

12557

No. _____

Supreme Court of Illinois

Cushman

vs.

Savage

71641  7

21
W. H. W. Cushman
vs

John Savage

4117

1858

State of Illinois J. p. Pleas before the Honorable Edwin
Lisalle County J. S. Lisalle Presiding Judge of the
north Judicial Circuit of the
State of Illinois at a term of the Circuit Court in
and for said Lisalle County, commenced and
held at the Court House in Ottawa on Monday
the fourteenth day of November A.D. 1833 the regular
term the second Monday in said month of
November of the twenty eighth year of American
Independence.

Present

The Honorable Edwin S. Lisalle	Presiding Judge
Philip Lindley	Clerk
W. H. L. Wallace	State Attorney
Richard Thorne	Sheriff

On the 30th day of August 1833 a process was filed
in the office of the Clerk of the Circuit Court of said
County in the words and figures following to wit;

In the Lisalle County Circuit Court to Sam.
term A.D. 1833

William H. W. Kushman

vs
John Savage

Assumpsit - Damages
\$100.00

Clerk will please issue
summons in the above entitled cause to the
Sheriff of said County Illinois returnable to Sam.
term 1833

M. C. Hollister
Plffs Atty

On which process a summons was issued in the words

2) and signs following, that is to say:

"State of Illinois, The People of the State of Illinois
County of LaSalle, of the Sheriff of said County,

We command you that you
summon John Savage if he shall be found in
your County, to be and appear before the Circuit Court
of said LaSalle County on the first day of the next term
thereof, to be holden at the Court House in Ottawa
in said County on the 14th day of November next to
answer unto William H. W. Leckman in a plea
of trespass on the case upon promises to the damage
of the said plaintiff as he says in the sum of one
hundred dollars. And have you then and then this
writ with an endorsement thereon in what manner
you shall have executed the same
Witness Phil Lindley Clerk of said Court and
the Seal thereof at Ottawa in said County
this 30th day of August 1833
P. Lindley Clerk"

which summons was returned to said Clerk's office
October 6th 1833 with the following endorsement
thereon viz:

"I executed this summons by reading the
same to the within named John Savage at the
County of LaSalle September 27th 1833
William P. P. Sheriff
Serving - 25 - 10 miles back 50 - returning 10 - 85"

And afterwards, to wit; on the 31st of October 1833 the
plaintiff's attorney filed his Declaration in the words &
signs following, viz:

3)

State of Illinois 3^d of Circuit Court thereof to Sommers
 La Salle County 3^d Term A.D. 1833

William W. W. Cushman

the plaintiff in this suit of Mr. E. Wollerton his Attorney
 complains of John Savage the defendant in this suit
 who has been summoned of a plea of trespass on the case
 upon premises

For that whereas the said defendant on
 the second day of July in the year of our Lord one
 thousand eight hundred and fifty one at LaSalle County
 to wit: in the County aforesaid, made his promissory note
 in writing, and then and there delivered the same to
 one Henry Green and thereby promised to pay to the
 said Henry Green or order seventy five dollars, or on
 before the first day of January in the year of our Lord
 one thousand eight hundred and fifty two, which
 period hath now elapsed, and the said Henry Green
 then and there indorsed the said note to the plaintiff
 whereof the defendant then and there had notice, and
 then and there in consideration of the premises
 promised to pay the amount of the said note to the
 plaintiff according to the tenor and effect thereof and
 the endorsement to therein made, and the Statute in
 such case made & provided. Yet the defendant
 though often requested hath not paid the said sum
 of money mentioned in said note, or any part thereof
 but to do so, hath hitherto refused and still doth refuse
 to plaintiff's damage one hundred dollars, and
 therefore he sues &c.

And whereas also the defendant on the second day
 of July in the year of our Lord one thousand eight
 hundred and fifty one in the County aforesaid was
 indebted to the plaintiff in one hundred dollars for the

4) price and value of goods and chattels then and there
sold and delivered by the plaintiff to the defendant at
his request; and in one hundred dollars for the price
and value of work then and there done and materials for
the same provided by the plaintiff for the defendant
at his request, and in one hundred dollars for
money then and there lent by the plaintiff to the
defendant at his request, and in one hundred dollars
for money then and there paid by the plaintiff for the
use of the defendant at his request, and in one hundred
dollars for money then and there received by the defendant
for the use of the plaintiff, and in one hundred dollars
for interest due from the defendant to the plaintiff
for and in respect of the plaintiff having for some
and given day of payments of money due from the
defendant to the plaintiff at the defendant's request
for a long time then elapsed, and in one hundred
dollars for money found to be due from the defendant
to the plaintiff on an account then and there stated
between them.

