

13088

No. _____

Supreme Court of Illinois

Peterson

vs.

Flagg

71641  7

STATE OF ILLINOIS
SUPREME COURT,
Third Grand Division.

No. 53.

1888

Peterson

vs

Deary

1 Pleas continued and held at the Court House in Bloomington in the County of McLean in the Eighth Judicial Circuit of the State of Illinois in a certain action herein pending wherein William F Flagg was Plaintiff and William Peterson and W F Fenton were Defendants.

State of Illinois
McLean County

William F Flagg

vs.
William Peterson
& W F Fenton.

In Assumpsit.

Be it remembered that heretofore to wit on the 19th day of November AD 1858 came said Plaintiff by Everett & Orme his attorneys and filed in the office of the Clerk of the Circuit Court of said County a Declaration and copy of note sued on which said Declaration and copy of note sued on were in words and figures as follows, to wit:

State of Illinois
McLean County.

In the McLean Circuit Court.
of the December Term AD 1858.

William F Flagg Plaintiff in this
suit complains of William W Peterson and W F Fenton
Defendants in a plea of assumpsit.

For that whereas

He said Defendant heretofore to wit on the Seventh day of September in the year of our Lord Eighteen Hundred and fifty seven, at Bloomington to wit at the County and State aforesaid by the name and description of Wm W Peterson W T Henton by me & aforesaid made their certain promissory note in writing bearing date the day and year aforesaid and then and there delivered the same to the Plaintiff and thereupon then and there promised to pay to the order of the said plaintiff ninety days after the date thereof which period elapsed before this suit was brought, four hundred and fifty dollars for value received with interest at the rate of ten per cent per annum and if not paid at maturity to pay twenty five per cent interest per annum as liquidated damages from date until paid.

By reason whereof and by force of the Statute in such case made and provided the said Defendant then and there became liable to pay the said plaintiff the said sum of money in said promissory note specified according to the tenor and effect thereof: and being so liable they the said defendant in consideration thereof undertook and promised plaintiff to pay said sum of money in said note specified according to the tenor and effect thereof.

And whereas the said Defendant on the first day of November in the year Eighteen Hundred and fifty Eight at the County and State aforesaid was indebted to the said Plaintiff in the sum of Six Hundred and fifty Dollars for the price and value

of goods then and there bargained for and sold by the plaintiff to the defendant at their request, and in the sum of Six Hundred and fifty Dollars for the price and value of work then and there done and materials provided by the plaintiff for the defendant at their request. And in the sum of Six Hundred and fifty Dollars for so much money then and there lent by the plaintiff to the defendant at their request, and in the sum of Six Hundred and fifty Dollars for money then and there paid by plaintiff for the use of the defendant at their request, and in the sum of Six Hundred and fifty Dollars for money then and there received by the defendant for the use of the plaintiff, and in the sum of Six Hundred and fifty Dollars for interest due from said defendant to the said plaintiff for and in respect of said plaintiff having forborne and given day of payment of money due from the defendant to the plaintiff at the defendants request for a long time then elapsed, and in the sum of Six Hundred and fifty Dollars for money found to be due from defendant to plaintiff on account then and there stated between them, and the defendant afterwards to wit on the day and year last aforesaid at the county and state aforesaid in consideration of the premises respectively then and there promised to pay the last mentioned several monies respectively to the Plaintiff on request. Yet the Defendant has not paid any of the said monies or any part thereof although often requested so to do to the plaintiffs damage of Four Hundred Dollars and therefore he brings suit &c.

Sweet & Orme.
Attys.

A copy of note sued on.

\$450.00

Livingston Ill. Sept 7th 1857.

Ninety days after date we promise to pay to the order of William F. Flagg, four hundred and fifty dollars for value received with interest at the rate of 10 per cent per annum, and if not paid at maturity it is to draw 25 per cent interest per annum as liquidated damages from date until paid.

Wm. Peterson.

W. F. Fenton.

By me x

William F. Flagg

vs. William Peterson.

W. F. Fenton.

In arrears

Damages \$ 650.

The Clerk of McLean Circuit Court please issue process. Livingston Co.

Swett & Orme.

