

No. 12915

Supreme Court of Illinois

Speer

VS.

Craig

71641  7

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION.

APRIL TERM, 1859.

THOMAS SPEER }
vs.
R. SOLON CRAIG. }

ABSTRACT OF RECORD.

ASSUMPSIT upon a promissory note, made Oct. 10, 1857, by Samuel A. Hatch and Thomas Speer for \$813.48, payable to John Craig. Endorsed to R. S. Craig. The declaration is filed in the name of *R. Solon Craig*. Plea non-assumpsit, and sworn to. Thomas Speer was a mere surety. In the descriptive allegation relating to the endorsement, it is simply stated that John Craig endorsed the note to the *plaintiff*. These facts all appear in the bill of exceptions.

Error assigned :

1. The Court erred in admitting the note and endorsement in evidence.
2. The Court erred in not excluding the note and endorsement from the jury.

R. S. BLACKWELL, *Plffs. Attorney.*

283-160

Thomas Spear

vs

R. Solon Craig

Abstract

Filed May 24 1837

L. Liland

Clerk

283 - 160
State of Illinois
Cook County
Court of Common Pleas.

283

R. Solon Craig

vs

Thomas Speer in p^{er}
with Samuel A. Hatch

Record.

Filed April 24 1839
L. Leland
Clerk

Trans^{pt} 1108.
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283-160

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Abstract

Filed May 26. 1839

L. Leland

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285

Thomas Spear

(v)

R. Solon Craig

Abstract

Filed May 20, 1839
L. Leland
Clerk

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283-160

Thomas Speer

vs

R. Solon Craig

Abstract

Filed May 20, 1859

L. Leland
clerk

State of Illinois
Cook County } *Sp*

Pleas before the Honorable John M. Wilson
sole Judge of the Cook County Court of Common Pleas
within and for the County of Cook and State aforesaid
at a Special Term of said Cook County Court of
Common Pleas, began and held at the Court house in
the City of Chicago on the fifth Monday being the
twenty ninth day of November in the year of our Lord
one thousand eight hundred and fifty eight and
Notice of the time and place of the holding said
Special term of Court, having been printed and published
in the "Daily Democrat" the Corporation Newspaper
of the City of Chicago, said Notice having been
printed and published twenty days previous to the
holding of said Special Term of Court in accordance
with the Statute in such case made and provided
and in pursuance of an order made by the Judge
of said Court on the sixth day of November A. D.
Eighteen hundred and fifty eight.

Present John M. Wilson Judge
Carlos Hovey Prosecuting Attorney
John Gray Sheriff

Attos
Walter Kimball. Clerk.

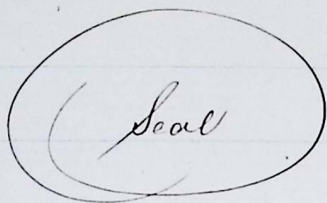
Be it remembered that heretofore to wit on the twenty second day of May in the year of our Lord one thousand eight hundred and fifty eight there issued out of and under the seal of the Clerk of Cook County Court of Common Pleas aforesaid, a certain summons wherein R. Solon Craig is Plaintiff and Samuel A. Hatch and Thomas Speer are defendants; Which said summons with the Sheriff's return thereon endorsed is in the words and figures following that is to say

State of Illinois,	The People of the State of Illinois
County of Cook &c.	To the Sheriff of said County
	Greeting

We command you that you summon Samuel A. Hatch and Thomas Speer if they shall be found in your County personally to be and appear before the Cook County Court of Common Pleas of said County, on the first day of the Special term thereof to be holden at the Court house in the City of Chicago in said County, on the second Tuesday of June next, to answer unto R. Solon Craig, in a plea of Trespass on the case on promises to the damage of the said Plaintiff as he prays in the sum of Two thousand dollars

And have you then and there this writ with an endorsement thereon in what manner you shall have executed the same.

Witness Walter Kimball Clerk of our



said Court and the Seal thereof at
the City of Chicago, in said County
this 22nd day of May A. D.
1858.

Walter Kimball
Clerk.

"Served by reading to the within named Thomas Speer
this 29th day of May A. D. 1858, Samuel A. Hatch not-
found in my County, this 7th day of June 1858.