And whereas the defendant afterwards to wit: on the
day and year last aforesaid in the County aforesaid
in consideration of the promises respectively promised
to pay the said several last mentioned moneys respect-
ively to the plaintiff on request yet he hath disregarded
his promises and hath not paid any of said moneys on
any part thereof, but to do so hath hitherto refused and
will do so refuse to plaintiff's damage one hundred
dollars and therefore he brings his suit &c. 7

And Whereas also the said defendant on the first
day of January in the year of our Lord one thousand
eight hundred and fifty two in the County aforesaid
was indebted to the plaintiff in the sum of twenty five dollars

5)

on a promissory note in writing made by the defendants on
 the second day of July in the year of our Lord one thousand
 eight hundred and fifty one and payable to Henry Green
 or order on the first day of January in the year of our
 Lord one thousand eight hundred and fifty two and
 which was then and there indorsed by the said Henry
 Green to the plaintiff and King so indebted to the
 plaintiff the defendant in consideration that the plain-
 tiff would forbear and give day of payment of said sum
 of money to the defendant for a period of twenty days
 from the aforesaid first day of January in the year of
 our Lord one thousand eight hundred and fifty two
 promised the plaintiff to pay him the said sum of
 money with interest at certain in the County of
 LaSalle aforesaid on the twenty first day of January in
 the year of our Lord one thousand eight hundred and
 fifty two which time has now elapsed and the
 plaintiff avers that at the request and in consideration
 of the promise aforesaid he did forbear and give the
 defendant day of payment of said sum of money
 for twenty days from the aforesaid first day of January
 in the year of our Lord one thousand eight hundred
 and fifty two to wit: until the twenty first day of
 January in the year of our Lord one thousand eight
 hundred and fifty two. And he further avers that he
 the plaintiff at and before the signing of this writ
 and at the time of the promise of the defendant aforesaid
 and on the ^{twenty} first day of January aforesaid resided
 in said County of LaSalle and that the defendant at
 the time last aforesaid resided in the County of LaSalle
 in the State of Illinois — Yet the plaintiff saith
 that the defendant hath since failed his promise

6) and hath not paid said sum of money or any part thereof. but to do so, hath hitherto refused and still doth refuse to plaintiffs damages one hundred dollars and therefore he sues &c

M. E. Wallister, plffs &c."

"Copy of note and af declared on

"On or before the first day of January next I promise to pay Henry Green or order the sum of twenty five dollars for value received
 Cash County Ill July 2^d. 1831

John Savage

John Savage to Wm. K. Klemmman Esq

July 2 ^d 1831	Goods & chattels (to wit 1 group cutter)	\$100.00
	work & materials furnished (dift)	100.00
	Cash lent (dependant)	100.00
	Cash paid for the use of dift.	100.00
	Cash rec ^d of dift. for use of plff	100.00
	Interest on money due	100.00
July 1. 1832	Cash due on note	100.00"

And afterwards to wit; on the 14th day of November 1833 the defendant filed his plea in a statement in the words and figures following to wit:

"State of Illinois LaSalle County - William K. Klemmman vs John Savage - Circuit Court for LaSalle County November Term 1833 - And the said defendant John Savage in his own proper person comes & says that the Court ought not to have or take further cognizance of the action aforesaid because he

7) say that at the date of the Commencement of said suit the said defendant resided and now resides in the County of Cook & State of Illinois, and that the said supposed cause of action & each & every of them (if any such have accrued to the said plaintiff) accrued in the said County of Cook. And the said supposed cause of action were not specifically made payable in LaSalle County aforesaid and thus the said defendant is ready to verify wherefore he prays judgment whether this Court can or will take further cognizance of the action aforesaid.

John Savage defendant as aforesaid makes oath & say that the foregoing plea & the matters & things therein contained are true in substance & fact.
John Savage"

"State of Illinois: I the undersigned Justice of the peace for Cook County do within and for the said County of Cook certify that foregoing plea was subscribed & sworn to by John Savage before me.

Given under my hand and seal this tenth day of November A.D. 1853 J. A. Spry *Jud.*
Justice of the peace for Cook County Illinois"

"State of Illinois: I Lewis F. Sanders Clerk of the County of Cook do within and for the County of Cook State of Illinois do hereby certify that J. A. Spry Esq. whose name appears to the foregoing certificate was on the day of the date thereof an acting Justice of the peace within and for the County of Cook State of Illinois, duly elected, commissioned and qualified according to law, and that as such full faith and credit are due and of right should be given

8) to all his official acts & I also certify that the foregoing signature of said Justice hung to said certificate is genuine.

In Testimony Whereof I have hereunto set my hand and the seal of said Court at Brandon
this tenth day of November in the year of our Lord
one thousand eight hundred and fifty three
Lewis F. Sanders Clerk

On the 28th day of November 1833 the plaintiffs
attorney files his demurrer to the aforesaid plea, in
words and figures following viz:

"State of Illinois In the LaSalle County Circuit
LaSalle County Court to wit, Term 4th 1833

William W. W. Cushman & and the said plaintiff
John Savage & with that the said
plea of the said de-
fendant And the matters

therein contained in manner & form as the same
are above pleaded and set forth are not sufficient in
law to quash the said writ, and that the said
plaintiff is not bound by the law of the land to
answer the same & this he is ready to certify, whereupon
for want of a sufficient plea in this behalf the
said plaintiff prays judgment and that the said
defendant may answer further to the said decla-
ration &c.

