

13945

No. _____

Supreme Court of Illinois

Peak

vs.

Pricer

Peck v. Price

SUPREME COURT.
OF
ILLINOIS.
SECOND GRAND DIVISION.

47

Geo. Peck
vs
Henry Pucher
13945
2794

SUPREME COURT OF ILLINOIS,

JANUARY TERM, 1859.

GEORGE C. PEAK, Plaintiff,
vs.
HENRY PRICER, use of &c., Defendant. } *In Error to Macon.*

- R. 1. 4. Pricer to the July Term, 1858, of the Circuit Court of Macon, impleaded Peak and another in an action of assumpsit on a 90 day's note for \$1750.
- R. 5. At the July Term, 1858, it appearing to the Court that Peak was a minor under the age of twenty-one years, W. E. Nelson was appointed his guardian *ad litem* who filed pleas for his ward and entered appearance as attorney of Shasted, and on same day pleas were withdrawn by *agreement of parties*, judgment was entered against the Defendants for &c. The pleas that were filed and withdrawn were non Assumpsit and Infancy.
- R. 5. 6.

R. S.

ERRORS ASSIGNED.

1st. That the Guardian *ad litem* withdrew pleas filed by him and agreed to a judgment against his ward.

2d. That the Court below suffered the Guardian *ad litem* of Plaintiff in error to withdraw pleas that had been filed, and to agree to a judgment against him, said Plaintiff in Error.

See Thornton *vs.* Heirs of Henry, 2nd Scam., 221. McClary *vs.* Norris, 4 Gilm., 370. Hitt *vs.* Ormsbee, 12 Ill., 166. Enos and others *vs.* Capps, Id., 255. Cochran *et. al.* *vs.* McDowell, 15 Ill., 10.

D. A. & T. W. SMITH,

Attorneys for Peak.

State of Illinois, }
SUPREME COURT. } ss.

The People of the State of Illinois,
To the Sheriff of *Macon* County.

Because in the record and proceedings, and also in the rendition of
the judgment, of a plea which was in the Circuit Court of *Macon*
County, before the judge thereof, between *Henry Prier, use of Peddicord,*
Surron & Co. — Plaintiff
vs *George C. Peak & William E. Shastib*

Defendants it is said that manifest error hath intervened to the injury of said *George C. Peak*

as we are informed by *his* 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
Springfield, 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 *Henry Prier*

that *he* be and appear before the Justices of our said Supreme Court, at the next term of
said Court, to be helden at Springfield, in said State, on the ^{*first Tuesday after the*} *1* ^{*first*} *Monday* in
January next, to hear the records and proceedings aforesaid, and the errors as-
signed, if *he* shall think fit; and further to do and receive what the said Court
shall order in this behalf; and have you then there the names of those by whom you shall give
the said *Henry Prier* notice together with
this writ.

Witness, the Hon. *John D. Caton* Chief

Justice of our said Court, and the seal thereof, at Spring-
field, this *eighteenth* day *October*
in the year of our Lord, one thousand eight hundred and
~~forty~~ *forty* *—* *fifty eight*.

Wm. A. Turner

Clerk of the Supreme Court.

Supreme Court.

George C. Peck, by his
next friend Bird Peck

Plaintiff in error,

vs.

Henry Prier Defendant in error,
use of &c

as commanded I have served
the return Scire Facias. by reading
to Henry Prier. This
23 October 1858.

Edw. Clifton, Siff, Mason, Co
Filed.

Five hundred 100 Paid

Paid Jan 7/59
W. H. Money



SUPREME COURT OF ILLINOIS,

JANUARY TERM, 1859.

GEORGE C. PEAK, Plaintiff,
vs.
HENRY PRICER, use of &c., Defendant. } *In Error to Macon.*

- R. 1. 4. Pricer to the July Term, 1858, of the Circuit Court of Macon, impleaded Peak and another in an action of assumpsit on a 90 day's note for \$1750.
- R. 5. At the July Term, 1858, it appearing to the Court that Peak was a minor under the age of twenty-one years, W. E. Nelson was appointed his guardian *ad litem* who filed pleas for his ward and entered appearance as attorney of Shasted, and on same day pleas were withdrawn by *agreement of parties*, judgment was entered against the Defendants for &c. The pleas that were filed and withdrawn were nor Assumpsit and Infancy.
- R. 5. 6.
- R. 8. **ERRORS ASSIGNED.**

1st. That the Guardian *ad litem* withdrew pleas filed by him and agreed to a judgment against his ward.

