

No. 12837

Supreme Court of Illinois

Riley.

vs.

Loughrey, Admr.

11
Lark

38 my

A. Longhrey

12837

~~12837~~

1858

State of Illinois }
Bureau County }

Andrew Loughrey Adm^r of the
Estate of Mary Loughrey Dec^d
vs
Paul Riley Deb^t

Be it remembered that on the 24th
day of December AD 1857 the said Andrew Loughrey
Administrator of the estate of Mary Loughrey deceased,
by Peters & Fairwell his Attorneys, came into the office
of the Clerk of the Circuit Court within & for said County
in the State aforesaid, and filed his precipe for summons
herein in the words and figures following, to wit; -

State of Illinois Bureau County, ss
Andrew Loughrey Administrator } Circuit Court
of the Estate of Mary Loughrey Dec^d } January Term AD 1858
vs } Deb^t \$ 250.00
Paul Riley } Damages \$ 200.00
Clerk will issue summons re-
turnable as above
Peters & Fairwell Pltffs Attys

- and on the same day to wit; the 24th day of Decem-
ber AD 1857, process of summons issued herein, out of
the office of said Clerk of said Court in the words
and figures following, to wit;

State of Illinois } The People of the State of Illinois
Bureau County } To the Sheriff of said County greeting

We command you that you summon
Paul Riley if he shall be found in your County personally
to be and appear before the said Circuit Court of said County
on the first day of the next term thereof to be holden at the
Court House in the Town of Princeton, in said County, on
the first Monday in the Month of January next to answer
unto Andrew Loughrey Administrator of the Estate of Mary
Loughrey Dec^d in a plea of debt that he render to him
two hundred & fifty dollars which he owes and unjustly
retains from him against gauges & pledges as he saith to
be damage of the said Plaintiff as he says in the sum of
two hundred dollars and have you then and there this
writ with an endorsement thereon in what manner you
shall have executed the same. Witness Edward M. Fisher
Clerk of our said Circuit Court and the seal thereof
at Princeton in said County this 24th day of De-
cember in the year of our Lord one thousand eight
hundred and fifty seven

Edward M. Fisher Clerk
— upon the back of which summons, the Sheriff made the
following endorsement, viz; —

"Paul Riley not found in my County Jan 1st 1858
J. R. Waldron Shff"

And, afterwards, to wit; on the 25th day of December AD 1857
the said Plaintiff by his attorney aforesaid, came into the

Office of the Clerk of the said Court and filed his declaration
and copy of note by him then & there declared upon in the
words and figures following, to wit;

" State of Illinois } Circuit Court
Bureau County } January Term AD 1858

Andrew Loughrey Administrator of all
and singular the goods & chattles & credits which were of
Mary Loughrey deceased at the time of her death who
died intestate plaintiff complains of Paul Riley defendants
a plea of debt for that when the said defendant hereto-
fore in the lifetime of the said Mary Loughrey since de-
ceased to wit on the 16th day of February AD 1852 at
the County & State aforesaid made his certain promiss-
sory note in writing & sealed with his seal bearing date
the day & year aforesaid & then & there delivered the same
to the said Mary Loughrey & thereby then & there acknow-
ledged himself bound to pay or cause to be paid to the said
Mary Loughrey the sum of one hundred & eighty four
dollars & eighteen cents for value received with interest
from date at 10 percent per annum one day after the
date thereof which time has long since elapsed yet the
said defendant has not paid the said sum of money in
the said promissory note mentioned or any part thereof
to the said Mary Loughrey in her lifetime or to the said
Plaintiff administrator as aforesaid since the death of
the said Mary Loughrey

And whereas also the said defendant
before and in the lifetime of the said Mary Loughrey

since deceased, to wit on the 16th day of February AD 1852
the County & State aforesaid made his ^{certtain} other writing oblig-
tory & in writing & sealed with his seal & then & there de-
livered the same to the said Mary Loughrey & thereby then
& there agreed to pay or cause to be paid the said Mary
Loughrey, the sum of one hundred & eighty four dollars &
eighteen Cent for value received with interest from date
at 10 per cent per annum one day after the date thereof
which time has long since elapsed, yet the said defend-
ant has not paid nor has he caused to be paid the
amount of the said writing obligatory or any part thereof
to the said Mary Loughrey in her life time or the said
Plaintiff administrator as aforesaid since the decease of
the said Mary Loughrey