M. E. Hollister
for plff.

And the said plaintiff according to the form of the
Statute in such case made and provided states & shews
to the Court here the following causes of demurrer to the

- 9) said plea, that is to say
- 1 - The ~~said~~ plea does not pray that the "mist" may be quashed
 - 2 - The plea does not show where the cause of action more specifically made payable
 - 3 - The plea does not show that the cause of action accrued out of the jurisdiction of this Court & within the jurisdiction of any other Court.
 - 4 - The plea does not show that the debt was out of the jurisdiction of this Court when the "mist was found"

And afterwards to wit: on Wednesday November 30th 1833 the same King, one of the dep of said November Term of said Court the following order was entered of record in said cause to wit:

"William H. W. Bushman

John Savage 3 3 This day comes
his attorney & the defendant by Dickey & Wallace his
attorneys & after hearing the arguments of counsel
the Court orders the plaintiff's demurrer to
defendant's plea"

And again on Wednesday Dec. 7th 1833 the same King, one of the dep of said term of Court the following further order appears of record in said cause that is to say

"William H. W. Bushman

John Savage 3 3 This day comes

10) the plaintiff & Hollister his attorney and on his motion
it is ordered that he have leave to reply to defendants
plea "

And on the same day plffs. attorney files his
reply to said plea in the words and figures following
to wit:

"State of Illinois LaSalle County p - 8
Circuit Court Term of Nov. Term AD 1853
William H. W. Cunningham vs John Savage - And
the said plaintiff says that notwithstanding any
thing by the said defendants above alleged the Comps
have right not to be precluded from raising further
objections of this action, because the said plaintiff
says that the causes of action & each & every of them
aforesaid, did not occur in the County of Cass And
because the same were specifically made payable
in the County of LaSalle aforesaid at the time when
so as he hath above in declaring alleged, and this
he prays may be enquired of by the Court
M. E. Hollister Atty. for plffs"

And on Dec. 22^d 1853 the same being one of the
days of said November Term, defendants counsel
file their demurrer to plffs. replication in the words
and figures following, that is to say:

"State of Illinois LaSalle Circuit Court Nov. Term
1853 Wm. H. W. Cunningham vs John Savage -
And the said John Savage & Dickey his attorney
says that that plaintiffs replication to his plea herein
is insufficient in law and that he is not bound by law

11) to answer the same

Dickey p d

And for special causes of demurrer - diff. set forth
the following viz:

1st - Said replication is double

2nd - it is uncertain

3^d - It is incompatible with the declaration

4th - It is a departure from the declaration

J. L. Dickey p d

And afterwards on Friday December 23^d the same being
one of the days of said Court term the following further
order was made and entered of record in said cause

viz "William H. W. Cushman

vs
John Savage

Defendant's

This day again comes
the plaintiff of Cullerton his
attorney & the defendant of Dickey his attorney and the
defendants demurrer to plaintiffs replication is
taken up and argued by counsel, and after hearing
said arguments the Court sustains said demurrer.

Whereupon plaintiffs attorney takes leave to
amend his replication"

Said amended replication
was filed Dec. 24, 1883 in the words and figures
following, that is to say:

"State of Illinois LaSalle
County p + Circuit Court thereof to wit Term AD 1883
William H. W. Cushman vs John Savage - And the
said plaintiff prays amendments & by leave of the
Court as to the said defendants pleas to the plaintiffs

12/ first and second Comts. in his declaration mentioned says that the cause of action & each & every of them mentioned in said first and second Comts. accord to him the said plaintiff in the County of LaSalle aforesaid where & not in the County of LaSalle as in said plea to said first & second Comt. the defendant has alleged, and that at the time where the plaintiff abided & now resides in the County of LaSalle, and as to the said defendants plea to the plaintiffs third Comt. in his said declaration mentioned the plaintiff says that the cause of action specified in his said third Comt. was specifically made payable in the said County of LaSalle at the time where &

And so the plaintiff says that notwithstanding any thing of the said defendants in said plea alleged the Court here ought not to be precluded from having further cognizance of his said action, and thus he prays may be enquired of by the Court &c.

