above mentioned or any
 part thereof but so to do hath hitherto wholly
 neglected and refused and still doth neglect
 and refuse to the damage of said plaintiff of
 the sum of two thousand dollars and therefore
 he brings this suit etc

Wiles B. Light,
 Plffs Attorney

Which said declaration was entered on the
back as follows to-wit-

Filed this 25th day of October 1861
F. L. Petric Clerk

And afterwards to-wit-on the 19th day
of Nov. A.D. 1861 and yet of the said November
term the following pleas were filed in said
cause) which are in the words and figures ~~and~~
following to-wit-

State of Illinois } Circuit-Court of said
Cyle County } County Nov Term 1861

Anthony Phalsey }
vs

Henry A. Mit.

And the said defendant
comes and defends the wrong and injury
and says that he did not under take and
promise in manner and form as the
plaintiff hath about thereof complained
against him & of this he puts himself upon
the Verdict.

Complainant against Lorna Annan after this has
perita himself upon the County

2 And for a further plea defendant
says actio non because he says that before the
commencement of this suit and while the note
such upon in this cause was ⁱⁿ actio non possession
we fully paid the same unto said Crill
of said Crill, and that said note was endorsed
by said Crill after it became due and with full
notice of said defendant and this he says may
be inquired of by the Country

And for a further plea defendant
says actio non because he says that the note de-
clared against upon in the plaintiffs declaration was made
by this defendant to the said Crill without any
consideration whatsoever and that said note was
endorsed to plaintiff after due to this defendant
all of which defendant is ready to verify wherefore
H. P. Quenb for Def

Words be covered the
words to covered by
leave of court

8 And for a further plea in this behalf by leave
of Court first had and obtained the defendant
says actio non because he says that the note
declared upon in plaintiffs declaration was
given for the certificates of purchase made by
the Sheriff of Cyle County to the payee Henry Crill
in which certificates it appeared that the premises
in the same described had been sold in two parcels
recovered in the County Court of Amabays County

in the state of Illinois at the June term of said Court 1858 which was obtained in favor of William H. Brown and against one Edward K. Lester for the sum of \$ 603.48 each and costs of suit both of said judgments amounting to the sum of \$ 1207.56 besides costs and interest and that executions had been issued on said judgments and directed to the Sheriff of Cyle County to execute and that in pursuance of the said - - - of said writ of execution the then Sheriff of Cyle County Illinois then and there levied the same upon the following premises situated in the County of Cyle and State of Illinois to wit the East half of the West half of the South West fractional quarter of Section Nineteen Township (42) forty two North and Range two East of 3^d M. bounded as follows commencing at the North East Corner of the East half of the West half of the South West quarter of said Section (19) nineteen then West along the line of said Section Fifty rods then north parallel with the West line of said Section 80 rods thence East parallel with the north line of said Section twenty rods thence north parallel with the West line of said Section 80 rods thence East along the entire line of said Section ten rods thence South sixteen rods thence East thirty rods thence South sixteen rods thence West ten rods thence South eight rods thence East ten rods thence South twenty rods thence East sixteen rods thence South twenty rods thence East twenty five rods thence South twenty rods

Thence South fifty rods to the place of beginning
Containing forty seven acres more or less and that
it appeared in and by said Certificate that
said tract of land was sold on said two sections
on the 3^d day of March 1839 and to said
Crill for the sum \$ 131.46 and said Sheriff
purported ~~and~~ to have executed to said Crill on said day
and delivered to him the said Certificate of purchase
and this defendant having examined said
Certificate and the said Crill representing to this
defendant that the same was issued on a good valid
and subsisting judgment yet remaining in
full force and Virtue in no wise null or Void in
the County Court of Minabago County and that the
defendant being ignorant in the premises and
said Crill being the owner of said judgments
and caused the rendition of the same to be made
in the name of said Brown the defendant relying
upon such representation purchased said Certifi-
cates and agreed to pay therefor the sum of twelve hun-
dred and ninety five dollars and gave the note
declared upon in plaintiffs declaration in security
therefor and for no other or different consideration
and this defendant avers and Charges that the said
judgments so pretended to be good and valid
judgments remaining in the County Court of
said Minabago County was in truth and in fact
absolutely null and Void as no service of pro-
cess was had on said defendant Lester in said

Caused me was there any power or authority given by said Lister to enter his appearance whereby the said judgement became and was an absolute nullity and that said note was endorsed ^{to} the plaintiff after maturity. Wherefore the defendant says that the consideration of said note has wholly failed all of which the defendant is ready to verify.