2d. That the Court below suffered the Guardian *ad litem* of Plaintiff in error to withdraw pleas that had been filed, and to agree to a judgment against him, said Plaintiff in Error.

See Thornton *vs.* Heirs of Henry, 2nd Scam., 221. McClary *vs.* Norris, 4 Gilm., 370. Hitt *vs.* Ormsbee, 12 Ill., 166. Enos and others *vs.* Capps, Id., 255. Cochran *et. al.* *vs.* McDowell, 15 Ill., 10.

D. A. & T. W. SMITH,

Attorneys for Peak.

Smith-

4 Dana 436.

Tupper

47 = 26.

Peak

no

Prier

Caton C. J.

State of Illinois }
Macon County }

Be it Remembered, that on the 2^d day of July A.D. 1858,
there was filed in the Clerk's Office of the Circuit Court of said Macon
County in the State aforesaid, a Writ for Summons, in the words &
figures following, to-wit:

"State of Illinois } Of the July Term of the Macon County
Macon County } Circuit Court A.D. 1858.

Henry Poirer, who sues for the use of Peddard, Burrows & Co.
vs. & Action of Assumpsit, Damages \$3000.00

George C. Peak & William E. Shuckitt

The Clerk of said Court will please issue process
in this cause directed to the Sheriffs of Piatt and Macon County respectively,
returnable &c. A. B. Dunn, Atty for Poirer."

Upon the filing of which said Writ there issued out of the said Clerk's
Office on said 2^d day of July A.D. 1858, a summons directed to the Sheriff of Macon County
in the words & figures
following, to-wit:

"State of Illinois } The People of the State of Illinois
Macon County } To the Sheriff of said County, Greeting:
We command you to summon William E. Shuckitt, impleaded with George
C. Peak, if to be found in your County, personally to be and appear before
the Circuit Court of said County on the first day of the next term thereof to be
held at the court-house in Decatur on the third Monday in the month of
July next - to answer unto Henry Poirer, who sues for the use of Peddard,
Burrows & Co. in an action of Assumpsit, damages Three Thousand
Dollars (\$3000.00) and have you then and there this writ and make return
thereof in what manner you execute the same.

Witness J. B. Oden, Clerk of said Court at Decatur
this 2^d day of July A.D. 1858, the seal of,

2
said Court being hereto affixed.



J. Q. A. Odor, Clerk
By Theo. W. Freese, Dep.

~~And upon the 2nd day of July~~ which said summons was returned into said Clerk's Office on the 23^d of July, 1858, by said Sheriff, with the following endorsement thereon, to-wit: "Not served - E. M. O'Leary, Dep. M. Co., By E. A. Piper D. J. P."

And upon the aforesaid 2^d day of July A.D. 1858, there issued out of said Clerk's Office to the Sheriff of Peate County, a summons in the words & figures following, to-wit:

"State of Illinois }
Macon County } The People of the State of Illinois
To the Sheriff of Peate County, Greeting:

We command you to summon George C. Peck, impleaded with William E. Shastee, if to be found in your County; personally to be and appear before the Circuit Court of said County on the first day of the next term thereof to be holden at the court-house in Decatur on the third Monday in the month of July next to answer unto Henry Poirer who sues for the use of Redden, Burrows & Co. in an action of Unlawful damages Three Thousand Dollars (\$3000.00) - And have you then and there this writ and make return thereof in what manner you execute the same. Witness, J. Q. A. Odor, Clerk of said Court at Decatur



this 2^d day of July A.D. 1858, the seal of said Court being hereto affixed.

J. Q. A. Odor, Clerk
By Theo. W. Freese, Dep.

Which said summons was returned into said Clerk's Office by said Sheriff of Peate County, on the 5th day of July A.D. 1858, with the following endorsement - By said Sheriff thereon, to-wit: "I have served the within summons by reading to the said George C. Peck on the 5th day of July

summons of reading to the said George C. Peck on the 5th day of July

1858 - William E. Shastid not found in my County.

3

Samuel Mowin, Sheriff Patton
per J. M. Barnes, Atty. Sheriff.

And upon the 11th day of July A.D. 1858, there was filed in said Clerk's Office in said cause a Narration in the words & figures following, to-wit:

State of Illinois } of the July Term of the Mason County
Mason County } Circuit Court A. D. 1858.

