

No. 13585

Supreme Court of Illinois

Carlin, Imp.

vs.

Hoffman, et al

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 102.

1862

Carlson
vs
Jefferson

13585

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Jameson & Morse, Printers, 14 La Salle St., Chicago.

SUPREME COURT OF ILLINOIS.

THIRD GRAND DIVISION.

PHILIP CARLIN, Impleaded with MICHAEL GLEESON,
vs.
FRANCIS A. HOFFMAN, OTTO GELPCKE, ALEXANDER
SILLER.

ERROR FROM COOK.

ABSTRACT OF THE RECORD IN ABOVE CAUSE.

- Rec. p. 1&7 The proceedings of the Superior Court in this cause, being a judgment by confession, were had in vacation.
- 2 The narr contains but one count, the usual count upon a joint promissory note payable generally.
- 3 The note is a joint and several note, and is payable at a particular place, to wit, "their banking house."
- 4 Cognovit.
- 5 Letter of attorney. No affidavit of the execution thereof.
- 7 The order of judgment, wherein is recited "that the execution of the warrant of attorney was duly proven."

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Carlson

or

Hoffman ~~et al~~

Abstract

Filed April 22 1862
L. Leland
clerk.

Barker & Tuley
for post

SUPREME COURT OF ILLINOIS.

THIRD GRAND DIVISION.

PHILIP CARLIN, Impleaded with MICHAEL GLEESON,
vs.
FRANCIS A. HOFFMAN, OTTO GELPCKE, ALEXANDER
SILLER.

ERROR FROM COOK.

ERRORS ASSIGNED.

1st. There is no proof of the execution of the warrant of attorney, nor does there appear among the records and papers in the cause any proof whatever of the same to authorize a judgment to be entered thereon by the clerk in vacation.

2d. There is a variance between the note filed and the one described in the narr.

3d. The court erred in rendering judgment for the plaintiffs below.

BARKER & TULEY,
For Plaintiffs in Error.

POINTS OF PLAINTIFFS IN ERROR.

The case presented is precisely similar to the one of *Durham vs. Brown*, 24 Ills., p. 93, which was decided upon the ground "That there was no affidavit filed with the clerk proving the execution of the power of attorney to confess judgment." The record in this cause shows that there was *no affidavit*. The note is payable at a particular place, "their (defendants') banking house," thus being a matter of description.

24 *Illinois*, 168.

The note varies from the one described in the narr, and the power of attorney did not authorize the judgment to be entered upon the note described in the narr. Such confessions taken by the clerk are not judicial. 24 *Ills.*, p. 93. There are no common counts.

BARKER & TULEY,
Att'ys for Plaintiffs in Error.

Carlin
vs

Hoffman et al

Points of Pff in error

Tried April 22 1866
J. Selman
clerk,

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Booker & Selman
for Pff

Know all men by these presents that we Philip -
Carlin as principal and John -
Trauer _____ as security of the
county of Cook and state of Illinois are held and firmly
bound unto Francis A Hoffman Otto Gelpke and Alexander
Sitter of the same county in the penal sum of eight hundred
dollars (\$800⁰⁰) lawful money of the United States for the
payment of which well and truly to be made we bind
ourselves our heirs executors and administrators
jointly severally and firmly by these presents -
Witness our hands and seals this the tenth day of September
A.D. 1861 -

The condition of the above obligation is such that whereas
the said Francis A Hoffman Otto Gelpke and Alexander Sitter
did on the 26th day of November A.D. 1860 in vacation ~~in~~
in the Superior Court of Chicago in said county or over -
a judgment against the above named Philip Carlin
and one Michael Gleason for the sum of three hundred and
seventy six dollars and seventeen cents besides costs of
suit from which said judgment of said superior court of
Chicago the said Philip Carlin _____ has and
out of the Supreme Court of the said state a writ of error in said
cause which writ of error has been ordered by one of the
justices of said Supreme Court to be made a Super-
sedes -

Now therefore if the said
Philip Carlin shall duly prosecute the said writ
of error with effect and moreover pay the amount
of the judgment costs interest and damages
rendered and to be rendered against him

in case the said judgment shall be affirmed
in the said Supreme court - then the above
obligation to be void - otherwise to remain
in full force and virtue