Wm. C. Hollister

Plffs Atty

And afterwards to wit: on the 4th day of January 1834, the same being one of the days of the said Monday Term 1833 the defendants Leonard filed a rejoinder & demurrer (both being attached and made inseparable by dfts attys) in the words & figures following, that is to say:

"State of Illinois LaSalle Circuit Court Nov. Term 1833 - William H. W. Leachman vs John Savage And said defendants - that the Court ought not to take cognizance of the matters stated in the first Comt. in said plaintiffs declaration of record of

13) any thing stated in plaintiffs application to defendants
plea in abatement, because he says that the promissory
note mentioned in said ^{count} ~~count~~ was executed in the
County of LaSalle in the State of Illinois and not in the
County of LaSalle - and this he prop may be required
of the Court. John Savage defendants

And said defendant says that the Court might
not to take cognizance of the matters stated in the
Second Count of said plaintiffs declaration forasmuch
of any thing stated in plaintiffs application to defen-
dants plea in abatement because he says that -
that the goods and chattels therein alleged to have
been sold and delivered by plaintiff to defendant
were sold and delivered (if at all) in the said
County of LaSalle and not in said County of LaSalle
and that said work alleged in said Count to have
been done by plaintiff and the said materials alleged
in said Count to have furnished by plaintiff was
(if at all) done and furnished in the County of LaSalle
aforesaid and not in the County of LaSalle aforesaid -
and that the money in said Count alleged to have
been lent by plaintiff to defendant was lent (if at
all) in the County of LaSalle and not in the County of
LaSalle and that the money alleged in said Count
to have been paid by plaintiff for the use of defendant
was paid (if at all) in the said County of LaSalle
and not in the said County of LaSalle and that the
money alleged in said Count to have been received
by defendant for the use of plaintiff was received
(if at all) in the said County of LaSalle and not in
the County of LaSalle aforesaid - and that the sum
of money alleged in said ~~Count~~ Count to have been

14) due and owing from defendants to plaintiff for
interest (if due and owing at all) such interest
accrued in the ~~County of~~ said County of Cap and not
in the County of LaSalle aforesaid - and that the
money alleged in said Combs to have been paid
due from the defendants to the plaintiff on an
account stated was so found due (if at all) in the
County of Cap aforesaid and not in the County of
LaSalle aforesaid, and that such account, stated
(if any such was stated) embraced only claims
and causes of action which accrued in the County
of Cap aforesaid and not in the County of LaSalle
aforesaid - And if this defendant puts himself
upon the County. John Savage defendant

And said defendant says that said Court ought
not to take Cognizance of the matters stated in the
third Combs of said declaration of reason of any
thing contained in plaintiff's replication to de-
fendants plea in a statement herein - Because he
says that the same are not sufficient in law in
the manner in which the same are stated in said
replication to authorize this Court to take Cognizance
of said matters stated in said third Combs in said
declaration and that defendant is not bound by law
to answer the matters stated in said replication
in that behalf and this he is ready to verify &c
whereupon he prays judgment &c
John Savage defendant

3^d - So far as said replication relates to the cause of
action mentioned in said third Combs of said
declaration - said replication states matters repugnant

15) to and in compatte with matters stated in said Court
also said replication in answer, that said cause of
action was made specifically payable does not
sustain said conclusion of an allegation of facts
sufficient to authorize said conclusion I do not
contain the necessary arguments in that behalf
4th Said replication sets up new matters and
improperly concludes to the contrary when it should
have concluded with a verification
John Saray defendant"

And again afterwards on the 8th day of May 1854
the same being one of the days of the May term
of said Court for the year 1854 the plaintiff
Comand filed his demurrer & defendants rejoinder
in the words and figures following viz;

State of Illinois 3 Circuit Court May term 1854
Ladalle County 3
Wm. H. Cushman vs John Saray
Trespas on the lease upon premises

And the said plaintiff
for answer to the rejoinder of said defendant to the
plaintiffs replication as pleaded by him in the above
entitled cause says, that the matters contained in
said rejoinder in manner and form as therein set
forth, are insufficient in law to preclude the said
plaintiff from having and maintaining his said
action in the first & second Court in his said declaration
mentioned against him, and that he the said plaintiff
is not bound by the laws of the land to answer the

16) Same and this he is ready to verify wherefore for the want of a sufficient rejoinder in this behalf to said plaintiffs replication the said plaintiff prays judgment and that said defendant may answer further to said replication &c. Hollister & Casady
Attornies for plaintiff

And the said plaintiff according to the Statute in such case made and provided States and Verbs to the Court here the following causes of damages to wit:

1st - Because the said rejoinder sets up no new or other matter than that set forth alleged in plaintiffs replication which replication renders an issue to the Country, which the defendant has not joined

"Def't joins damages
Dickey f d"

And on Tuesday May 9th 1834 the same being one of the days of said May term the following final order was entered of record in said cause viz:

"William M. W. Cushman

John Saray

Attornies for
the plaintiff

This day comes the plaintiff of Hollister his attorney & the defendant of Dickey his attorney, and after hearing the arguments of counsel, the damages to that part of the replication applicable to that part of the plea applicable to the third count is sustained and the damages to the rejoinder is awarded, and it is therefore considered of the Court that it will take no further cognizance of the

11)

causes of action in ^{the} declaration mentioned, and that
defendant recovers of plaintiff his costs in this behalf
expended and that he have execution therefor

State of Missouri
Laclede County
J. P. Philo, County Clerk of
the Circuit Court in and for
said County, do hereby certify the above
and foregoing to be a full true and
correct copy of all the proceedings
& judgment of the Court in the foregoing
cause as the same appears of records
and on file in my office
In Testimony whereof I have
hereunto set my hand & the
Seal of said Court this 16th day
of January AD 1855
J. P. Philo, Clerk

Supreme Court. 3^d Grand Division
April Term A D 1858

William A W Carver,

vs
John Savage

Now comes the said plaintiff
in error by A W Carver his atty, and says that
in the record and proceedings in said cause
there is manifest error in this to wit.