And for another and further plea by like leave of Court the defendant says Actio-mori because he says ^{that} the note declared upon in plaintiff declaration was given for two Certificates of purchase made by the Sheriff of Cyle County and delivered by him to the payee of said note in and by which Certificates it appears that two judgements ^{were obtained} in the County Court of Win-abago County in the State of Illinois at the June term 1858 of said Court for the sum of \$603.14 ^{and costs of suit} and against Edward W. Lister & in favor of Mrs. M. Brown in which judgements executions were issued directed to the Sheriff of Cyle County to serve and by virtue of which said executions the Sheriff under the direction of Henry Crill who was the owner of said judgements directed the same to be levied on the following premises to-wit: The East half of the West half of the South West fractional quarter of section nineteen (19) Township (42) forty two Range (2) two East of the 3^d P.M. bounded as follows commencing

at the South East-Corner of the East-half
 of the West-half of the South East quarter
 of said section-19- thence West along the line
 of said section fifty rods, thence North-
 parallel with the West line of said section
 eighty rods, thence East-parallel with the
 north line of said section twenty rods thence
 North parallel with the West line of said sec-
 tion 80 rods thence East-along the Center line
 of said section ten rods thence South sixteen
 rods thence East-twenty rods thence South
 sixteen rods thence West-ten rods thence South
 (8) eight-rods thence East-ten rods thence South
 twenty thence East-sixteen rods thence South
 twenty rods thence East-twenty four rods
 thence South twenty rods thence West-forty
 rods thence South (60) sixty rods to the place
 of beginning containing only forty seven acres
 more or less and that after the levy of said
 execution on said premises the same were
 by the Sheriff advertised and afterwards sold
 at public Auction and said Crill became the
 purchaser of said premises at said sale
 and the Sheriff made and delivered to the said
 Crill, at the time of the purchase of the said
 Certificate represented to this defendant that
 the premises therein described were free and
 clear from all incumbrances and that the said

The said Certificate is the said Crill

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levy and sale so made to him said Crill
by virtue of said execution and the title that
would be obtained by the Sheriff said Under and
by virtue of said Certificate would vest
in the defendant a good and perfect title of
the premises in said Certificate described
and relying on such assurances and repre-
sentations this defendant purchased said
Certificate and gave the rate declared upon
in plaintiff's declaration and for no other
or different consideration and the defendant
avens and charges that at the time of the
purchase of said Certificate that Elias S.
Patterson and one of said Ogle County held
a judgment obtained in the Circuit Court of
Ogle County Illinois for the sum of \$387.50
at the March term of said Court 1857 against
one Calvin R. Roadley. Which said is a
valid and subsisting lien on said prem-
ises and that one William Brown also has
and had an incumbrance by trust deed
made by said Calvin R. Roadley and ^{his} ~~his~~
his wife to said Brown for the sum of
\$800.00 eight hundred dollars. Which was a good
valid and subsisting lien on said premises
at the time of said purchase and prior thereto
Therefore the defendant avens that the consideration
of said note has in part failed all of which
13 this defendant is ready to verify therefore he prays
that he be decreed to have the said note cancelled
for

On the back of said plea is the following
which is endorsed in the words and figures
following to-wit

Filed Nov 19-1861

F. C. Petrie Clerk

By B. J. Shuts Deputy

And whereas to-wit on the 13th day of November
A. D. 1861 and still one of the ~~the~~ days of the Nov-
ember term of said Circuit Court of said year
the following proceedings were entered of record
in said cause to-wit

Anthony Pholsey }
vs } Assumpsit
Henry A. Mint. }

And now at this time comes
the said defendant in person and on his motion
leave is given him by the Court to file addi-
tional pleas herein by Monday noon

And afterwards to-wit on the 19th day of November the said plaintiff files his plea and answer to wit

State of Illinois } In the Circuit Court of
Cyle County } the said November term
A. D. 1861

Anthony P. Balsey
vs
Henry A. McKittrick

And the said plaintiff by Miles B. Light his attorney comes and says as to the first plea of the said defendant wherein he hath put himself upon the Country that the said plaintiff doth the like

And for a replication to each the second, fourth and fifth pleas of the said defendant, the said plaintiff says Actio non because he says that the said defendant of his own wrong and without the cause by him in his second, fourth and fifth pleas alleged broke his said promise and undertaking in manner and form as the said plaintiff hath above in his said declaration thereof complained and of this the said plaintiff puts himself upon the Country &c

1. Rep. to a plea amended by Mr. Light and the words "the third" amended to "plea and the" and "the third" amended to "plea" by leave of Court this 19th Nov 1861

Filed 22nd Nov 19 1861
G. B. Price Clerk
B. B. Shultz

And as to the third plea of the said
defendant the said plaintiff says that
the same is insufficient in law and that
the said plaintiff is not bound to answer
the same wherefore he prays judgment &c
Miles B. Light-pleff atty