And whereas also the said defend-
ant heretofore in the lifetime of the said Mary Loughrey
since deceased to wit on the 16th day of February AD 1852
at the County ^{& State} aforesaid made his certain other promis-
sory note in writing & then & there sealed the same with
his seal & then & there delivered the same to the said
Mary Loughrey & thereby then & there agreed to pay or cause
to be paid to the said Mary Loughrey the just & full sum
of one hundred eighty four dollars & eighteen Cent for value
received with interest from date at 10 per cent per annum
one day after the date thereof which time has long since
elapsed yet the said defendant has not paid nor has he
caused to be paid the amount of the said promissory note
or any part thereof to the said Mary Loughrey in her life-
time or to the said Plaintiff administrator as aforesaid

the death of the said Mary Loughrey

And whereas also the said defendant in the life time of the said Mary Loughrey, to wit on the 20th day of December A.D. 1852, at the County & State aforesaid was indebted to the said Mary Loughrey in the sum of two hundred dollars for money then & there lent by the said Mary Loughrey to the defendant at his request and in the sum of two hundred & forty dollars for money found to be due from the defendant to the said Mary Loughrey on an account then & there stated between them. And the defendant afterwards to wit on the day & year last aforesaid at the County & State aforesaid in consideration of the premises respectively agreed with the said Mary Loughrey to pay her the said several moneys herein above mentioned on request but the defendant has disregarded his last mentioned promises & has not paid any of said last mentioned moneys or any part thereof either to the said Mary Loughrey in her life time or to the Plaintiff as administrator as aforesaid since the death of the said Mary Loughrey to the damage of the Plaintiff as administrator in the sum of two hundred dollars and therefore he brings his suit &c. And the Plaintiff brings into Court here the letters of Administration of the goods & chattels which were of the said Mary Loughrey which after the decease of the said Mary Loughrey were granted in due form of law to the Plaintiff by the County Court of Henry County State of Illinois on the 7th day of November A.D. 1856. whereby it appears to the

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Court that the Plaintiff is the administrator of the estate
of the said Mary Loughrey dec'd &c

Peters & Farwell Plffs Attys

Copy of notes & instruments sued on in this case.

February the 16th 1852, one day after date I promise to pay
or cause to be paid ~~250~~ to Mary Loughrey the just sum
" of \$184-18 for value received with 10 per cent in trust
" Given under my hand and seal Paul Riley (seal)"

February the 16th 1852 one day after date I promise
to pay or cause to be paid ~~250~~ to Mary Loughrey the just
sum of \$184-18 for value received with 10 per cent
in trust Given under my hand and seal, Paul Riley (seal)

February the 16th 1852 one day after I promise
to pay or cause to be paid ~~250~~ to Mary Loughrey the just
sum of \$184-18 for value Received with 10 per cent
in trust Given under my hand and seal Paul Riley (seal)

Copy of account sued on in this Cause
Paul Riley

To Mary Loughrey (in her life time)	Dr
To money lent by her in her life time to you	\$ 200.00
To money due on account stated between you & her in her lifetime	\$ 250.00

Pleas before the Hon^{le} Martin Ballou Judge
of the twenty third judicial circuit of the State of
Illinois at the January term of the Circuit Court in

and for the County of Bureau began and held at the
Court House in Princeton in said County on the first Mon-
day in the Month of January in the year of our Lord
one thousand eight hundred and fifty eight

Present Hon^{ble} Martin Ballou Judge

Edward M Fisher Clerk

J. N. Waldron Sheriff

Geo W Stupp State Attorney

To wit: on the first day of said term, it being Monday
January 4th AD 1858.

Andrew Loughrey Adm^r
of estate of Mary Loughrey dec^d
vs Deb^t

Paul Riley

Now comes the Plaintiff by Peters &
well his attorneys and on motion of said Attorneys
it is considered by the Court that this cause be continued
to the next term of this Court and that an alias sum-
mons be issued herein returnable to the said next
term of this Court.

And afterwards, to wit on the second day of
February AD 1858 an alias summons herein, issued out
of the office of the Clerk of the said Circuit Court, which
in the words and figures following to wit;

State of Illinois } p The People of the State of Illinois
Bureau County) To the Sheriff of said County greeting;

We Command you as we have heretofore
commanded you that you summon Paul Riley if he shall be
found in your County, personally to be and appear before the
said Circuit Court of said County, on the first day of the
next term thereof, to be holden at the Court House in
the town of Princeton, in said County on the first Monday
in the month of April next to answer unto Andrew
Loughrey Administrator of the estate of Mary Loughrey
decd of a plea of Debt, that he render to him two hun-
dred and fifty dollars which he owes and unjustly de-
tains from him against guages and pledges as he saith
the damage of the said plaintiff as he says in the
sum of two hundred dollars and have you then and
here this writ with an endorsement thereon in what
manner you shall have executed the same