1st The court erred in overruling the demurrer
to the rejoinder of the defendant to the plaintiff,
replication to the plea in abatement to the
1st count in the declaration.

2^d The court erred in overruling the demurrer
to the rejoinder of the defendant to the plaintiff,
replication to the plea in abatement to the
2^d count in the declaration.

3^d The court erred in ~~overruling~~ sustaining
the defendant's demurrer to the plaintiff's replica-
tion, the plea in abatement to the 3^d count
in the declaration, and in rendering the judgment ag^t
the Plaintiff that "the court will take no further cognizance of the causes of
action in the declaration mentioned."

Wherefore, for these and other errors apparent
on the face of the record, said plaintiff prays
that the judgment of the court below be reversed
annulled and set aside.

Defendant joins in error.
J. L. Dickey atty for Def.

A. W. Carver atty for Pl.

Imp. Court. 3^d Division

Compt. H. W. Cushman⁴

M^o Savage

acc^t of Errors

Filed April 26. 1858

S. Leland

clerk

²⁰ ³⁸ ³
Wm. H. Cutbushman
Cutbushman
Transcript

4

Filed April 23, 1858.
L. Veland Clk.

cap. 60.

Caps fus 474 folio 475
C. 217 1/2 25
#500

STATE OF ILLINOIS—SUPREME COURT.
THIRD GRAND DIVISION.

WILLIAM H. W. CUSHMAN }
vs. } *Trespass on the Case upon Promises.*
JOHN SAVAGE.

This is an action of assumpsit by plaintiff, as assignee, against the maker, commenced and tried in the LaSalle circuit court, May term, 1854, on the following promissory note :

On or before the first day of January next, I promise to pay Henry Green, or order, the sum of seventy-five dollars, for value received.

JOHN SAVAGE.

Cass county, Ill., July 2d, 1851.

The note was assigned by Henry Green to William H. W. Cushman before the note became due.

There are three several counts in the declaration —

1st. Special count by assignee against the maker ;

2d. Common counts ;

3d. Special count, and alleges that on the first day of January, 1852, the defendant was indebted to plaintiff in the sum of seventy-five dollars, on a promissory note dated July 2d, 1851, and payable to Henry Green, or order, on the first day of January, 1852, and by him endorsed to plaintiff; and being so indebted to plaintiff, the defendant, in consideration that the plaintiff would forbear, and give day of payment of said sum of money for *twenty days* from the day of payment as specified in said note, promised the plaintiff to pay him said sum of money and interest at Ottawa, in the county of LaSalle, and state aforesaid, on the twenty-first day of January, 1852, which time has now elapsed. And the plaintiff avers that at the request of defendant, and in consideration of the premises, he did forbear and give day of payment of said sum of money, from the first to the twenty-first day of January, 1852. And the plaintiff further avers, that he, said plaintiff, at and before the bringing of this suit, and at the time of the promise of defendant aforesaid, and on the first day of January, 1852, resided in said county of LaSalle, and that the defendant, at the time last aforesaid, resided in the county of Cass, in the state of Illinois: yet said defendant hath not paid, but, disregarding his promises, &c.

To this declaration the defendant filed his plea in abatement, verified by affidavit, that the court ought not to have or take further cognizance of the action, because he says that at the date of the commencement of the

Page 6

3

4

4 + 57

677

suit, the defendant resided, and now resides, in the county of Cass, and state of Illinois, and that the said supposed causes of action, and each of them, (if any such have accrued to the said plaintiff,) accrued in the county of Cass, and the said causes of action were not specifically made payable in LaSalle county aforesaid; and this defendant is ready to verify, &c.

To which plea in abatement the plaintiff filed his demurrer, which was overruled by the court; and on leave of the court the plaintiff filed his replication to defendant's plea in abatement, alleging that the causes of action, and each and every of them, did not accrue in the county of Cass, but did accrue, and were specifically made payable, in the county of LaSalle, as alleged in his said declaration; which replication concludes to the country.

To which replication the defendant filed his demurrer, alleging that the replication was "double, uncertain, and incompatible with, and a departure from, the declaration."

Which demurrer was sustained by the court, and leave was given by the court to plaintiff to amend his replication: which amended replication alleges that the causes of action, and each and every of them, as set forth in the first and second counts in said plaintiff's declaration, accrued to said plaintiff in the county of LaSalle, and not in the county of Cass, as alleged in defendant's plea of abatement; and that at the time when, &c., the plaintiff resided, and now resides, in the county of LaSalle. And as to the defendant's plea in abatement as to the third count of plaintiff's declaration, says that the cause of action therein specified, as therein alleged, was specifically made payable in said county of LaSalle at the time when, &c., and concluded to the country.