John L. Wilson, Sheriff
by Thomas L. Holt
Deputy."

And thereafter to wit on the Twenty fourth day of
May in the said year of our Lord one thousand eight
hundred and fifty eight, the said Plaintiff filed in the
office of the said Clerk of the said Cook County Court of
Common Pleas his Declaration, together with a Copy of
the Instrument and account sued upon; which said
Declaration and account is in the words and figures
following that is to say.

"State of Illinois
County of Cook *vs* Cook County Court of Common
Pleas. Of the Special June
Term A. D. 1858

R. Solon Craig Plaintiff in this suit by Coventry
Bountree and Vaughan his Attorneys complain of
Samuel A Hatch and Thomas Speer Defendants who
have been Summoned &c of a Plea of Trespass on
the case on promises.

For that whereas the said Defendant
heretofore, to wit; on the Tenth day of October in the
year of our Lord one thousand eight hundred and
fifty seven, at Chicago, to wit, at said County
of Cook, made their certain Promissory Note in
writing, bearing date the day and year aforesaid
and then and there delivered the same to John
Craig, in and by which said Note said
Defendants by the name style and description
of Samuel A. Hatch and Thomas Speer
promised to pay to the Order of the said John
Craig, Seven Months after the date thereof Eight
hundred and thirteen dollars and forty eight cents
for value received And the said John Craig
to whom or to whose order said Note was
payable, afterwards to wit on the day and year
aforesaid, at Chicago, that is to say, at the
County of Cook aforesaid, endorsed said Note
in writing by which said endorsement the said
John Craig, then and there ordered and
appointed the said sum of money in said

Note mentioned to be paid to said Plaintiff and then there delivered said Note so indorsed to the said Plaintiff By means whereof and by force of the Statute in such case made and provided, the said Defendant became liable to pay said Plaintiff said sum of money mentioned in said Note, and being so liable in consideration thereof then and there undertook and promised to pay the same to the said Plaintiff, according to the tenor and effect of the said Note, and of the indorsement aforesaid, to wit at the place aforesaid.

And whereas also the said defendant afterwards, to wit on the first day of May in the year of our Lord one thousand eight hundred and fifty eight, to wit, at said County became and was indebted unto the said Plaintiff in a large sum of money to wit, the sum of Two thousand dollars for money before that time lent and advanced to said defendant by said Plaintiff at said defendant's request; and also in the like sum for money before that time paid laid out and expended for said defendant by the said Plaintiff, at the like special request of said defendant; And in the like sum for money before that time had and received by said defendant to and for the use of said Plaintiff; and also in the like sum for Goods, wares and Merchandize before that time sold and delivered by said Plaintiff to said Defendant, at the like special instance and requests; and also in the like sum for the labor care and diligence of the said Plaintiff before that time done and performed by said Plaintiff for said

defendant; and at the like special instance and request of said defendant; and also in the like sum then and there found to be due and owing to said Plaintiff on an account stated between them, and being so indebted said defendant in consideration thereof, then and there undertook & promised to pay said Plaintiff, said several sums of money above mentioned, when thereunto afterwards requested.

Yet the said defendants not regarding their said promises and undertakings, but contriving &c, altho' often requested so to do has not paid said Plaintiff either of said sums of money above mentioned or any part thereof but so to do have hitherto, wholly neglected and refused, and still do neglect and refuse to the damage of said Plaintiff of Two thousand dollars, and therefore he brings this suit &c -

Coxworthy, Rountree & Vaughan
Plaintiffs' Attorneys -

Copy of Instrument and account filed on
" 813 $\frac{48}{100}$ Chicago October 10th 1857

Seven Months after date we promise to pay
John Craig or order Eight hundred & thirteen dollars and
forty eight cents for value received.

Attest

Saml. A. Hatch
Thos. Speer

A.B. Vaughan

Endorsed " For value received I transfer the within
Note to R. S. Craig."

" Oct 26. 1857.

John Craig.

(1)

" Samuel. A. Hatch & Thos: Speer
 to R. Solon Craig - Dr.