Witness Edward M. Fisher Clerk of our said
Circuit Court and the seal thereof at
Princeton in said County this 2^d day of
February in the year of our Lord one thousand
eight hundred and fifty eight

Edward M. Fisher Clerk "

- upon the back of which summons the Sheriff made the
following endorsement, to wit;

" Personally served the within by reading the same to the
" the within named defendant Paul Riley this 23^d day
" of March 1858

J. K. Waldron Sheriff
Pr A. Ruthven Deft "

Pleas before the Hon^l Martin Ballou

judge of the twenty third judicial circuit of the State
of Illinois at the April Term of the said Circuit Court
begun and held at the Court house in Princeton in the
County of Bureau on Monday the fifth day of April in
the year of our Lord one thousand eight hundred and
fifty eight

Present Hon^{le} Martin Ballou Judge
Edward M. Fisher Clerk
J. K. Waldron Sheriff
George W. Stepp States Atty

To wit, on the 15th day of April AD 1858, it being the
tenth day of said term.

Andrew Loughrey Admr
of the estate of Mary Loughrey dec^d
vs Debt

Paul Riley

Now comes the defendant by Taylor
his attorney and files his plea herein in the words
and figures following to wit;

State of Illinois } p. In the Circuit Court
Bureau County } April Term AD 1858

Alexander Loughrey Administrator
of Estate of Mary Loughrey dec^d

vs

In debt

Paul Riley

And the defendant by

Taylor his Attorney comes & defends &c and says that he does
not owe the said sum above demanded or any or either
any part thereof as the Plaintiff hath thereof Complained
against him and of this he puts himself upon the
Country

J. J. Taylor Atto for Pltff

'And the pltff doth the like
P & F for Pltff'

- And for a further plea in this behalf the said defendant
says "A" as to the first second & third counts in the Plain-
tiffs declaration mentioned that by reason of any thing
in said Counts alledged the plaintiff ought not to have
maintain his aforesaid action ^{thereof} against the said defen-
dant so far as relates to the sum of \$300. parcel of the sum in
the several counts of the plaintiffs declaration mentioned
because he says the ^{said} supposed sealed notes in the said several
Counts of the plaintiff declaration mentioned are all one
and the same sealed note and not other or different
and the said defendant says that the said note was
given by the defendant to the said Mary Loughrey
in her lifetime under the following circumstances that
is to say the said defendant about the year 1848 gave
his note to Loughrey the husband of the said
Mary for about the sum of three hundred dollars upon
a valuable consideration that at the time of the giving
of said note the said Mary & her said husband were old
and helpless and it was understood between the husband
of the said Mary & the defendant that he & the said
Mary would board with defendant & his family and

that defendant should be credited with the value
of such board upon the said note this defendant fur-
ther says that under the said arrangement the said
Mary & her husband boarded & lodged with defendant
from about the time last aforesaid until the death of
her said husband which took place about the year
1853 at the said County of Bureau that at the time of
the decease of the said Loughrey, he was indebted
to this defendant for board furnished him & the said
Mary to the amount of three hundred dollars that
this defendant never had any settlement with said

Loughrey for said board and that he died
in the possession of the last note aforesaid which
note came into the possession of the said Mary that no
letters of Administration was taken on his estate and
that the said Mary presented said note to this de-
fendant and begged him to renew said note and
make the same payable to her so as to place the same
under her individual care and control, "B" that
defendant to gratify the said Mary she being old and
childish he gave to her the sealed note aforesaid in
lieu of the said note before that time given to her hus-
band as aforesaid, and was given for no other considera-
tion whatever and this he the said defendant is ready to
verify wherefore he prays judgement &c

Taylor for Deft

And for a further plea in this behalf the said
defendant says as he has said in his second plea from
"A" to "B" and that it was expressly understood between

the defendant and the said Mary that defendant should bring ⁱⁿ as a set off against said note all his account against the husband of the said Mary for the board aforesaid and it was with this understanding and upon this consideration that said note was given and upon no other and the defendant says that his said account against the said first note herein above mentioned amounts to the sum of three hundred dollars and this he is ready to verify

Taylor for Deft

And for a further plea in this behalf the said defendant says as in his second plea he has said from "A" to "B" and that said note was given without any valuable consideration whatever and was given with the express consideration & understanding that said note should be for the sole and only use and benefit of the said Mary and was not to be collected or exacted from defendant in case the said Mary died before the said note was paid but upon such event the same was to be given up & cancelled and this he is ready to verify