And on the 4th day of January, 1854, the defendant filed a rejoinder and demurrer, (both being attached and made inseparable,) rejoining that the promissory note mentioned in the first count, was executed in the county of Cass, in the state of Illinois, and not in the county of LaSalle, and concludes to the country. And defendant says as to the second count, that the goods and chattels, &c., therein alleged to have been sold and delivered by plaintiff to defendant, (if at all,) were sold and delivered in the county of Cass, and not in the county of LaSalle, &c., and concludes to the country.

And so far as said replication relates to the third count in said declaration, said replication states matters repugnant to, and incompatible with, matters stated in said count; and also, said replication, in averring that said cause of action was made specifically payable, does not sustain said conclusion by an allegation of facts sufficient to authorize said conclusion, and does not contain the necessary averments in that behalf; and further, said replication sets up new matter, and improperly concludes to the country, when it should have concluded with a verification.

To which the plaintiff files his demurrer to the rejoinder to the first and second counts of his declaration, and assigned for cause that the rejoinder set up no new or other matter than that set forth and alleged in plaintiff's replication, in which replication plaintiff tendered an issue to the country, and which the defendant did not join.

Defendant joined in demurrer.

At the May term, 1854, the court decided that the demurrer applicable to that part of the replication, applicable to that part of the plea, applicable to the third count, was sustained by the court, and the demurrer to the rejoinder is overruled, and that the court would take no further cognizance of the cause of action mentioned in the declaration, and that defendant recover of the plaintiff his costs, &c., and that he have execution therefor.

A. W. CAVARLY, *Att'y for Plff.*

W H, W, Cushman
 vs { Supreme Court 3^d Division
 John Savage } April Term 1858

This was an action of Assumpsit, brought
 by Plaintiff as assignee against the maker
 in La Salle County, Circuit Court

Writ issued to LaSalle County.

Where process issues to a foreign county the declara-
 -tion need not contain any averment as to the
 residence of the Plaintiff, or the accruing of the
 cause of action.

Kenny vs Greer
 13 Ill. 432,
 14 Ill. 416

If the Plaintiff does not reside in the county
 where the suit is brought, or the cause of
 action does not arise there, the objection
 must be taken advantage of by plea in
 abatement or by motion

Gilliam et al vs Gray et al
 14 Ill 416, 17,
 18 Ill 185,
 " " 192

In this case however the jurisdiction of the court
 was denied by plea so as to bring it within the rule
 as laid down by this court.

The replication traverses the plea in abatement & tendered an issue to the country which was not ~~done~~ — accepted by the def. by the similitur

When the alleged matter in the rejoinder does not set up any new matter other than that set up in the Plea in abatement it is obnoxious to a demurrer

1 Chitty 657.

When Defendants plea concludes with a verification, The replication may traverse the plea and conclude to the country, — and Defendant must add the similitur

1 Chitty 578.

and Notes 1. —

579

5 After judgment the Court will presume a joinder in demurrer. or that it was waived
Mileoy by Woods et al

3 Senn 53.

The distinction between a plea in abatement and a plea in bar, see,

1 Chitty 446. & 7.

5 The general rule that a demurrer must be carried back and sustained to the first defective pleading does not apply so as to carry it behind a plea in abatement

Ryan Agency of the Bank
14 May

14 Ill 49.

The clause of 2^d Sec Practice act giving jurisdiction in the County where the contract may have been made specifically payable applies only to the payment of money 17 Ill 575.

An express promise to pay the debt or perform the contract be made to the assignee of a chose in action in consideration of forbearance, such assignee may proceed in his own name, declaring upon such promise & new consideration

1 Chitty 15. 16 & note

104

The Indorser of a promissory note given in Connecticut, where promissory notes are not negotiable may, in the State of New York, maintain an assumpsit in his own name against the maker, for, the lex loci contractus does not govern as to mode of enforcing the contract

1 Chitty ~~15~~ 15. Note 2.

104

If, in respect of a new consideration there has been a new simple contract to pay a debt &c assumpsit may be supported

1 Chitty 104. Note 4

It is not necessary in stating executed consideration to state them with the certainty of time & place required in executory considerations; &c
It must be shown that it arose at Defendant's request

1 Chitty 295. &c.

A contract in writing may be subsequently
varied by parol

See 24 Forbes

18 Ill 493. 568

4 117
Cushman vs Savage

Ills trial

Filed May 14, 1838
Indelant
Eden

STATE OF ILLINOIS, }
Supreme Court. }

The People of the State of Illinois,

To the Sheriff of the County of *Cass* 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 *La Salle* county, before the Judge thereof, between *William H. W. Bushman* Plaintiff and *John Savage* defendant,

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

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 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

John Savage

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 *2nd* Monday in *June* 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 *John Savage* notice, together with this writ.

