No. 12616

Supreme Court of Illinois

Kellogg, et al.

vs.

Pillsbury.

William Kellogg
William S Hays
Richard Hogg
Henry A Lightner
vs
Thomas P Pillsbury
Deft in Error

} Pffs in Error

} In the Supreme Court

And the said Pffs in error come and say that there is manifest error in the record of the proceedings and judgment in this cause to the injury of Pffs and for assignment of errors when the record shows to the Court here the following

1. The Court Erred in permitting the clerk to assess the damages

2. The Court erred in rendering judgment without first disposing of the demurrer filed by the defendants below

3. The judgment was against law

4. The judgment should have been for the defendants

5. The judgment was against the weight of evidence

For which and other errors appearing in the record the plaintiffs pray the Court to set aside reverse said judgment &c

Gronniger, & Hardy
Pltffs

[illegible]

And now comes the said defendant by Reed & Williamson their Attorney comes & says that there is no such error in the record & proceedings aforesaid, nor in the judgment aforesaid whereon he prays that said may be affirmed

Reed & Williamson

Pleas before the Honorable John S Thompson
Judge of the tenth Judicial Circuit of the
State of Illinois, At a circuit Court begun
and held at the Court house in Monmouth
within and for the County of Warren and
state of Illinois on the third Monday in the
Month of March In the year of our Lord
one thousand Eight hundred & fifty seven
It being the sixteenth day of said month

Present Hon John S Thompson Judge

James H Stewart States attorney

William Lafferty Clerk

Charles M Mills Sheriff

Thomas P Pillsbury
99 vs } Assumpsit
William Kellogg
William S. Moss
Charles S Clark
Richard Gregg
Harvey Lightner &
James Knox

[12614-3]

A. P. Pillsbury
vs
Kellogg Moss & Co

The following is a copy of the declaration filed March 6th 1857 in the above entitled cause

State of Illinois } March term AD 1857 of
Warren County } the Warren County Circuit Court

Athamer P Pillsbury Plaintiff by J G Madden his attorney complains of William Kellogg William S Moss, Charles S Clark, Richard Gregg, Harvey Lightner and James Knox. defendants in custody &c of a plea of trespass in the case on promises. For that whereas one S A Brown & son heretofore to wit. on the twenty fourth day of June one thousand eight hundred and fifty six at Monmouth in the County aforesaid made their certain promissory note in writing bearing date a certain day and year therein mentioned to wit the day and year aforesaid and thereby then and there promised to pay at the Banking House of Mackoy & Quimby in Monmouth, on the first day of January next after date, meaning the first day of January 1857 to the order of said defendants by the name and style of Kellogg Moss & Co the sum of three hundred dollars with Interest at the rate of ten per cent. For value Received, and then and there delivered the said promissory note to the said defendants, and the

[13616-3]

said Defendants to whom or to whose order the payment of the said sum of money in the said promissory note specified was to be made after the making of the said promissory note before the payment of the said sum of money therein specified to Wit. in the day and year aforesaid at the place of msaid indorsed the said promissory note by which said indorsement they the said defendants by the name and Style of Kellogg Moss & Co then and there and appointed the said sum of money in the said promissory note specified to be paid to the said Plain-tiff and then and there delivered the said promissory note so Indorsed as aforesaid to said Plaintiff and the said Plaintiff avers that afterwards when the said promissory note became due and payable according to the tenor and effect thereof to Wit. on the first day of January A D 1857 at the said Banking House of Machoy & Dumby to Wit. at Monmouth in the County aforesaid the said promissory note was duly presented and shown for payment thereof and payment of the said sum of money therein specified was then and there duly required according to the tenor and effect of the said promissory note but that neither the said Kellogg Moss & Co nor the said S A Brown and son nor any person or persons on behalf of the said S A Brown & son did or would at the said time when the said promissory note was presented and shown for payment thereof as afore-said or at any time before or afterwards pay the said