Taylor for Deft

The Plaintiff will take notice that the defendant on the trial of this Cause will give in evidence that the plaintiff at the commencement of this suit was and still is indebted to the Plaintiff in the sum of three hundred dollars for the price and value of goods before that time bargained and sold by the defendant to the Plaintiff at his request and in the sum of three

hundred dollars for the value of work before that
 time done and materials for the same provided by the
 defendant to the Plaintiff at her request and also in
 the sum of three hundred dollars for money before
 that time lent by the defendant to the Plaintiff at her
 request and in three hundred dollars for money before
 that time received by the Plaintiff for the use of the
 defendants and also in the sum of three hundred
 dollars for money before that time found to be due from
 the plaintiff to the defendants on an account then and
 there stated between them and that the defendants
 will set off on said trial so much of the said several
 sums of money so due and owing from the Plaintiff to
 the defendants against any demand of the plaintiff
 to be proved on said trial as will be sufficient to satisfy
 such demand and indebtedness and will also demand
 judgment against the plaintiff for the balance of
 said several sums of money due the defendant accor-
 ding to the Statute in such cases made & provided

Taylor for Deft

Estate of Mary Loughrey

To Paul Riley

Dr

To Amt for board & lodging the said Mary & her husband in his lifetime	2	\$ 300.00
To Amount of board & lodging of said Mary in her lifetime after the death of her said husband	3	\$ 100.00

Plea before the Honorable Martin Ballou Judge
the twenty third judicial circuit of the State of Illinois
a term of said Circuit Court begun and held at the
Court House in Punciton within and for the County of
Bureau in said State on Monday the sixth day of
September in the year of our Lord one thousand eight
hundred and fifty eight

Present Hon^{le} Martin Ballou Judge

Edward M. Fisher Clerk

J. K. Waldron Sheriff

George W. Stupp States Attorney

To wit on the first day of said Term

Andrew Loughrey Adm^r

Est of Mary Loughrey Dec^d

vs

Debt

Paul Riley

Now comes the Plaintiff by Peter
Farwell his attorney and files his demurrer to said
defendants plea filed herein in the words and figures
following to wit;

Alexander Loughrey Adm^r
of Mary Loughrey Dec^d

vs

Paul Riley

And the said Plaintiff says that the
said pleas of the said defendants are each ^{and all} of them in-
sufficient in law, and the Plaintiff demurs severally
to each of them wherefore he prays judgement &c

And for cause states that Nil debet is not a

proper plea to debt upon a sealed instrument, that
deft should have pleaded non est factum if he wished
to deny the instrument sued upon.

that 2^d & 3^d pleas are defective in not showing
that defendants set off is equal to the ^{old} note for which the
new one was executed

4th plea don't deny but that there was and is a good
consideration for the note sued upon and attempt to
contradict the terms of the instrument sued upon and
vary the written contract by verbal testimony

Peters & Farwell Plffs Attys "

To wit on the 4th day of said term
Andrew Loughrey Admr &c

vs Debt

Paul Riley

Now comes the Plaintiff by Peters
's Attorney and the defendants ^{comes} by Taylor his
Attorney, and it is considered by the Court that
Plaintiffs demurrer to defendants Special plea be
sustained, and on motion of said Attorney defendant
has leave to amend his said plea.

To wit on the 8th day of said Term

Andrew Loughrey Admr
'the estate of Mary Loughrey dec'd

vs Debt

Paul Riley

Now comes the Defendant by Taylor his

attorney and on his motion the defendant has leave
to withdraw his special pleas filed herein and
to file additional pleas. And the defendant by his
said attorney files his additional pleas in the
words and figures following to wit;

And for a further plea in this behalf the said
defendant by ~~his~~ leave of the Court for this purpose first
had and obtained says, that the said plaintiff
by reason of anything in the first second and third
counts in his declaration mentioned the said
Plaintiff ought not to have or maintain his aforesaid
action thereof against him because he says the said
supposed sealed note in the said three several counts
of the plaintiffs declaration mentioned are all one and
the same sealed notes and not other and different
and the said defendant says that the said note was
given without any valid consideration whatever, that
said note was given under the following circumstan-
ces that is to say about the year 1848 said defendant
gave his three notes to one Loughrey the husband
of the said Mary Loughrey which amount in all to about
three hundred dollars the exact amount is not remem-
bered by said defendant and he has no means now of as-
certaining the amount of said notes that said notes
was given upon a valuable consideration and remained
in the hands of the said Loughrey as his property from
the time the same were given as aforesaid until his
death which took place about the year 1853 that

no letters of administration or testamentary were ever issued
upon the estate of said Loughrey and that after his
death as aforesaid the said notes herein above mentioned
came to the hand of the said Mary Loughrey without
any legal right or title to the same and that while said
notes was ^{thus} wrongfully in the possession of the said Mary
she having no title to the same that defendant renewed
the said note and attempted to cancel the same by
giving to the plaintiff the said note sued on in the Plain-
tiff declaration in lieu of said three old notes. that the
consideration of said note sued on in the Plaintiffs decla-
ration was the said three notes made to said
Loughrey as aforesaid and no other. Consideration whatever
and that defendant is still liable for the amount of
said three notes to the representatives of said Loughreys estate
that said Mary Loughrey of whose estate the Plaintiffs
the Administrators had no legal right to cancel the old
notes above mentioned and that defendant is still liable
to pay the amount of said old notes to the legal repre-
sentatives of said Loughrey dec^d and this he is
ready to verify &c.