John D. Caton
Witness, the Hon. ~~Samuel H. Treat~~, Chief Justice of our said Court, and the seal thereof, at Ottawa, this *23rd* day of *April* in the year of our Lord one thousand eight hundred and fifty *five*.

L. Deland Clerk of the Supreme Court.

John Savage

Scire Facias
to Cap Count

June Ten. 1855.

The History of the County of

Gravimetric:

before the

10

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20

This image shows a vertical strip of aged, stained, and torn paper, likely a book cover or endpaper. The paper is heavily discolored with brown and tan hues, showing significant wear and damage. A large, dark, irregular tear is visible on the left side, revealing a darker, possibly leather-bound inner layer. The paper has a textured, fibrous appearance with visible vertical creases and horizontal staining. The overall condition suggests it is an old, well-used object.

66

...and five hundred of them very high.

ie
so
lu

Ice

17

ag
id
5
180

This image shows a blank, aged, cream-colored page, likely an endpaper or flyleaf of a book. The paper has a slightly textured appearance with some minor discoloration and a large, dark brown stain near the top left corner. A smaller dark spot is visible near the bottom left corner. The page is framed by a thin black border.

STATE OF ILLINOIS,
SUPREME COURT,

ss. The People of the State of Illinois,

TO THE SHERIFF OF THE COUNTY OF *Cass*

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 *La Salle* county, before the Judge thereof, between *William H. W. Bushman*

plaintiff and John Savage

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

plaintiff

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 Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; *as we have here before you* THEREFORE, WE COMMAND YOU, that by good and lawful men of your county, you give notice to the said *John Savage*

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* 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 *John Savage*

notice, together with this writ. *John D. Baton*

WITNESS, The Hon. ~~WALTER B. SCATES~~, Chief Justice of our said Court, and the Seal thereof at Ottawa, this *13th* day of *March* in the Year of Our Lord One Thousand Eight Hundred and Fifty-*Eight*.

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

I have served the within summons
by reading the same to the within
named John Savage this 2 day
of April 1858

James A. Dick Sheriff
by John Husted Deft
Sheriff's fee paid by Plaintiff
Service 50

Travel 12 miles 50

Return 10

shall give the said
shall order in this behalf
errors assigned, if
shall see fit, to appear to do and receive what said Court
may require, and to be present at the records and proceedings
of said Court to be holden at Ottawa in said State on the
first day of May next, and appear before the Justices of said
said Supreme Court at the next

good and lawful men of said County, you give notice to the said
said John Husted, according to law: Therefore, we command you, that you
publish in the records and proceedings of said Court to collect the errors in the same in
judgment, do make cause to be brought into said Supreme Court of the State of
Illinois, as we are informed by you, combining the record and proceedings of said

before the Judge thereof, between
ment of a writ which was in the Circuit Court of said County,
BEFORE, in the record and proceedings, and also in the rendition of the Judge,
to the Sheriff of the County of said County,
SHERIFF OF THE COUNTY OF
STATE OF ILLINOIS, The People of the State of Illinois

W. H. W. Cashman
John Savage

STATE OF ILLINOIS,

Supreme Court,

ss.

The People of the State of Illinois,

To the Clerk of the Circuit Court for the county of La Salle 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 *La Salle* county, before the Judge thereof, between

William H. W. Cushman

plaintiff, and

John Savage

defendant — it is said manifest error hath intervened, to the injury of the aforesaid plaintiff

as we are inform-

ed by *his* 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 *2^d Monday in June* — 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 J. Catron
SAMUEL H. TREAT,

Chief Justice

of our said Court, and the Seal thereof, at Ottawa, this *20th* day of *April*
in the Year of Our Lord One Thousand Eight Hundred and Fifty-*five*.

S. Leland

Clerk of the Supreme Court.

21 4
Cushman is Savage
Wit of Enor

Filed April 23^d 1855.
L. Leland Clk.

BEFORE me, the County and Precinct, as also in the presence of the judges of the
Circuit Court, the People of the State of Illinois,
STATE OF ILLINOIS, }
The People of the State of Illinois,

D1 *Cavalry practice out 82*
The State - & *Can of Clark & Hanks*
down to 13 M. 432, 14 M. 416, 17 M. & 2 cases in
18 M. 153 - 292

Sixty
16 M. 300
State applying only to written contracts

STATE OF ILLINOIS—SUPREME COURT.
THIRD GRAND DIVISION.

WILLIAM H. W. CUSHMAN }
vs. } *Trespass on the Case upon Promises.*
JOHN SAVAGE.

This is an action of assumpsit by plaintiff, as assignee, against the maker, commenced and tried in the LaSalle circuit court, ~~May~~ term, 1854, on the following promissory note:

On or before the first day of January next, I promise to pay Henry Green, or order, the sum of seventy-five dollars, for value received.

JOHN SAVAGE.

Cass county, Ill., July 2d, 1851.