sum of money therein specified or any part thereof but wholly neglected and refused so to do, of all of which said several promises the said defendants afterwards to Wit. on the day and year last aforesaid had notice. And thereupon afterwards to Wit. on the third day of January AD 1857 at the place aforesaid the said promissory note was duly protested for non payment thereof according to the statute in such case made and provided of all of which said several promises the said defendants afterwards and within two days then next following to Wit on the day and year last aforesaid at the place aforesaid had notice. And the said Plaintiff avers that at the time when said note became due and payable to Wit on the 1st day of January AD 1857 to Wit at the place aforesaid. The said S A Brown & son were utterly insolvent so that the institution of a suit against them for the recovery of the amount of money in said promissory note specified would have entirely unavailing. And that the said S A Brown & son are still utterly insolvent and a suit at this time & since said note became due and payable would have been utterly unavailing. by means whereof and by force of the statute in such case made & provided the said defendants then and there became liable to pay to the said plaintiff the said sum of money in the said promissory note specified when they the said defendants should be thereunto afterwards requested. And being so liable they the said defendants in consideration thereof afterwards to Wit. on the day and year last aforesaid

[12616-4]

and at the place aforesaid undertook and then and there faithfully promised the said Plaintiff to pay him the said sum of Money in the said promissory note specified when they the said defendants should be thereunto afterwards requested. And whereas also the said defendants afterwards to Wit on the first day of February in the year of our Lord One thousand Eight hundred and fifty seven at the County aforesaid were indebted to the said Plaintiff in the sum of five Hundred dollars lawful money of the United State of America for so much money before that time lent and advanced by the said Plaintiff to the said defendants and at the special instance and request of the said defendants. And for other money by the said Plaintiff before that time paid, laid out and expended to and for the said defendants and at the like request of the said defendants. And for other money by the said defendants before that time had and received to and for the use of the said Plaintiff. And being so indebted the said defendants in Consideration thereof afterwards to Wit on the same day and year last aforesaid, and at the place aforesaid undertook, and then and there faithfully promised the said Plaintiff well and truly to pay the said Plaintiff the said sums of money in this count mentioned when the said defendants should be thereunto afterwards requested, And whereas also, the said defendants afterwards, to Wit on the same day and year last aforesaid, and at the place aforesaid accounted together with the said Plaintiff of and concerning divers other sums of money before that time due

and owing from the said defendants to the said Plaintiff and then and there being in arrear and indebt-ed to the said Plaintiff in the further sum of five hundred dollars lawful money as aforesaid. And being so found in arrear and indebted to the said Plaintiff they the said defendants in Consideration thereof afterwards to Wit on the same day and year last aforesaid and at the place aforesaid undertook and then and there faithfully promised the said Plaintiff well and truly to pay unto the said Plaintiff the said sum of Money last mentioned when the said defendants should be thereunto afterwards requested. Nevertheless the said defendants although often requested &c to Wit at the time when the said note became due and payable according to the tenor and effect thereof and often times since to Wit at the place aforesaid have not yet paid the said several sums of money above mentioned or either of them or any part of them or any part thereof to the said Plaintiff but to pay the same or any part thereof to the said Plaintiff the said defendants have hitherto altogether neglected and refused and still do neglect and refuse to the damage of said Plaintiff of five hundred dollars and therefore the said Plaintiff brings suit &c

J. G. Madden Atty
for Plaintiff

[12616-5]

Copy of Note Sued on

$300. Monmouth June 24th 1856

On the first day of Jan next after date we promise to pay to the order of Mrs Kellogg Mays & Co three hundred Dollars with interest at the rate of ten per cent at the Banking House of Mackey & Bimby in Monmouth Value received

S A Brown & son

Copy of Endorsement

For value received we assign the Within note to Ethamer P. Pillsbury

Kellogg Mays & Co

Copy of Acct Sued on

Money had and received	$5.00.
Money paid out &c	$5.00
Money lent & advanced	$5.00.
Money on account Stated	5.00.

The following is a true copy of Demurrer filed March 16th 1857 to Plaintiff Declaration in the foregoing case

State of Illinois } Warren Circuit Court
Warren County } March term AD 1857

Ithamer Pillsbury
vs
William Kellogg
William S Mays
Richard Gregg
James Knox
Charles S Clark

And the said defendants save said Clark & Knox come and defend the wrong and injury when &c and say that they ought not to be held to answer unto the Plaintiff in this case because they say that the said Declaration and each of said Counts are not nor are either of them sufficient in law for them to answer unto and of this they put themselves upon the Judgment of the Court. And pray Judgment &c

George F Hadley
Defts Attorney

[12616-6]

And afterwards to wit on the 20th day of March AD 1857 the following record was made in the foregoing case