Taylor for Deft

To wit on the 9th day of said Term
Andrew Loughrey Adm^r of
Estate of Mary Loughrey dec^d
vs Deft

Paul Riley

Now comes the Plaintiff by Petition

Turnell his Attorney and files his demurrer herein as follows, to wit;—

Andrew Loughrey	Admr of	Circuit Court
vs	Debts	Bureau Co
Paul Riley		Sept. T. 1858

And the said Plaintiff says that the 2^d plea of said defendant is insufficient and that the Plaintiff is not bound by law to answer the same, wherefore he prays judgement &c. Petrs Turnell for Plff.

And for causes among others of form the Deft states conclusions of Law and no facts

P & F. for Plff "

and the defendant comes by Taylor his Attorney and the argument of Counsel and the Court being fully advised in the premises, said demurrer is sustained.

To wit on the 11th day of said term

Andrew Loughrey Admr of
Estate of Mary Loughrey decd.
vs Debt

Paul Riley

Now come the parties by their said attorneys and on motion of defendants Attorney leave is given said defendant to withdraw his plea of general issue and notice of set off the defendant choosing to abide by his said second plea whereon it is considered by the Court that the plaintiff ought to recover of the said defendant the sum of one hundred

and eighty four dollars and eighteen cents his debt
and one hundred and twenty one dollars and twenty
four cents his damages for the detention of the same
It is therefore considered by the Court that the said
Plaintiff have and recover of the said defendant the
said sum of one hundred eighty four Dollars and
eighteen cents his debt and the sum of one hundred
and twenty one dollars and twenty four cents his
said damages together with all his costs and charges
in and about his suit in this behalf expended and
that he have execution therefor. And the defendant
by his said Attorney prays an appeal to the Supreme
Court of the State of Illinois which is allowed on con-
dition that he file his bond herein for the sum of six
hundred dollars with George W Squire as security
within thirty days from this date.

And afterwards to wit on the 15th day of October AD
58 came the said defendant and filed his ^{herein} bond for
appeal to the Supreme Court of the State of Illinois, which
said bond is in the words and figures following to wit:

Know all men by these presents that we Paul Riley and
George Squire of the County of Bureau and State of Illinois
are held and firmly bound unto Andrew Loughrey Ad-
ministrator of the estate of Mary Loughrey Deceased also
the same County and State aforesaid in the penal sum
Six hundred dollars current 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 fifteenth day of October AD 1858
The condition of the above obligation is such that where
is the said Andrew Loughrey Administrator aforesaid
did on the 17th day of September AD 1858 in the Cir-
cuit Court in and for the County and State aforesaid
recover a judgment against the above bounden Paul
Riley for the sum of one hundred and eighty four & ¹³/₁₀₀
dollars debt and one hundred & twenty one & ²⁴/₁₀₀ dol-
lars damages together with costs from which said judg-
ment of the said Court the said Paul Riley has prayed
and obtained an appeal to the Supreme Court of
the said State. Now if the said Paul Riley shall
truly prosecute his said appeal with effect and shall
moreover pay the amount of the judgment costs interests
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

Paul Riley (Seal)
George W Squire (Seal)

State of Illinois }
Bureau County }

I Edward M Fisher Clerk of the
Circuit Court within and for said County and State aforesaid
do hereby Certify that the above and foregoing is a
true and perfect copy of all the proceedings in the

above entitled cause as the same appears on file and
of record in my office

In testimony whereof I hereunto set my
hand and affix the seal of the said Court
at my office in Princeton in said County
this 21st Day of February AD 1859

Edward M Fisher Clerk
Wm Hall Jenkins Dep Clk

Supreme Court of the State of
Illinois To the April T. 1859
Paul Riley
vs appellee from Bureau Co
Andrew Loughrey Circuit Court
admr & c

Now Comes the said appellee,
and says that there is no
error in the records proceedings
or Judgment of the Court below,
wherefore the said appellee prays
that the said Judgment, may
be in all things affirmed
Peter & Farrell
attys for appellee

Paul Riley

M

Andrew Langhrey
adms &c

London in Enon

Filed April 23. 1858
Leland
bleck

Illinois - Supreme court
3rd Grand Division

April term 1889.