To money lent and advanced - - - - -	\$2000
To money paid laid out & expended - - - - -	2000
To money had received to and for the use of Plt. - - - - -	2000
To Goods Wares & Merchandize sold & delivered - - - - -	2000
To labor & services - - - - -	2000
To balance due on account stated - - - - -	2000

And thereafter to wit on the Eighth day of June in the year of our Lord one thousand eight hundred and fifty eight, the said defendants filed in the Office of the Clerk of said Court, their Plea to said Declaration, together with Affidavit of Merits; Which said Plea and Affidavit is in the words and figures following, to wit

" R. Solon Craig } In the Cook County Court of Common
 vs } Pleas. Of the June Special Term
 Samuel A. Hatch & } A. D. 1858.
 Thomas Speer ... }

And the said Defendants by their Attorney R. S. Blackwell come and defend the wrong injuries when &c and say that they did not undertake or promise in manner and form as the said Plaintiff has above thereof complained against them, and of this they put themselves upon the Country &c - And Plaintiff likewise.

"R. S. Blackwell."

"R. Solon Craig } In the Cook County Court of Common
 vs } Pleas. Of the June Special Term
 Samuel Hatch & } A. D. 1858
 Thomas Speer ... }

Thomas Speer being duly sworn deposes and says that he is one of the Defendants in the above entitled cause and that he believes he has a good defence to said action upon the merits thereof, and further deponent says not.

Subscribed & sworn to before } Thos. Speer.
me this 8th day of June }
A. D. 1858. }

W. Kimball. Clerk

And afterwards to wit on the tenth day of June (said day being one of the days of the June Special Term of said Court) in the year of our Lord one thousand eight hundred and fifty eight, the following proceedings were had in said cause and entered of record in said Court, to wit.

"R. Solon Craig

vs

Samuel A. Hatch }
& Thos. Speer . . . } Spumroit.

This day comes the said Plaintiff by Country, Rountree & Vaughan his Attorneys, and on their Motion it is Ordered the Plea and Affidavit of Merits of the said defendant Thomas Speer herein pleaded be stricken from the files of this cause for want of venue being stated in Affidavit, and due personal service of process of Summons issued in this cause having been had on the said defendant and he being three times solemnly called

in open Court comes not nor does any person for him, but
herein he makes default which is on motion ordered to be
taken and is hereby entered, Whereupon the said Plaintiff
ought to have and recover of the said defendant Thomas
Speer unpleaded with Samuel A. Hatch his damages
sustained herein by reason of the premises, and the Court
having heard the allegations and proofs submitted by the
said Plaintiff, and being fully advised in the premises assesses
his damages herein to the sum of Eight hundred & seventeen
dollars and fifty four cents.

Therefore it is considered that the said Plaintiff do
have and recover of the said defendant Thomas Speer
unpleaded with Samuel A. Hatch his damages of Eight
hundred & seventeen dollars and fifty four cents, in form
aforesaid by the Court assessed, and also his Costs & charges
in this behalf expended, and have Execution therefor.

And afterwards to wit on the fifteenth day of June
(being another of the days of the said June Special Term)
in the year of our Lord one thousand eight hundred &
fifty eight, the following further proceedings were had
in said cause and entered of record in said Court
to wit,

" R. Solon Craig

(or)

Samuel A. Hatch & Affumpsit
Thomas Speer . . .

And now on this day again comes

the said plaintiffs by his Attorneys aforesaid and on their Motion it is Ordered that the default of the said defendant Thomas Speer impleaded with Samuel A. Hatch together with the judgment entered of record against him at a former day of this term, of this Court to wit on the 10th day of June be and is hereby set aside, and vacated and that said defendant have leave to plead over.

And thereafter to wit on the nineteenth day of June A. D. Eighteen hundred and fifty eight, the said defendant Thomas Speer, accordingly filed in the office of the Clerk of said Court his further plea and Affidavit of merits, which said plea and affidavit is in the words & figures following, that is to say

"R. Solon Craig	{	In the Cook County Court of
@		Common Pleas.
Samuel Hatch &		Of the June Special Term 1858,
Thomas Speer	}	

And the said defendants by R. S. Blackwell their Attorneys come and defend the wrong and injury whereof and say that they did not undertake or promise in manner and form as the said Plaintiff hath above thereof complained against them, and of this they put themselves upon the Country &c."

"R. S. Blackwell."