And thereupon issued out of said Clerk's office a writ of Summons directed to the Sheriff of Livingston County in words and figures as follows to wit:

State of Illinois
McLean County

The People of the State of Illinois.

To the Sheriff of Livingston County Greeting
We command you to summon William Peterson and W. F. Fenton. If found in your County personally

to appear before the Circuit Court of said County of
McLean on the first day of the next term thereof to be
held at the Court House in Bloomington on the second
Monday in the month of December next to answer
unto William F. Flagg in a plea of Assumpsit to his
damage Six Hundred and fifty Dollars as he saith,
and have you then and there this writ and make return
thereon in what manner you execute the same.

(S)

Witness, W^m McCullough Clerk of the
said Circuit Court and the seal thereof
hereto affixed at Bloomington this 19th
day of November AD 1858.

W^m McCullough Clerk
By Geo. W. Shepherd. Dpty.

Which said Summons was by the Sheriff of said
County returned into said Clerk's office endorsed as
follows to wit:

Served this precept by reading the
same to the within named defendants William Peterson
and W. T. Fenton this 3^d day of December 1858.

W^m J. Russell Shff
per O. A. Maple Dpty.

And hereupon afterwards to wit at the December Term
of said Court to wit on the 17th day of December AD 1858.
Came said Plaintiff by his Attorneys filed herein a note
in words and figures as follows to wit.

\$450.00 Bloomington. Ill. Sept. 4. 1857.

Ninety day after date we promise to

6

pay to the order of William F. Flagg. Four Hundred
fifty Dollars for value received with interest at the rate
of 10 per cent per annum, and if not paid at maturity
it is to draw 20 per cent interest per annum, as liquid-
ated damages from date, until paid.

Wm F Peterson
W F Fenton.

No. ---.

By me. X

And thereupon on said 17th day of December in
the year last aforesaid being the fifth day of the
session of said Court then being held this cause came
on to be heard and final judgment was rendered,
herein as appears of record in words and figures as
follows to wit:

William F. Flagg.

vs.

William Peterson

W F Fenton.

In Assumpsit.

This day comes said plaintiff
by his Attorney and it appearing to the Satisfaction of
the Court that said Defendants have been duly served
with process herein at least ten days prior to the first day
of the present term of the Court and each being three times
solemnly called comes not but herein wholly makes
default. It is thereupon adjudged by the Court that said
plaintiff hath sustained damages by reason of the non
performance of certain promises in his Declaration

mentioned, but the amount thereof being unknown to the Court therefore the Clerk is ordered to assess the same and the Clerk having assessed the damages aforesaid reports the same in writing to the Court, which Report is by the Court approved and ordered to be filed. It is therefore considered by the Court that said Plaintiff recover of said Defendants the sum of Five Hundred and ninety three dollars and seventy five cents (\$593.75) his damages aforesaid in form aforesaid assessed, and also his costs herein expended, and that he have execution therefor.

State of Illinois
McLean County ^{ss} I. W^m McCullough, Clerk of the Circuit Court in and for said County do hereby certify that the foregoing is a true and complete transcript of the files and record of the foregoing cause as the same appears in my office

Given under my hand and the seal of said Court
this 3^d day of May A. D. 1857

W^m McCullough, Clerk.

By Sherman Burr Deputy.

Assignment of Errors

And now come the said William Peterson, and M. J. Fenton, plaintiffs in error by C. J. Beattie, their attorney, and say that in the record and proceedings aforesaid there is manifest error and show to the Court here the following

Know all Men By these Presents

That We William W. Peterson & W. F. Tinton as Principals
by George W. Boyer as Security are Held by firmly
bound unto Wm. F. Lugg in the Bond Sum of Eight =
Hundred Dollars, good & Lawful Money of
the United States, for the Payment of which We
truly to be made, the Said Wm. W. Peterson & W. F. Tinton
by George W. Boyer, bind themselves their Heirs
Executors & Administrators Jointly & Severally
by firmly by these presents.

This fourth day of May A.D. 1859.