Paul Riley, appellant
vs
Andrew Longhrey, admr of
the estate of Mary Longhrey decd. } appeal from
Bureau-

And now comes the
said appellant by W. H. Wallace his
attorney and shows to the court here
that in the record of the proceedings and
in the rendition of the judgment
aforesaid there is manifest error
~~in this, that~~ and the said appellant
assigns for error therein the following

The court below erred in sustaining
a demurrer to appellants amended or
additional plea -

The court below erred in rendering
judgment in manner and form as the
same is shown by the record -

Third - The court below erred in finding
the amount of damages without the
intervention of a jury or an order to
the clerk to assess the same -

The court below erred in rendering
the judgment aforesaid in manner
and form aforesaid -

Illinois - Supreme court
3rd Grand Division

April term 1889.

Paul Riley, appellant
vs
Andrew Longhrey, adm^r of
the estate of Mary Longhrey dec^d.
} appeal from
Bureau

And now comes the
said appellant by W. H. Wallace his
attorney and shows to the court here
that in the record of the proceedings and
in the rendition of the judgment
aforesaid there is manifest error
~~in this, that~~ and the said appellant
assigns for error therein the following

The court below erred in sustaining
a demurrer to appellant's amended or
additional plea -

The court below erred in rendering
judgment in manner and form as the
same is shown by the record -

Third - The court below erred in finding
the amount of damages without the
intervention of a jury or an order to
the clerk to assess the same -

The court below erred in rendering
the judgment aforesaid in manner
and form aforesaid -

Wherefor for these and other errors
apparent on the face of said record
appellant prays this court that
aid judgment may be reversed
10
W. H. Wallace
counsel for appellant.

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Pan
Certified Transcript of
Record and
Assy't of Errors
Filed April 21. 1859
L. L. Leland
Clerk

W. H. Wallace
No 8570

SUPREME COURT OF ILLINOIS,

Third Division—April Term, 1859.

PAUL RILEY, *Appellant,*

vs.

ANDREW LOUGHREY, *Administrator,*
of the Estate of Mary Loughrey, Appellee.

} *Appeal from Bureau.*

ABSTRACT.

1 This was an action of debt, commenced by appellee, against appellant, in the Circuit Court of Bureau County, December 24, 1857, to the January Term, 1858.

2 Summons was issued, and on the 25th December, 1857, appellee filed
3 his declaration in the case, containing three special counts, and the common counts.

The special counts are on a sealed note, alleged to have been given by the appellant to Mary Loughrey, the intestate, on the 16th of February, 1852, for \$184,18, with interest at 10 per cent., from date.

6 The common counts are for money had and received, &c., to the use of Mary Loughrey, the intestate, and declaration concludes with averments of the issuing of letters of administration on Mary Loughrey's estate to the plaintiff.

7 There being no service, the cause was continued at the January term, 1858, and an alias summons issued, returnable to the April term, 1858.

9 At the April Term, 1858, the defendant, by Taylor, his attorney, filed four pleas with notice of set off, to-wit: 1st, nil debit, and three special pleas.

14 The plaintiff demurred to all the pleas, and the Court sustained the de-
15 murrer to the special pleas, and the defendant asked and obtained leave to file amended pleas, and at the September term, 1858, he filed an
16 amended special plea, to the 1st, 2nd, and 3d counts of the declaration, alleging that the notes mentioned in said counts were one and the same, and that the note was given without any valid consideration whatever; that the note was given under the following circumstances: that in 1848 defendant gave his three several notes to one ——— Loughrey, husband of the said Mary Loughrey, which amounted to \$300; that said notes were given for a valuable consideration, and remained in the hands of the said ——— Loughrey, as his property, from the time the same were given, until his (L.'s) death, which occurred 1853; that no letters of ad-

17 ministration or testamentary, were ever issued upon the estate of said
 ——— Loughrey, and that after his death, the notes came to the hands
 of said Mary Loughrey, without any legal right or title to the same; and
 that while said notes were so wrongfully in the hands of said Mary, she
 having no title to the same, the defendant renewed said notes, and at-
 tempted to cancel the same by giving to the plaintiff the note sued on, in
 lieu of said three old notes; that the consideration of said notes sued on,
 in the declaration, was the said three notes, made to said ——— Lough-
 rey, and no other consideration; and that defendant is still liable for the
 amount of said three notes to the representatives of said ——— Lough-
 rey's estate, and that said Mary Loughrey, of whose estate plaintiff is ad-
 ministrator, had no legal right to cancel the old notes above mentioned,
 and defendant is still liable to pay the amount of said old notes to the
 legal representatives of said ——— Loughrey, deceased, &c.