State of Illinois	{	In the Cook County Court of
County of Cook		

R. Solon Craig } Of the June Special Term
(vs) A. D. 1858

Samuel Hatch & } Thomas Speer being duly sworn deposes
Thomas Speer . . and says That he is one of the defendants
in the above entitled cause and that he believes they have
a good defence to said action upon the merits thereof and
further said deponent saith not.

Sworn to before me this }
19th day of June 1858 } Tho^s. Speer.

W. Kimball. Clerk

And afterwards to wit on the fourteenth day of
December (being one of the days of the November Special
Term of said Court) in the year of our Lord one thousand
eight hundred and fifty eight, the following proceedings
were had in said cause, and entered of record in said
Court, to wit.

" R. Solon Craig

(vs)
Thomas Speer impleaded } Apts
with Samuel A. Hatch

This day comes again said Plaintiff
by Country, Rountree & Vaughan his Attorneys and the
said Defendant Thomas Speer by R. S. Blackwell his
Attorney also comes - No service of process of Summons
issued in this cause having been had on the said defendant
Samuel A. Hatch, and issue being joined with the said
defendant, upon his plea of the general issue it is ordered

that a Jury come, whereupon comes the Jury of good and lawful men to wit -

E. Paul, John Devitt, John Webb, J. T. Clark, G. M. Griswold, A. Otto, Wm. Yelverton, James Young, Herman Lewis, B. S. Fagg, B. H. McBarty, and R. P. Weed.
Who being duly elected tried and sworn to try the issues joined aforesaid, after hearing the allegations & proofs submitted and arguments of counsel retire to consider of their Verdict, and afterwards come into Court and say
we the Jury find issue for the said Plaintiff and assess his damages to the sum of Eight hundred forty one dollars and ninety six cents.

Therefore it is considered said Plaintiff do have & recover of the said defendant Thomas Spurr impleaded with Samuel A. Hatch his damages of Eight hundred forty one dollars and ninety six cents in form aforesaid by the Jury aforesaid assessed, and also his costs & charges in this behalf expended, and have Execution therefor.

And thereupon comes said defendant Thomas Spurr and prays an Appeal in this cause to the Supreme Court of the State of Illinois, which is allowed to him upon his filing his Appeal Bond in One thousand dollars to be approved by Judge of this Court, said Bond with Bill of Exceptions to be filed within ten days from this day.

And thereafter to wit on the Eighteenth day of December A.D. one thousand eight hundred and fifty eight there was filed in the office of the Clerk of said Court the Appeal Bond of the said Thomas Spear; which said Bond is in the words and figures following that is to say.

' Know all Men by these presents That we Thomas Spear and James Saunder and John B. Roberts of the City of Chicago in the County of Cook and State of Illinois are held and firmly bound unto R. Solon Craig of in the sum of One thousand dollars lawful money of the United States to be paid to the said R. Solon Craig his executors administrators or assigns; for which payment well and truly to be made, we bind ourselves, our and each of our heirs, executors and administrators, jointly and severally firmly by these presents. Sealed with our seals dated the sixteenth day of December one thousand eight hundred and fifty eight.

Whereas on the fourteenth day of December A.D. 1858 on a trial then had in a cause then pending in the Cook County Court of Common Pleas wherein R. Solon Craig was plaintiff and Samuel A. Hatch and Thomas Spear were defendants, a judgment was recovered against the said Thomas Spear (the said Hatch not having been served with summons) for the sum of Eight hundred and forty one dollars and ninety six cents And whereas also the said defendant then and

there moved the said Court for a New trial of said Cause which Motion the said Court then and there overruled, And whereas also the said defendant then & there prayed an Appeal to the Supreme Court of the State of Illinois, which prayer of the said defendant was granted by said Court. Now therefore the Condition of the above obligation is such, that if the above bounden Thomas Speer shall prosecute his said Appeal with Effect, and without delay, and shall moreover pay or cause to be paid the said judgment interest, damages and costs in case the said judgment shall be affirmed by the said Supreme Court, then & in that event this obligation shall be void, Else to remain in full force and virtue.