Ithamer P. Pillsbury
90 Vs } Assumpsit
William Kellogg, William S Moss
Charles S Clark Richard Gregg
Harvey A Lightner & James Knox

This day came the Plaintiff by his Counsel. and it appearing to the satisfaction of the Court that William Kellogg, William S Moss, Richard Gregg and Harvey A Lightner had been duly served with process and being three times solemnly called came not nor any person for them to defend this suit, but made default herein. Therefore it is considered by the Court. that the said Plaintiff have and recover of and from the aforesaid defendants the amount of his damages herein and as those damages are unknown to the Court it was ordered by the Court. that the Clerk assess the the same. and the Clerk having assessed and reported the damages at the sum of Three hundred and Twenty two dollars and twenty cents damages, Therefore it is considered by the Court that the said Plaintiff have and recover of and from the said defendants aforesaid the sum of Three hundred and Twenty two dollars and twenty cents damages as aforesaid, together with his costs by him in this suit expended and may have execution therefor, And it is further

[12610-7]

ordered by the Court that a Scire facias issue herein directed to the Sheriff of Peoria County against Charles S Clark returnable to the next term of this Court to show cause if any he can why he should not be made a party to this judgment. And it is further ordered by the Court that this cause as to said Charles S Clark be continued until the next term of this Court.

The following is the full amount of Costs in the foregoing case as appears of Record

Steamer P Pillsbury vs Kellogg Moss & Co } Warren Circuit Court March term A.D. 1857

Clerks fees W Safety	6.30
Copying papers to S Court	2.00
Sheriffs fees C M Mills Warren Co	70
" " J W Smith Peoria "	3.50
" " G N. Eutes Knox "	1.60
Notary Public fees	
J G Madden protesting note &c	1.75
Witness fees Erastus Rise	2.00
" " C. Hardin	4.00
	21.75

[12 6 1857]

State of Illinois } ss
Warren County } I William Safety clerk of the circuit Court for said County do hereby certify that the foregoing is a full, true, and Complete Copy of all the proceedings in the foregoing Case as appears from the files and Records now in my office

In testimony whereof I have hereunto set my hand and affixed the seal of the said Court at my office in Monmouth this 18th day of April AD 1857

Wm Safety clerk

133.
Pillsbury
v
Kellogg et al.

Record

Filed April 21, 1857
L. Leland
Clerk

Know all Men by These Presents, That William Kellogg, William S. Moss, Richard Gregg & Harvey A Lightner as principal, and Charles A Ballance as security, are held and firmly bound unto Thomas P. Pillsbury in the penal sum of six hundred dollars good and lawful money of the United States, for the payment of which, well and truly to be made, the said William Kellogg, William S. Moss, Richard Gregg, Harvey A Lightner & Charles Ballance bind themselves, their heirs, executors, and administrators, jointly, severally, and firmly by these Presents.

Witness, our hands & Seals

this 23d day of April A. D. 1857

The Condition of the above Obligation is such, That, whereas, the above named Thomas P. Pillsbury did, at the March Term of the Circuit Court, held in and for the County of Warren in the State of Illinois, A. D. 1857 recover a judgment against the above bounden William Kellogg, William S. Moss, Richard Gregg & Harvey A Lightner twenty cents damages & costs of court for the sum of three hundred & twenty two dollars & to reverse which said judgment, the said William Kellogg William S. Moss, Richard Gregg & Harvey A Lightner have sued out a Writ of Error from the Supreme Court, within and for the Third Grand Division of said State. Now if the said William Kellogg, William S. Moss, Richard Gregg & Harvey A Lightner shall duly prosecute said Writ of Error, and pay, or cause to be paid, all judgments, costs, interest and damages which the said Supreme Court shall adjudge against the said William Kellogg, William S. Moss, Richard Gregg & Harvey A Lightner and abide the order and judgment of said Supreme Court in this behalf, then this obligation is to be void, otherwise to remain in full force and effect.

Wm Kellogg [SEAL.]

Wm S. Moss [SEAL.]

Rich Gregg [SEAL.]

Harvey Lightner [SEAL.]

C A Ballance Seal

[12216-17]

Kellogg et al
vs
Pillsbury

Susp's Bond

Filed May 6. 1857.
S. Leland
Clerk

No. 50.

William Kellogg

by

Ethamar P. Kellogg

1858

50