Philip Barlow Done
John Franer Done

State of Illinois }
Cook County. }

This affiant John Tramer
being duly sworn upon oath says
that he signed the above bond and
that this affiant is worth over and above
all debts and claims and demands
against him at least the sum of
three thousand dollars - I further swear
not

sworn and subscribed } John Tramer
before me this 9th Sept 1863 }
Joseph N. Barber }
Notary Public

I hereby certify that I believe the above bond
to be sufficient

Walter Kimball cck
(11)

State of Illinois }
Cook County. }

This affiant John Tramer
being duly sworn upon oath says
that he signed the above bond and
that this affiant is worth over and above
all debts and claims and demands
against him at least the sum of
three thousand dollars - I further swear
not

sworn and subscribed } John Tramer
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Joseph N. Barber }
Notary Public

I hereby certify that I believe the above bond
to be sufficient

Walter Kimball cck
(11)

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Francis A. Hoffman

et al

vs
Michael ~~Green~~
et al

Bond & affidavit



Filed September 26. 1861
L. Deland
Clerk

Michael Gleason
Philip Carlin Impleaded
with Michael Gleason
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Francis A Hoffmann
Otto Gelpcke
Alexander Siler

Case from book
Supreme court of
Illinois 3rd hand
division

The hereby enter our ap
pearance in the above entitled case
and upon review of process upon
the several defendants -
April 10/62

Francis Hoffmann
Atty for said Defendants

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Philip Leavelle
with -

Michael Gorman
~~and~~ is

Francis A Hoffman
et al

Entry of Appearance
by F. A. Hoffman
for debt

Filed Apr. 22, 1862.
C. Veland
clerk.

State of Illinois,

SUPERIOR COURT OF CHICAGO,

COOK COUNTY, SS.

On vacation after November Term, A. D. 1864

Francis A. Hoffmann, Otto Gelpcke & Alexander Siller,
Co-partners under the firm name of Hoffmann Gelpcke
Plaintiff's in this suit, by *Raris & Mieser* their Attorney, complain of

Michael Gleason & Philip Carlin

Defendant in a plea of trespass on the case on promises; For that whereas the said Defendant, here-
tofore, to-wit, on the *twenty first* day of *September* in the year of our
Lord one thousand eight hundred and *sixty* at *Chicago*
to wit, at said County of Cook, made *them* certain Promissory Note in writing, bearing date
the day and year aforesaid, and then and there delivered the same to *Said Plaintiff's*

Defendant, by the name, style and description of *M Gleason & Philip Carlin* promised to pay to the order of the said

plaintiffs. Three thousand & fifty Dollars with
two per cent per annum interest after maturity
in forty five days after the date of said note

for value received. ~~And the said~~
~~to whom or to whose order said Note was payable, afterwards, to wit, on the day and year aforesaid, at~~
~~to wit, in the County of Cook aforesaid, endorsed said Note in~~
~~writing, by which said endorsement the said~~

~~then and there ordered and appointed the said sum of money in~~
~~said note mentioned to be paid to said Plaintiff, and then and there delivered said note 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's 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's according to the tenor and effect, true intent and meaning of the said Note, and of
the endorsement aforesaid, to wit, at the place aforesaid.

Yet the Defendant, although often requested, etc., hath not yet paid the said sum of money, or
any part thereof, to the Plaintiff's, but so to do hath hitherto wholly refused, and still does refuse, to
the damage of the Plaintiff of *Five thousand Dollars*
and therefore he bring suit, &c.

J. Raris & Mieser
PLAINTIFFS ATTORNEY

STATE OF ILLINOIS, }
SUPREME COURT, } ss.

The People of the State of Illinois,

To the Clerk of the Superior Court ^{of Chicago} ~~for the County~~ of Cook Greeting:

Because, In the record and proceedings, as also in the rendition of the judgments of a plea which was in the Superior Court of Chicago, Cook County, before the Judge thereof, between Francis A Hoffman, Otto Gelpcke and Alexander Siller

plaintiffs and Michael Gleason and Philip Carlin

defendants, it is said manifest error hath intervened, to the injury of the aforesaid Philip Carlin

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 judgments 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 28th day of September in the Year of Our Lord One Thousand Eight Hundred and Sixty-one

L. Leland

Clerk of the Supreme Court.
by J. D. Rice

~~Francis A. Hoffmann &~~

Philip Carlin respondent

No. vs.