18 To this plea plaintiff filed a demurrer, assigning as a special cause that
 it stated conclusions of law and not facts. The Court sustained the de-
 murrer, and the defendant abided by his plea, and withdrew his plea of
 the general issue, and notice of set off. The Court, without the inter-
 vention of a Jury, and without any order to the Clerk to assess, and with-
 out the cause having been submitted to the Court, or a Jury waived, con-
 sidered that plaintiff ought to recover of defendant \$183,18, debt, and
 19 \$121,24, damages, for the detention of the same, and rendered judgment
 against defendant for \$184,18, debt, and \$121,24, damages and for
 costs.

The defendant prayed an appeal, which was allowed, and bond filed.

ERRORS ASSIGNED.

1st. The Court below erred in sustaining the demurrer to appellant's
 amended plea.

2nd. The Court below erred in rendering judgment without the inter-
 vention of a Jury, and without an order to the Clerk to assess.

3d. The Court erred in rendering said judgment in manner aforesaid.

W. H. L. WALLACE,
 Counsel for Appellants.

27
Raul Riley

v.s.

Anderson Sengrey

Abstract

Filed April 25, 1859

L. Leland

Clark

SUPREME COURT OF ILLINOIS,

Third Division—April Term, 1859.

PAUL RILEY
vs.
ANDREW LOUGHREY, Adm'r, &c. } *Appeal from Bureau.*

POINTS FOR APPELLANT.

- I. The plea presented a legal defence against the note. Mary Loughrey, as the widow, had no legal right to the original note. The note in the hands of her husband at the time of his death, immediately became the property of his legal representatives. The widow had no more legal right to it than a stranger; and surely had a stranger procured the note, and had Riley given the note sued on therefor, and that were the only consideration, the Court would not have hesitated to hold the plea good.
- II. Even if the plea were bad, yet the judgment was erroneous, because there was no submission of the case to the Court; a jury was not waived; and yet the Court, without the intervention of a jury, and without any order to the Clerk to assess, rendered judgment for \$183.18 debt, and \$121.24 damages. The Court had no power to assess the damages in such a case. By the statute, in certain cases the Court may direct the Clerk to assess; but nothing appears, by the record, to show that this was a case within the statute. There were other counts in the declaration besides the one on the note.

R. S., 415, sec. 16.

W. H. L. WALLACE,
Counsel for Appellant.

274

Riley

(27)

Longhury

Appita Pointy

Filed May 2, 1839

L. Leland
Clerk

Supreme Court State of Illinois
In the April T. 1859.

PAUL RILEY
vs.
ANDREW LOUGHREY,

In Appeal

The widow had a claim of title to the three old notes.

2 Blackwell's Stat., page 1202, Sec. 2. 1203, Sec. 2, 4. 1201, Sec. 48, 49. 1199, Sec. 46.

An honest compromise is a good consideration for a note.—13 Ill., 144; 1 Bibb, 168; 2 Penn. Rep., 531; 3 Hill, 504.

Party acquiring property wrongfully can recover against one who takes it from him and much more. So where
that one receives it under an agreement to pay.—²Scam., 284. 11 Ill., 530.

[1238-7-17]

Peters & Lamee
attys for Appellee

27.4

Wiley
as
Loughrey
Melles Authorities

Filed May 7. 1859
L. Deland
Clerk

Supreme Court State of Illinois
To the April T. 1859

PAUL RILEY
vs.
ANDREW LOUGHEREY,

for Appellee

The widow had a claim of title to the three old notes.

2 Blackwell's Stat., page 1202, Sec. 2. 1203, Sec. 2, 4. 1201, Sec. 48, 49. 1199, Sec. 46.

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that one receives it under an agreement to pay.—²/₂ Scam., 284. 11 Ill., 530.

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Peters & Samuel
attys for Appellee

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Puley

Loughrey

Appelles Authentics

Filed May 7, 1859

L. Leland

Clerk

SUPREME COURT OF ILLINOIS,

Third Division—April Term, 1859.

PAUL RILEY
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POINTS FOR APPELLANT.

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R. S., 415, sec. 16.