Henry Poirer, who avers for the use of Goddeer & Currens Co., plaintiff in this suit, by W. Dumm's Atty, complains of George C. Peck impleaded with William E. Shastid, the defendants, in an action of Assumpsit. For that whereas the said defendants heretofore, to-wit, on the twenty eighth day of March in the year of our Lord eighteen hundred and fifty eight at Oakley, to-wit, at the County of Mason and State of Illinois, made their certain promissory note in writing bearing date a certain day and year herein mentioned, to-wit, the day and year aforesaid, and thereby then & there promised to pay, ninety days after the date thereof, to one William Pea under seven-ten hundred and fifty dollars, value received, with interest at the rate of ten percent per annum from the first day of January in the year eighteen hundred and fifty eight - And the plaintiff avers that the said defendant Shastid signed said note & Wm. E. Shastid and then and there delivered the said promissory note to the said William Pea (and the said William Pea to whom or to whose order the judgment 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, on the day and year aforesaid at the County and State aforesaid, indorsed the said promissory note by which said ~~instrument~~ indorsement, to the said William Pea,

then & there ordered the said sum of money in the said promissory note specified to be paid to the said plaintiff - and then & there delivered the said promissory note so indorsed to the said plaintiff, by means whereof the said defendants then & there became liable to pay to the said plaintiff the said sum of money in the said promissory note specified according to the tenor and effect thereof - And being so liable, they, the said defendants, on consideration thereof, afterwards, to-wit, on the day and year aforesaid at the County & State aforesaid undertook and then & there promised the said plaintiff to pay him the said sum of money in the said promissory note specified according to the tenor and effect thereof - yet they have disregarded their said promise & undertaking, and have not paid the said sum of money or any part thereof to the plaintiff or otherwise, although the same has long since been due - to the damage of the said plaintiff for the use of the said Poddewort, Burrows Co. of \$300,00 - And thereupon he brings his suit &c

A. B. Dunn, Atty. for Plt.

Copy of Note sued on -

Cash, March 25, 1858 - Ninety days after date of promise to pay unto William Rea or order Seventeen Hundred & Fifty Dollars, value rec'd, at ten per cent from Jan'y 1st, 1858. (Signed) George C. Peck
Indorsed on the back - Wm. E. Shaekel.

4 I guarantee the within - William Rea. "

And afterwards, to-wit, "At a regular term of the Mason County Circuit Court begun and held at the court-house in Decatur on the third Monday in the month of July A. D. 1858, present, Hon. Charles Emerson, Judge of the 17th Judicial Circuit of the State of Illinois, John P. Eden, Prosecuting Attorney, J. R. Pator, Clerk and Edmiston M. Colman, Sheriff", among other proceedings then and there had, there appears to us of record the following proceeding on the twentieth day of said Court, being the 10th day of August, A. D. 1858, the following proceedings on the aforesaid cause, to-wit:

Henry Prier, who acts for the use of Redwood, Burruss & Co.

vs & Assumpsit

of George C. Peck & William C. Shastid

Now on this day comes

The plaintiff J. W. B. Dunn, his attorney & the defendant George C. Peck, by his attorneys, Gallagher, Ward & Oglesby, when, upon motion, it is ordered by the Court that W. E. Nelson be appointed guardian ad litem for said defendant, Peck, who is a minor under the age of twenty one years: And afterwards, to-wit, on the same day, the pleas filed by the said defendant Peck, are withdrawn, and the appearance of said defendant, Shastid, entered in this cause by his attorney, W. E. Nelson: Thereupon, by agreement of said parties, It is ordered by the Court that said plaintiff have judgment against said defendants for the amount of the note, with interest in their said declaration mentioned; which said amount being computed by the Clerk at the sum of One Thousand Eight Hundred & Fifty Nine ³⁵/₁₀₀ Dollars & so reported to & approved by the Court. It is adjudged & decreed by the Court that said plaintiff have & recover of said defendants the said sum of One Thousand Eight Hundred & Fifty Nine ³⁵/₁₀₀ Dollars, together with his costs in this behalf expended & that he have execution issue against said defendants therefor: It is further ordered that the issuing of said execution be stayed until the twenty fifth day of December next.