Which was enclosed in back as follows
to wit
Filed Nov 19, 1861
F. G. Petrus Clerk
By B. F. Sheets Deputy

And afterwards on the said 19th day of November
the said defendant filed his demurrer to the
replication of said plaintiff. Which demurrer
is in the words and figures following to-wit-

State of Illinois } Circuit Court of said
Ogle County } County Nov 7, 1861

Anthony T. Halsey
vs
Henry Amis

And the said Mr Amis

and defends &c and says precluder non-
that the second replication of the plaintiff
is insufficient and he is not bound by the
law of the land to answer the same

Wherefore he prays the judgement of this
honorable Court whether he will further answer
the same

Leop. Jacobs for
Deff

On the back of said demurrer is the following
Endorsement: = Filed Nov 19th 1861

L. G. Petrov Clerk

And afterwards to-wit on the 19th day of November
A.D. 1861 it still being one of the days of said November

17 terms the following proceedings were entered of record
in said cause to-wit-

Anthony P. Healey } Plaintiff
vs }
Henry A. Witt } Defendant

This day comes the said plaintiff
by Light his attorney and the defendant comes in person and now
the demurrer of the plaintiff to defendant's third plea comes on
to be heard and after argument of counsel and the Court
being fully advised in the premises ^{is by the Court sustained} the said demurrer
and now in motion of ^{the} defendant leave is given him to amend
and his third plea whereupon the defendant amends his
said third plea And now comes on to be heard the defendant's
demurrer to the plaintiff's replication and after argument
of counsel and consideration by the Court it is ordered that defen-
dant's said demurrer be overruled and thereupon the defen-
dant says he abides by his said demurrer It is therefore consid-
ered by reason of the premises that the plaintiff here and
recover his damages herein of the said defendant and in as
much as the plaintiff's damages are uncertain and uncerti-
ain & set alone in computation it is ordered by the Court that the
Clerk assess and report the same And the Clerk having made
assessment thereof reports the plaintiff's damages (at) \$1354 ³⁴/₁₀₀
thirteen hundred fifty four and ³⁴/₁₀₀ dollars which being exam-
ined by the Court is approved It is therefore ordered that the
plaintiff here and recover of the defendant the said sum
of thirteen hundred fifty four and ³⁴/₁₀₀ dollars his damages
assessed as aforesaid together with his costs and charges
in this behalf expended and that he have execution therefor
And now comes again the said defendant and enters his
motion in arrest of judgment and for a new trial
herein and after argument of counsel and the Court
being fully advised in the premises the said motion

is by the Court over ruled and thereupon the
defendant prays an appeal of this cause to the
Supreme Court of this state and the Court being
in my considered said proper the same is allowed
upon ^{the} said defendant filing bond with Pyron Jacob
or James V. Galt as security in ^{the} sum of (\$3000.) Three
thousand dollars within thirty days from this
date

And afterwards to-wit on the 20 day of November
A.D. 1861 a bill of exceptions was filed in said
cause which is in the words and figures following
to-wit

Bill of Exceptions

State of Illinois } Circuit Court of said
Ogle County } County Nov Term 1861

A. Balsey
vs
H. A. Witt

Be it remembered that on
the trial of said Cause the plaintiff to maintain
the issue on his part offered in evidence a note
which is in the words and figures following
to-wit

Cash paid June 1st 1861

Ninety days after date for value rec^d I
promise to pay Henry Coill or order Ten
hundred and ninety four dollars & interest at
Ten percent

H. A. Witt

And that said note is all the evidence
that was offered in this Cause to the introduction
of which the defendant excepted and which
exception was overruled by the Court

J. O. Wilkinson,

Judge

On the back of said Bill of Exceptions is the
following endorsement which is in the words

and figures following to-wit = Filed Nov 20 - 1861

F. L. Petty clerk
B. B. Abbotts Deputy

And afterwards on the 16th day of December
AD 1841 an appeal bond was filed in said cause
& is in the words & figures to wit -

Know all men by these presents That one Henry A. Mit as principal and Pyam Jacobs as security both of the County of Ogle and State of Illinois are held and firmly bound unto Anthony P. Halsey in the penal sum of Three thousand dollars lawfull money of the United States for the payment of which well and truly to be made we bind ourselves our heirs executors administrators and assigns jointly severally and firmly by these presents



Witness our hands and seals this 13th day of December A. D. 1861

The Condition of the above obligation is such that whereas the said Anthony P. Halsey died on the 19th day of November A. D. 1861 it being one of the days of the November term of that year of the Ogle County Circuit Court in and for the County of Ogle and State of Illinois recover in said Court a judgement against the above bounden Henry A. Mit for the sum of Thirteen hundred & fifty four dollars and thirty seven cents and Costs of a certain suit of Trespass on the case on promise from which said judgement of said Circuit Court the above bounden Henry A. Mit has prayed an appeal to the Supreme Court of the State of Illinois