Approved by me
John W. Wilson
Judge

Thos Speer
James Saunders
S. C. Roberts

SS
SS
SS

And thereafter to wit on the fifth day of January in the year of our Lord one thousand eight hundred and fifty nine, the said defendant Thomas Speer filed in the office of the Clerk of said Court his Bill of Exceptions; Which said Bill of Exceptions are in the words and figures following, that is to say.

" R. Solon Craig

(u)

Samuel A. Hatch &
Thomas Speer . . .

On the Cook County Court of
Common Pleas.

November Special Term A.D. 1858.

Be it remembered that upon the trial of this cause and after the Jury were empanelled herein the said Plaintiff in order to maintain the issue on his part offered to read in evidence to the Jury aforesaid a note and endorsement, in the words and figures following that is to say.

"\$813¹⁴/₈

Chicago Decr 10th, 1857.

"Seven Months after date we promise to
"pay John Craig or Order Eight hundred & thirteen
"dollars and forty eight cents for value received
"Attest

"Saml H. Hatch

"L. B. Vaughan" "Thos Speer."

Endorsed "For value received I transfer the within
"Note to R. S. Craig. Decr 26th 1857"

"John Craig

to the introduction of which said Note and endorsement as evidence in this cause before the Jury aforesaid the said defendant Thomas Speer by his counsel then & there objected; but the Court overruled such objection and permitted said Note and endorsement to be read to the Jury aforesaid.

To which opinion of the Court in overruling the said objection the said defendant Thomas Speer by his counsel then and there excepted.

And here the said Plaintiff closed his evidence.

And thereupon the said defendant Thomas Speer by his counsel called to the stand as a witness, James B. Vaughan, who testified in substance that the consideration

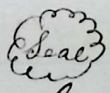
of the Promissory Note in question was a debt due by the said Samuel A. Hatch the maker of the said Note to one John Craig the payee thereof and that the said defendant Thomas Speer was supposed by the witness to be a surety upon said Note for the said Maker, but witness did not positively know the fact.

And this was all of the evidence offered in this cause either upon the part of the said Plaintiff or the said defendant Thomas Speer.

And thereupon the said Defendant Thomas Speer by his counsel moved to exclude the Note and endorsement aforesaid from the Jury aforesaid; which Motion was overruled by the Court aforesaid.

To which opinion of the Court in overruling the said Motion, the said defendant Thomas Speer by his counsel then and there Excepted.

And thereupon the said defendant Thomas Speer by his counsel aforesaid prays the Court here that this his bill of Exceptions may be signed and sealed by the Court here, and made a part of the record herein, which is done accordingly at Chicago, the County Seat of Cook County Illinois, this First day of January A. D. 1859.

John M. Wilson 

Judge of the Cook County Court
of Common Pleas, Illinois.

State of Illinois
County of Cook

I Walter Kimball Clerk of the Cook County Court of Common Pleas, within and for the County and State aforesaid Do hereby certify that the foregoing is a true and correct Transcript of the ^{process} Declaration - Pleas & Affidavits of Merits - Appeal Bond and Bill of Exceptions now on file in my office, together with all Orders Entered of Record in said Court, in a certain suit, wherein R. Solon Craig was Plaintiff and Samuel A. Hatch and Thomas Spear were defendants.



In witness whereof I the said Walter Kimball, have hereunto set my hand and affixed the Seal of said Court at Chicago in said County of Cook and State aforesaid this Thirty first day of January in the year of our Lord one thousand eight hundred and fifty nine.

Walter Kimball Clerk

Thomas Speer } In the Supreme Court of the
vs. } Third Grand Division of the Court
N. Solor Craig } of April 1859.

Appeal from the Cook County Court
of Common Pleas.

And now comes the said appellant
by R. MacNeill his attorney and says
that in the record of the proceedings of said
and the rendition of the judgment of said
manifest prejudice error hath intervened to
his prejudice in this work;

1. The said Court erred in admitting
the note ^{& endorsement} ~~of said~~ in evidence.

2. The said Court erred in overruling
the said motion of the said appellant to
to exclude the said note and endorsements
from the jury ~~forever~~.

Wherefore &c. the said appellant
prays judgment of reversal &c.
R. MacNeill p q

And now the appellee comes & says that there
is no error in the record & proceedings of & prays that said judgment
may be affirmed

By his atty
C. Breckinridge