The note was assigned by Henry Green to William H. W. Cushman before the note became due.

There are three several counts in the declaration —

1st. Special count by assignee against the maker ;

2d. Common counts ;

3d. Special count, and alleges that on the first day of January, 1852, the defendant was indebted to plaintiff in the sum of seventy-five dollars, on a promissory note dated July 2d, 1851, and payable to Henry Green, or order, on the first day of January, 1852, and by him endorsed to plaintiff; and being so indebted to plaintiff, the defendant, in consideration that the plaintiff would forbear, and give day of payment of said sum of money for twenty days from the day of payment as specified in said note, promised the plaintiff to pay him said sum of money and interest at Ottawa, in the county of LaSalle, and state aforesaid, on the twenty-first day of January, 1852, which time has now elapsed. And the plaintiff avers that at the request of defendant, and in consideration of the premises, he did forbear and give day of payment of said sum of money, from the first to the twenty-first day of January, 1852. And the plaintiff further avers, that he, said plaintiff, at and before the bringing of this suit, and at the time of the promise of defendant aforesaid, and on the first day of January, 1852, resided in said county of LaSalle, and that the defendant, at the time last aforesaid, resided in the county of Cass, in the state of Illinois; yet said defendant hath not paid, but, disregarding his promises, &c.

To this declaration the defendant filed his plea in abatement, verified by affidavit, that the court ought not to have or take further cognizance of the action, because he says that at the date of the commencement of the

suit, the defendant resided, and now resides, in the county of Cass, and state of Illinois, and that the said supposed causes of action, and each of them, (if any such have accrued to the said plaintiff,) accrued in the county of Cass, and the said causes of action were not specifically made payable in LaSalle county aforesaid; and this defendant is ready to verify, &c.

To which plea in abatement the plaintiff filed his demurrer, which was overruled by the court; and on leave of the court the plaintiff filed his replication to defendant's plea in abatement, alleging that the causes of action, and each and every of them, did not accrue in the county of Cass, but did accrue, and were specifically made payable, in the county of LaSalle, as alleged in his said declaration; which replication concludes to the country.

To which replication the defendant filed his demurrer, alleging that the replication was "double, uncertain, and incompatible with, and a departure from, the declaration."

Which demurrer was sustained by the court, and leave was given by the court to plaintiff to amend his replication: which amended replication alleges that the causes of action, and each and every of them, as set forth in the first and second counts in said plaintiff's declaration, accrued to said plaintiff in the county of LaSalle, and not in the county of Cass, as alleged in defendant's plea of abatement; and that at the time when, &c., the plaintiff resided, and now resides, in the county of LaSalle. And as to the defendant's plea in abatement as to the third count of plaintiff's declaration, says that the cause of action therein specified, as therein alleged, was specifically made payable in said county of LaSalle at the time when, &c., and concluded to the country.

And on the 4th day of January, 1854, the defendant filed a rejoinder and demurrer, (both being attached and made inseparable,) rejoining that the promissory note mentioned in the first count, was executed in the county of Cass, in the state of Illinois, and not in the county of LaSalle, and concludes to the country. And defendant says as to the second count, that the goods and chattels, &c., therein alleged to have been sold and delivered by plaintiff to defendant, (if at all,) were sold and delivered in the county of Cass, and not in the county of LaSalle, &c., and concludes to the country.

And so far as said replication relates to the third count in said declaration, said replication states matters repugnant to, and incompatible with, matters stated in said count; and also, said replication, in averring that said cause of action was made specifically payable, does not sustain said conclusion by an allegation of facts sufficient to authorize said conclusion, and does not contain the necessary averments in that behalf; and further, said replication sets up new matter, and improperly concludes to the country, when it should have concluded with a verification.

To which the plaintiff files his demurrer to the rejoinder to the first and second counts of his declaration, and assigned for cause that the rejoinder set up no new or other matter than that set forth and alleged in plaintiff's replication, in which replication plaintiff tendered an issue to the country, and which the defendant did not join.

Defendant joined in demurrer.

Page 889.

10

10

10

11 & 12

12.

14

15

17

15 & 16

16817
At the May term, 1854, the court decided that the demurrer applicable to that part of the replication, applicable to that part of the plea, applicable to the third count, was sustained by the court, and the demurrer to the rejoinder is overruled, and that the court would take no further cognizance of the cause of action mentioned in the declaration, and that defendant recover of the plaintiff his costs, &c., and that he have execution therefor.

A. W. CAVARLY, *Att'y for Plff.*

\$5.40

4 = 117

Mr H. W. Cushman

by
John Savage

Abstract

signed

May 14 —

V. W. CAVARLY, V. W. J. P. E.

of the cause of action mentioned in the declaration, and that defendant
rejoinder is overruled, and that the court would take no further cognizance
his to the third count, was sustained by the court, and the demurrer to the
to that part of the rejoinder applicable to that part of the plea, applicable.
At the May term, 1834, the court decided that the demurrer applicable