W. H. L. WALLACE,
Counsel for Appellant.

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219-137

Riley

as

Lougher

Appts. Points

Filed May 2, 1889

L. Leland
Clerk

Riley

vs

Appeal from Bureau

Andrew Loughrey

The only question in this case is as to the sufficiency of Defendants last or amended plea; After the Court below sustained the demurrer to that plea, there then being no issue in the case to try, the Court, the action being upon a promissory note, had the right to assess the damages either with or without the intervention of the Clerk; Although there was the common counts in the Declaration yet nothing was taken thereby, the amount of the Judgment is only for the debt and damages due on the sealed instrument declared upon, besides that the action being debt the Court was not required to Call a Jury to assess the debt and damages, but the same could be done by the Court without the intervention of a Jury, as this Court has decided. Although the plea says that Mary Loughrey the widow of the deceased payee had no legal title to the three old notes given to her husband, yet the Court will take notice as a matter of law that she had, certain specific articles are reserved to the widows of deceased persons, and in case that the estate does not possess these articles, or even if it does, the widow can elect to retain other property belonging to the

estate of equivalent value to be selected by himself - and the Administrator is Compelled to allow the same to her; In this case the widow had the right to retain these old notes in lieu of her specific articles, they amounting to only three hundred dollars, they could in no case, exceed the value of the specific articles allowed to her under the Statute, Besides she is by law entitled to one third of the personal property, if the deceased had children or descendants of children, and one half if he left none, after the payment of the debts of the estate and she could claim the same under these sections -

It is not pretended in the plea, but what Appellant knew what the title was to the old notes, or that he supposed her title to be good, or that he was deceived in any respect, but so far as the plea shows, that the note sued upon was given by the Defendants to Mrs. Doughrey, as a compromise for the release of her claim upon the three old notes, and in consideration of her releasing him thereon as far as she was concerned, and whether her title was good or not, it was just the title that he bargained for, and he cannot now set up that the compromise he made with her was not a good consideration, for the note sued upon,

13 Ill 144, 1 Bibb 168- 2 Penn Rep 531- 3 Hill 504

But aside from that, the giving up of those old notes to Defendant was a good consideration for the new note. This Court decided in 2 Scam 284 and 11 Ills 520- That the title of a trespasser was good against all the world except the rightful owner, and that although in that case, the plaintiff wrongfully trespassed upon Government land, and cut timber and made rails therefrom, that he could recover of one who took said rails from him, well if a wrong doer could sustain such action, much more could he recover of one, who received of him property, of which he had wrongfully had the possession, under an agreement to pay for the same. Here the debt by giving his note to the widow for \$184-18- got at his notes for three hundred dollars given to the deceased, this note was executed in 1852, Six and one half years have since elapsed, and no letters of Administration having been taken out upon the estate of the payee of the old note, nor any attempt been made to collect the same of the Defendant, and it would be strange indeed, if he could now avoid the payment of this note. He says that he is liable to pay the old notes, and they could be collected of him & therefore he should not pay this note well upon,

but he knew that when he gave this note
and chose to incur the risk, the
widow by surrendering to him the old
notes made herself responsible to the
estate of her husband for the amount
of the same, and they could now
collect the same of her, if she had
not the right to the same, and it
would be strange indeed, if she
could not recover of the defendants
the amount of the consideration
which he agreed to pay her, for the
surrender of the same to him, In the
Cases cited in 2 Scam 284 and 11 Ells
530. — The government could have
recovered in trover of the defendants
in each of these cases, yet it was held
notwithstanding that he was liable
to the plaintiff for the value of such
sails, although the plaintiff had
wrongfully obtained the timber out
of which they were manufactured
from the government —

But I deny that the estate of the
payee of the old notes could now recover
of the defendants upon these notes,
that the widow had the right by
law to administer upon the estate of
her husband and her action in
assuming to exercise control over
the property of the estate constituted
her in law at least an executor de
son tort, and that payment made

to her would be good, unless the same was disaffirmed by those interested in the estate within a reasonable time thereafter - that by acquiescing in the payment of the old notes by the giving of the new note; for the period of $6\frac{1}{2}$ years, they the representatives of ~~deceased~~ ^{deceased} could not insist that such payment was unauthorized and void, but by their acquiescence they have ratified her action in this respect, and if administration after this lapse of time was taken out upon said estate the administration could not recover of the defendant upon these old notes, but the deft could successfully plead such payment to the widow of the deceased.

Peters & Harwell
Attys for Appeller

Supreme Court State of Illinois
To the April T. 1859

PAUL RILEY
vs.
ANDREW LOUGHREY,

for appellee

The widow had a claim of title to the three old notes.

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that one receives it under an agreement to pay.—²Scam., 284. 11 Ill., 530.

*Peters & Hamell
attys for appellee*

2/4

Paul Riley
vs

Andrew Loughrey

Brief for Appellee

Filed May 7, 1859
L. Leland
Clerk

512587-45

Goughrey
Heller, Authorities

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