Which said pleas, mentioned in the foregoing record as having been held in said cause by said defendant, Peck, and afterwards withdrawn by him, the said defendant, are in the words & figures following, to-wit:

"State of Illinois } of the July Term A. D. 1858
Macon County } of the Circuit Court of said County:

George C. Peck impleaded with Wm. C. Shastid

Henry Prier who acts for the use of Redwood, Burruss & Co. at suit of & Pleas.

And the said defendant, George C. Peck, by his attorney Wm. E. Nelson, Gallagher, Wait & Oglesby, comes and defends the wrong and injury when &c. and saith that he did not undertake or promise in manner and form as the said plaintiff hath above therey complained against him and of this he puts himself upon the Country &c. Nelson, Gallagher, Wait & Oglesby.

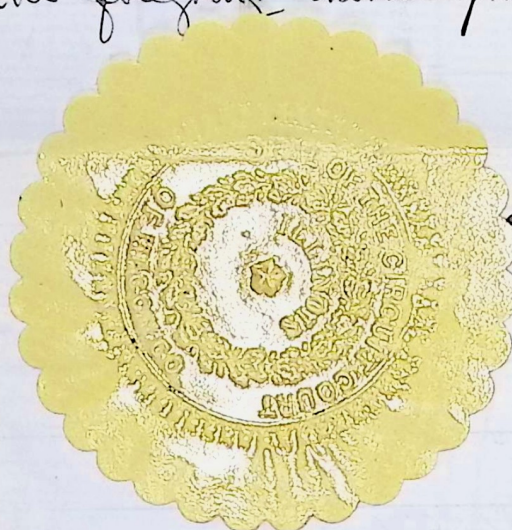
And for further plea in this behalf the said defendant, George C. Peck, by leave of the Court here for that purpose first had and obtained, according &c. by Wm. E. Nelson, admitted by the Court as guardian of the said defendant, George C. Peck, to defend for the said defendant, George C. Peck, who is an infant under the age of twenty one years, comes and defends the wrong and injury when &c. and says that the said plaintiff ought not to have or maintain his aforesaid action therefor against him, because he says that he, the said defendant, at the time of making the said several supposed promises and undertakings in the said declaration mentioned, was an infant under the age of twenty one (21) years, to-wit, at the County of Marion and State of Illinois, to-wit, of the age of 20 years; and this he is ready to verify; wherefore he prays judgement of the said plaintiff ought to maintain his aforesaid action therefor against him.

Wm. E. Nelson,
Guardian &c.

State of Illinois
Marion County

I, Joseph Q. A. Ocker, Clerk of the Circuit Court in and for said County of Marion & State aforesaid, do hereby certify that the foregoing is a full, true and complete transcript of the proceedings record of the proceedings had in said cause of Henry Bauer, who sues

for the use of Reddick, Burrows & Co. vs. George B. Peak & William E. Shastid
 in our said Circuit Court, and that the copies of the several writs
 issued and original papers appertaining to said cause set forth in
 the foregoing transcript are truly and correctly made.



In Witness Whereof, I have hereunto
 set my hand and the seal of said
 Marion County Circuit Court at Location
 this 8th day of October, A.D. 1888.
 J. S. O. Odey, Clerk.
 By Thos. M. Moore, Dep.

4

Fee Bill

Henry Paier proce vs.

George B. Peak et al.

	<u>Duff's Costs</u>
Dec. 10, Fil. Proc. Mars. Claim 15, Ser. Fil. 2, Sum. 80, Ent. App. & Atty. 15, f 1.20	
Ent. Mo. Ord. for guardian ad litem 40,	.40
Ent. Mo. Ord. of Judg. 40, Ent. sup. Judg. 25, Ent. Mo. Ord. for Ex. 40,	1.05
Ent. Mo. Ord. of Costs 40, Cost Bill Copy 50,	.90
Ent. Seal. in C.B. 35, Ent. Mo. Ord. of stay of Ex. 40	.75
	Clerk's Fee f 4.30
Duff. M. Clellan on Sum. . 10 f	.10
" Peatt Co. " " f 1.30 (paid by party)	1.30 f 5.70
<u>Duff's Costs</u>	
Fil. Writ. Ord. S. Ser. & Fil. July. 40, Tak. & Fil. 2, Writ. App. 30, Fil. pleas 5-	.80
Ord. of leave to withdraw Pleas 20, Ent. App. & Atty. 15, Cost Bill Copy 50,	.85
Witness	Clerk's Fee f 1.65
Wm. B. Laughlin & S. 22m. f 5.00	5.00
	7.25
	f 12.95

