

No. 13258

Supreme Court of Illinois

Carter

VS.

Clark

STATE OF ILLINOIS,

SUPREME COURT.

Third Grand Division

No. 289.

Carter

vs

Clark

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United States of America
State of Illinois Cook County Ill. }

Now before the Honorable the Judges,
of the Superior Court of Chicago within and for the
County of Cook and State of Illinois. at a regular
Term of the Superior Court of Chicago begun and
holden at the Court House in the City of Chicago
in said County and State on the first Monday being
the Fourth day of February in the year of our Lord
Eighteen hundred and sixty one. and of the Independence
of the United States of America the Eighty fifth

Present the Honorable John M. Wilson Chief Justice
of the Superior Court of Chicago.

David H. Higgins & Grant Goodrich Judges.

Carlos Warren Prosecuting Attorney

Anthony C. Hering Sheriff of Cook County.

Attest Walter Kimball Clerk

Be it Remembered, that heretofore, to wit, on the
twenty first day of January in the year of our Lord
One thousand eight hundred & sixty one, there issued
out of the Clerk's office of the Superior Court of Chicago
The Peoples Writ of Summons, which said summons,
and the Sheriff return thereon are in words & figures as
follows to wit

State of Illinois
County of Cook } S.S.

The People of the State of Illinois to the Sheriff
of said County - Greeting:

We Command you that you summon
William H. Carter and Henry Miller if they shall
be found in your County, personally to be and appear
before the Superior Court of Chicago of said Cook
County, on the first day of the next term thereof to be
holden at the Court House, in Chicago, in said Cook
County, on the first Monday of February next, to
answer unto Norman Clarke in a plea of Trespass
on the case upon promises, to the damage of the said
Plaintiff as is said in the sum of Two hundred &
Seventy five Dollars.

And have you these 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
Chicago aforesaid this 21st day of
January AD 1861.

Walter Kimball Clerk.

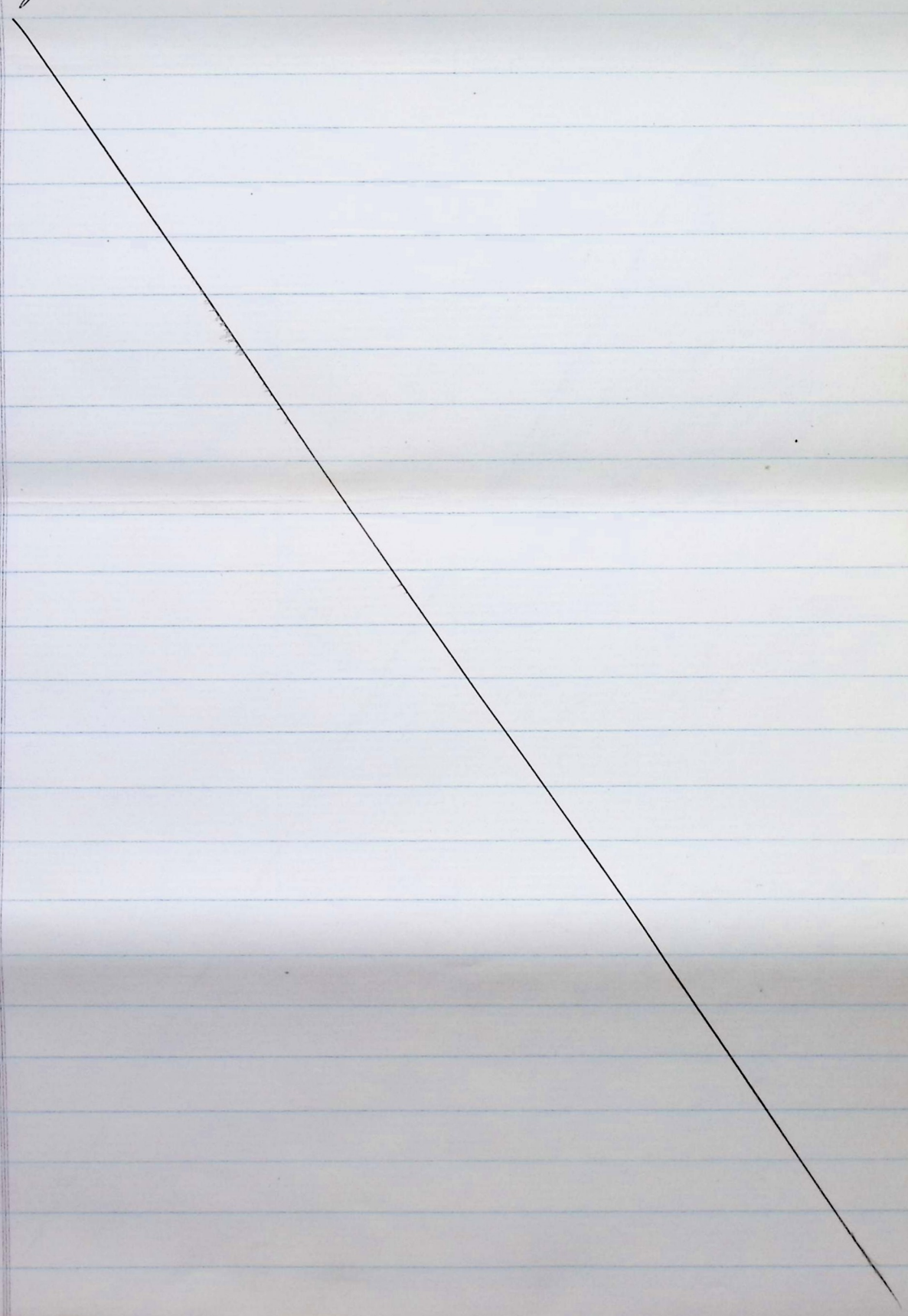
Served by reading this writ to the within named
Defts the 24th day of January 1861.