The Condition
of the above Obligation is Such that Whereas the
above Named Wm. F. Lugg did at the December
Term, of the Circuit Court, Held in and for
the County of McLean & State of Missouri -
1859 recover a Judgment, against the above Bounden
Wm. W. Peterson & W. F. Tinton for the Sum of five Hundred
& Thirty three Dollars & Twenty five Cents, to Reverse
which Said Judgment, the Said Wm. W. Petersons &
W. F. Tinton have sued out a Writ of Error from
the Supreme Court - Within & before the third grand
Decision of Said State - Know if the Said Wm.
W. Peterson & W. F. Tinton Shall duly prosecute
Said Writ of Error, & pay or cause to be paid all
Judgments, Costs, Interest & Damages, which the
Said Supreme Court shall adjudge against
the the Said Wm. W. Peterson & W. F. Tinton - &
also pay the amount - of Said Judgment - against
them if the Same shall be affirmed & abide the
order & Judgment of Said Supreme Court
in this behalf - then this obligation - shall be

Still my voice allowed to remain in full force
Effect

Wm. W. Peterson

W. J. ^{Wm.} F. M. W. W.

Geo. W. Boyer

Equal

Equal

Equal

~~200~~ 5-3

William H. Peterson
+ H. J. Fruton

vs

William F. Hagg
~ ~ ~

Error to M. Leau
~ ~ ~

Bond
~ ~ ~

Filed May 5. 1859

Leland
Clerk

STATE OF ILLINOIS, } ss. The People of the State of Illinois,
SUPREME COURT,

To the Sheriff of the County of *McLean*

Greeting :

Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the *Circuit* Court of *McLean* County, before the Judge thereof, between *William F. Flagg*

plaintiff, and *William Peterson and W. F. Fenton*

defendants, it is said that manifest error hath intervened, to the injury of the said

Defendants

as we are informed by *their* complaint, the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the State of Illinois, at *Ottawa*, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; Therefore, We Command You, That by good and lawful men of your County, you give notice to the said

William F. Flagg

that *he* be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at *Ottawa*, in said State, on the first Tuesday after the third Monday in April next, to hear the records and proceedings aforesaid, and the errors assigned, if *he* shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said *William F. Flagg*

notice, together with this writ.

Witness, The Hon. JOHN D. CATON, Chief Justice of our said Court, and the Seal thereof, at *Ottawa*, this *5th* day of *May* in the Year of Our Lord One Thousand Eight Hundred and Fifty-*nine*.

L. Leland
Clerk of the Supreme Court.
by J. B. Rice Deputy

Served by reading to the within named
J. J. Flagg May 6th 1859

of \$33.65 -
J. P. Wither Shff
By J. E. Rucker Clk
Filed by plaintiffs
W. P. Wither
Shff

340 5-3.
William DeLoria
State vs

William J. Flagg
Sei fa

Filed May 3. 1859
J. E. Rucker
Clk

William DeLoria
State vs
Sei fa

William J. Flagg



State of Illinois ³/₂

In the Supreme Court, Third
Third Grand division

William H. Peterson, &

W. J. Fenton, Plaintiffs in Error.

vs

William F. Flagg, Defendant in Error

Error to McLean.

State of Illinois
LaSalle County 3rd ss.

Charles J. Beattie being
first duly sworn declares and says on
oath that George W. Boyer, of the County of
Livingston and State of Illinois, is the
owner of a large amount of Real and
personal property, and that the said
George W. Boyer, is worth more than
eight Hundred dollars, over and
above his liabilities, and property
except from execution, and further
this affiant saith not

Subscribed and sworn
to before me this 4th of
May 1858

L. Deland Clerk of Supreme Court
by J. B. Rice Deputy

Charles J. Beattie

~~360~~ 5-3
Error to McLean.

William W. Peterson

W. J. Fenton

vs

William F. Flagg,

Filed May 5, 1859

L. Leland
clerk

STATE OF ILLINOIS, } ss. The People of the State of Illinois,
SUPREME COURT,

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

Because, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of McLean County, before the Judge thereof, between William F. Flagg

plaintiff, and William Peterson and W. L. Fenton

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

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

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 5th day of May in the Year of Our Lord one thousand eight hundred and fifty-nine
J. Leland

Clerk of the Supreme Court.
by J. B. Rice Deputy

860 5-3
William F. Flagg
Defendant in Error

William Peterson
et al. plaintiffs in Error
Writ of Error

This writ of Error is
made a supersedeas
and as such is to be
obeyed by all concerned.
L. Leland
clerk

Filed May 5. 1839
L. Leland
clerk



State of Illinois
McLean County 358.