Now if the said bounden

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Henry A. Mint shall prosecute his appeal
with effect and without delay and well and
truly pay whatsoever judgments costs
interest and damages as may be awarded
against him in case the said judgment
shall be affirmed then this obligation to be
void otherwise to remain in full force and
effect

Henry A. Mint 
Pyron Jacobs 

State of Illinois
Clerk of the Court of Frederick G. Polier Clerk

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for said County in said State do hereby certify
that the above and foregoing is a true full &
perfect Transcript of the Record & files in my
Office of the above entitled cause

Witness my hand & the seal of said Court
at Oregon in said County this 1st
day of April AD 1862

F. G. Polier Clerk
G. B. Sheets dep



And now comes the issue of appealment
 by Wlorn Cor N & Campbell and
 says that in the record and
 proceedings of record and in the
 rendition of the Judgment of record
 there is manifest error in this
 to wit

- 1st The Court erred in sustaining the
 plaintiffs replication to defendants
 2^d 3^d 4th & 5th pleas
- 2^d The Court erred in rendering Judgment
 without disposing of the plea of
 the general issue
- 3^d The Court erred in trying the case with
 out the case without the intervention
 of a Jury
- 4th The Court erred in overruling the motion
 in arrest of Judgment
- 5th The Court in overruling the motion for
 a new trial
- 6th The Court erred in rendering the
 Judgment of record in name of law

oprosand

Woonlook & Lempall
Jes appellunt

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Henry A. Clark
of
Anthony P. Halsey
Record & Errors

Filed April 24, 1862
L. Seland
Clerk.

Henry A. Ellis

vs

Appeal from Ogle

Anthony J. Halsey

The defendant asks the court to set aside the order of removal in this cause because counsel was surprised. Counsel was not retained until Saturday of the first week of the term so far as appears.

The default was not taken until the second week.

If in any case a party can be defaulted for mere negligence this seems to me to be the case.

Reasonable diligence would certainly have prevented a default.

B. C. Levon

for appellant

Mrs
Halsey.

Deputy against
motion

Supreme Court

Anthony J. Halsey
Appellee

and
Henry J. Mix
Appellant

State of Illinois
County of La Salle

William K. McAllister being
duly sworn deposes and says that he is one
of the firm of Scates McAllister & Jewett
& resides in Chicago. That said firm was re-
tained on the part of appellee in this cause
during sometime last week whilst deponent
and his partner W. B. Scates were here attending
court, by letter directed to the firm at Chicago
which was received by Mr. Jewett, and who
called deponent's attention to the same, on Satur-
day last whilst deponent was in Chicago, and
who also stated that it would be necessary to
join in error, that upon arriving here on Monday
afternoon deponent proceeded to the Clerk's
table to ascertain whether the Record was filed
& said case docketed, but before he could get
an opportunity to do so, the court came in
and although deponent was present, yet
a rule was taken reversing said ~~cause~~ the
judgment in said cause, without deponent
recognizing the case, deponent further says
that such reversal default occurred by the

reason of the mere accident of a large
number of attorneys applying to the Clerk
for information as to cases, and the Clerk
being compelled to ~~take~~ give his attention
to the proceedings in Court, that deponent
failed to find out that the record was
filed & a rule taken to join in error.
That deponent intended to join in error
in the cause but failed so to do as aforesaid.

W. H. McAllister

done this 28th day
of April 1862 before
me S. Ireland
Clerk

Superior Court 1862
Anthony H. Adams
Appellee

Henry J. May
Appellant
App

The Appellee on the within
affidavit moves the
Court to set aside
the order of reversal
and for leave to join
in error in this cause

Scates, Nich. & Jewett

Filed April 28. 1862
S. Ireland
Clerk

Motion Denied

Halsey)
ad)
Miz)

The attys for appellee ask to have the order of reversal entered on the 28th not set aside & leave given to join in error on the ground that the default was a matter of accident & surprise.

The retainer was signified in this case by letter to Chicago, which was unknown to us who were here until M^r A went here Friday P.M. On coming here Monday, there was something of a pressure around the Clerk's desk, and whilst he was waiting for the index of the Clerk to give information as to the case, the Court opened, and rendered the pursuit impracticable, and the default was taken without counsel recognizing the case.

Scates, M^r A & Jewett
Attys for Appellee

295
Halsey
ad
Mix

Reasons for me

Filed Apr. 28. 1862
L. Island
Ch.