Francis A. Hoffmann Pet.

WRIT OF ERROR.

This writ of error is made
a supersedeas & as such is
to be obeyed by all concerned.
L. Leland Clerk
per J. P. Davis Deputy

FILED September 26th A. D. 1861

L. Leland

Clerk.

Michael Glison

Philip Carlin

or

Francis A Hoffman

Otto Gelpcke +

Alexander Siller

Supreme Court of
the State of Illinois

3rd Grand Division

Exors

Abstract of the record in the above cause

Page 1 - 7 The proceedings of the superior court in this cause being a judgment by confession were had in vacation

" 2 The issue contains but one count the usual count upon a joint promissory note payable generally

" 3 The note is a joint and several note and is payable at a particular place to wit their banking house

" 4 Cognovit

" 5 Letter of attorney - no affidavit of the execution thereof

" 7 The order or judgment wherein is recited that the execution of the warrant of attorney was duly proved

(24 Ills reports pag 93)

Michael Green Ltd

vs

Francis A Hoffman Ltd

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Pleas, before the Honorable, the Judges of the Superior Court of Chicago, within
and for the County of Cook and State of Illinois, at a regular Term of said Superior Court
of Chicago, ~~begun and broken~~ at the Court House, in the City of Chicago, in said County
and State, on the first Monday, being the _____ day of
_____ in the year of our Lord One Thousand Eight Hundred
and Sixty _____ and of the Independence of the United States of America
the Eighty-fifth.

Present, The Honorable John W. Wilson Chief Justice of the }
Superior Court of Chicago. }

Saml Niggins }
Judges. }

Frank Goodrich }

Carlos Haven Prosecuting Attorney.

Anthony Keising Sheriff of Cook County.

Attest, Walter Kimball Clerk.

Be it remembered that heretofore
to wit: on the twenty sixth day of
November in the year of our Lord One
thousand eight hundred and sixty
Francis A. Hoffmann, Otto Gelpke and
Alexander Siller plaintiffs by Davis &
Nisew their attorneys filed in the office
of the Clerk aforesaid their certain
declaration and note which are in
the words and figures following to wit:

106324.

Chicago September 21st 1860 ¹³⁹

Seventy five days after date for value received. we or either promising to pay to the order of Hoffmann & Gelpcke at their Banking House. Three hundred fifty dollars with interest at the rate of ten percent. per annum after maturity being for money loaned

W Gleason
Philip Carlin

And afterwards to wit on the same day and year last aforesaid Michigan Gleason and Philip Carlin by Charles Keeney their attorney filed in the office of the clerk aforesaid their certain Cognovit and Power of Attorney in the words and figures following to wit

Hoffmann & Gelpcke

State of Illinois,
Cook County

SUPERIOR COURT OF CHICAGO,

TERM, A. D. 1860.

Michael Gleason and
Philip Carlin

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COGNOVIT:

Francis A. Hoffman, Otto
Selpeke & Alexander Siller

And the said *Michael Gleason & Philip Carlin*
Defendants in the above entitled suit, by *Charles Kemm* their Attorney
come and defend the wrong and injury, when, etc., and waive service of Process, and say that he
cannot deny the action of the said Plaintiffs, nor but that the said Plaintiffs have sustained damages on
account of the non-performance of the several promises and undertakings in the said declaration men-
tioned, including the sum of *Twenty five* Dollars, for *their* reasonable
Attorney's fees for entering up this judgment, over and above *their* other costs and
charges by *them* about *their* suit in this behalf expended to *Three Hundred*
and Seventy six *376 1/2* Dollars and
Seventeen Cents; and the said Defendant further agree that no writ of
error or appeal shall be prosecuted on the judgment entered by virtue hereof, nor any bill in equity filed
to interfere in any manner with the operation of said judgment, and that he hereby release all errors
that may intervene in entering up the same or issuing the execution thereon, and consent to immediate
execution upon such judgment.