In the Circuit Court, this
of the December Term A.D. 1855.

William F. Flagg

vs

William W. Peterson, &

W. J. Denton

Respondents

William W. Peterson, being first duly sworn declares and says on oath that he is one of the defendants in the above entitled cause, that the note upon which the above entitled suit was brought was given by the abovesaid defendants to the said plaintiff for a certain threshing machine, which the defendants purchased from the plaintiff on the 4th day of September 1854, that on the 15th day of October A.D. 1854, the defendants paid to the said plaintiff the sum of Two Hundred and fifty dollars, to be applied as part payment on the note aforesaid, as will more fully appear from the receipt given by the plaintiff for the last named sum of money, said receipt being hereto attached, marked "A", that afterwards the defendants were impleaded together, by the said plaintiff, in the Circuit Court of McLean County, and judgment rendered against them by the said Court for the full amount of the said note, together with usurious interest at

the rate of twenty five per cent per annum, that execution issued out of said Court on the said judgment directed to the Sheriff of the County of Livingston. and by the said Sheriff levied on the following described real estate belonging to this affiant, to wit, The S $\frac{1}{4}$ of the N $\frac{1}{4}$ of Section 26, in Township 28. North, Range 4, East of the 3rd P. M. and the said Sheriff has advertised the same for sale to be sold on Saturday the 7th day of May 1859, as will more fully appear from the Sheriff's advertisement of sale, huts attached marked, "B," and affiant further says that he has tendered the amount due on the said note with ~~legal~~ interest and costs of suit to the said Plaintiff which the said Plaintiff refused to accept, and further this affiant swith not,

Subscribed and sworn to before me this 3rd day of May A.D. 1859

Charles J. Beattie

Notary Public.

within & for Livingston County
in the State of Illinois

Wm W. Peterson

the rate of twenty five per cent per annum, that execution issued out of said Court on the said judgment directed to the Sheriff of the County of Livingston. and by the said Sheriff levied on the following described real estate belonging to this affiant, to wit, The S $\frac{1}{4}$ of the N $\frac{1}{4}$ of Section 26, in Township 28. North, Range 4, East of the 3rd P. M. and the said Sheriff has advertised the same for sale to be sold on Saturday the 7th day of May 1859, as will more fully appear from the Sheriff's advertisement of sale, huts attached marked, "B," and affiant further says that he has tendered the amount due on the said note with ~~legal~~ interest and costs of suit to the said Plaintiff which the said Plaintiff refused to accept, and further this affiant swears not,

Subscribed and sworn to before me this 3rd day of May A.D. 1859

Charles J. Beattie

Notary Public.

within & for Livingston County
in the State of Illinois

Wm W. Peterson

Recd Blomington Ills Oct 15th 1887 of Chap Wm. D. Peterson
& W. G. Fenton Gro Hundred & fifty - dollars to be ap-
plied on note given for Sewing Machine
\$250.00
Wm. F. Fagg
per O. J. Fagg

" "
A

SHERIFF'S SALE.—By virtue of an execution and fee bill, issued out of the clerk's office of the Circuit Court of McLean county, and State of Illinois, and to me directed, whereby I am commanded to make the amount of a certain judgment recently obtained against William Peterson and W. J. Fenton; in favor of William F. Flagg, out of the lands and tenements, goods and chattels of the said William Peterson and W. J. Fenton, I have levied on the following described real estate, to-wit:

The southwest quarter of the northeast quarter of section No. twenty-six (26), township No. twenty-eight (28), north of range four, east of the 3d R. M.

Therefore, according to said command, I shall expose for sale, at public auction, to the highest and best bidder, for cash, at the north door of the Court House, in Pontiac, in the county of Livingston, and State of Illinois, all the right, title interest and claim of the aforesaid William Peterson, in and to the above described property, on Saturday, the seventh day of May, 1859, between the hours of ten o'clock in the forenoon and four o'clock in the afternoon of said day, to satisfy said execution and costs.

Dated at Pontiac, this 12th day of April, 1859.

25-3t

WILLIAM T. RUSSELL,
Sheriff of Livingston co.