Charles Kemm Defendant's Attorney

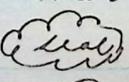
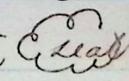
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Know all men by these presents,
That whereas, the Subscribers, are justly
indebted to Hoffmann & Gelpcke, in
the sum of Three Hundred & fifty
dollars for which sum the said
Subscribers have executed a promissory
note of even date herewith, bearing
interest at the rate of 10 per cent
per annum payable 45 days after
date to the order of the said
Hoffmann & Gelpcke

Now therefore in Consideration
of the premises we do hereby make,
Constitute and appoint J. N. Barber
or any Attorney of any Court of
Record, to be our true and lawful
Attorney irrevocably, for us and
in all names and stead, to
enter our appearance before any
Court of Record in the United
States of America, or any of the
Territories of the United States,
at any time after the date hereof
to waive the service of process and
Confess a judgment, and forthwith
issue execution thereon, in favor of
said Hoffmann & Gelpcke, their
executors, administrators, or assigns.

upon said note, with interest
thereon, at the rate aforesaid,
to the day of the entry of said
judgment, together with costs, and
25 dollars for attorney fees, and
also to file a Cognovit for the amount
that may be so due, with an
agreement therein that no writ of
Error or appeal shall be prosecuted
upon the judgment entered by virtue
hereof, and we hereby release,
and authorize said Attorney to
release all errors that may in-
tervene in the entering up of said
judgment, or issuing the execution
thereon.

Hereby ratifying and confirming
all that our Attorney may do by
virtue hereof.

Witness our hands and
seals this 21st day of September 1880
M. Gleason 
In Presence of Philip Carlin 

And afterwards to wit on the
twenty sixth day of November 1886
said day being one of the days in
vacation after the November term of
said Court the following among
other proceedings were had and
entered of Record in said Court. to
wit:

Francis Hoffman
Otto Selpke and
Alexander Siller

Michael Gleason &
Philip Canlin

Confession

This the 26th day
of November 1886 comes the said
plaintiffs by Davis & Nissen their attorneys
who files herein their certain declaration
of a plea of trespass on the case upon
promises and thereupon also comes
the said defendant by Charles Kemm
their attorney in fact who files herein
his warrant of attorney the execution
of which being duly proven, and also
they Cognovit confessing the action
of the said plaintiffs against them
and that the said plaintiffs have

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Sustained damages herein to the
sum of Three Hundred & Seventy Six
dollars and Seventeen Cents.

Therefore it is Considered that
the said plaintiffs do have and recover
of the said defendants their damages
of Three Hundred and Seventy Six
dollars and Seventeen Cents in
form aforesaid Confessed and also
their Costs and Charges in this behalf
expended and have Execution therefor

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State of Illinois
County of Cook ^{Es}

I Walter Kimball
Clerk of the Superior Court of Chicago
in and for said County and State
do hereby certify the foregoing to
be a true and correct copy
of the Declaration, Note, Warrant
of Attorney, Cognovit and order
entered of record in this cause.
and that the foregoing is a true copy of the record and proceedings in said cause.

Witness my hand and the
Seal of said Superior Court
of Chicago at the City of
Chicago in said County
this 26th day of August
A.D. 1861

Walter Kimball
Clerk

In a supersedias in re. Bond \$8000 dollars
John Trauer surety

J. H. Brown

Michael Gleason
Philip Carlin
vs
Francis A. Hoffman
Otto Gelpcke
Alexander Siller

Error from Cook
Supreme court of Illinois 3
Grand Division

Errors assigned

- 1st There is no ~~sufficient~~ proof of the execution of the warrants of attorney nor does there appear among the records and papers in the cause any proof whatever of the same to authorize a judgment to be entered thereon by the clerk in vacation
- 2nd There is a variance between the note and the one described in the writ
- 3rd The court erred in rendering judgment for the plaintiffs below

Barker & Tuley
for plffs in error

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Superior Court of Chicago

Francis A Hoffmann
et al

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Michael Gieson
et al
~~~~~

Transcript &  
Despt. of Execs

Filed September 26<sup>th</sup> 1886,  
L. Leland  
Clerk

Transcript 3.00  
Certs & Seal 50  
/ 3.50

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con