A. C. Housley Sheriff

By H. Lombard Deputy.

Seal

And afterwards to wit on the same day and year
aforesaid, there was filed in the clerk's office
aforesaid, a certain Declaration, in words and
figures as follows to wit:



k

State of Illinois
County of Cook } ss.

Superior Court of Chicago
Of the February Term AD 1861

William H Carter & Henry Miller were summoned to answer Norman Clark of a plea of trespass on the case upon promises; & thereupon the said Norman Clark by Henry T Steele, his attorney, complains.

For that whereas the said defendants, as copartners & under & by the names, style & firm of "Carter & Miller" heretofore, to wit, on the twenty seventh day of January, AD 1859. at Chicago. that is to say at County of Cook aforesaid, made then certain promissory note in writing bearing date a certain day and year therein mentioned, to wit, the day & year aforesaid, & thereby then & there, as such copartners, by & under their said names, style & firm of "Carter & Miller" promised to pay thirty days after the date thereof to the said plaintiff, or bearer the sum of one hundred & thirty four dollars & seventy one cents (\$134. $\frac{71}{100}$) with interest thereon at & after the rate of ten per centums per annum, for value received, & then & there delivered the said promissory note to the said plaintiff, by means whereof, & by force of the statute in such case made & provided, the said defendants then & there became liable to pay to the said plaintiff the said sum of money in ^{the} said promissory note; & being so liable they the said defendants, as such copartners as aforesaid

in consideration thereof, afterwards, to wit, on the day & year aforesaid, at the County of Cook aforesaid, undertook & then & there faithfully promised the said plaintiff to pay him the said sum of money in the said promissory note specified, according to the tenor & effect thereof.

And whereas also the said defendants, as copartners & by & under the names, style & firm of "Carter & Miller," heretofore, to wit, on the seventeenth day of September, AD 1859, at Chicago, that is to say, at the County of Cook aforesaid, made their certain promissory note in writing, bearing date a certain day & year therein mentioned, to wit the day & year aforesaid, & thereby then & there, as such copartners, & by & under their names style & firm of "Carter & Miller," promised to pay thirty days after the date thereof to the said plaintiff, or bearer, the sum of one hundred & eleven dollars & fifty cents (\$111.⁵⁰/₁₀₀) with interest thereon at & after the rate of ten per centum per annum, for value received, & then & there delivered the said promissory note to the said plaintiff by means whereof, & by force of the statute in such case made & provided, the said defendants then & there became liable to pay to the said plaintiff the said sum of money in the said promissory note; & being so liable they the said defendants, as such copartners as aforesaid, in consideration thereof afterwards, to wit, on the day & year aforesaid, at County of Cook aforesaid, undertook & then & there faithfully promised the said plaintiff to pay him the said sum of money in the said promissory

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note specified, according to the tenor & effect thereof.

And whereas also the said defendants, afterwards, to wit, on the eleventh day of December, 1860 at the County of Cook aforesaid, were indebted to the said plaintiff in the further sum of Two hundred & seventy five dollars, (\$275.00) lawful money of the United States of America, for the work & labor, care & diligence of the said plaintiff, by the said plaintiff before that time done, performed & bestowed in & about the business of the said defendants, & at their special instance & request & also in the further sum of two hundred & seventy five dollars (\$275.⁰⁰/₁₀₀) of like lawful money, for divers goods, wares & merchandise by the said plaintiff, before that time sold & delivered to the said defendants, & at their special instance & request. & also in the further sum of two hundred & seventy five dollars, (\$275.⁰⁰/₁₀₀) of like lawful money, for money by the said plaintiff before that time lent & advanced to & paid, laid out & expended for the said defendants & at their like special instance & request, and also in the further sum of two hundred & seventy five dollars (275.⁰⁰/₁₀₀) of like lawful money, for other money by the said defendants before that time had & received to & for the use of the said plaintiff & being so indebted they the said defendants as copartners & by & under the names, style & firm of "Carter & Miller" in consideration thereof afterwards, to wit, on the day and year last aforesaid, at County of Cook aforesaid, undertook & then & there faithfully

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promised the said plaintiff to pay him the said several sums of money in this Count mentioned, when they the said defendants should be thereunto afterwards requested.

And whereas also the said defendants afterwards to wit, on the Eleventh day of December AD 1860 at County of Cook aforesaid, accounted with said plaintiff of & concerning divers other sums of money, from the said defendants to the said plaintiff before that time due & owing & then in arrear & unpaid, & upon such accounting the said defendants were then & then found to be in arrear & indebted to the said plaintiff in the further sum of two hundred & seventy five dollars (\$275.⁰⁰/₁₀₀) of like lawful money & being so found in arrear & indebted they the said defendants as copartners & by & under their names style & firm of "Cartee & Miller" undertook & then & there faithfully promised the said plaintiff to pay him the said last mentioned sum of money when they the said defendants should be thereunto afterwards requested.

Nevertheless, the said defendants not regarding their said several promises & undertakings, but contriving & fraudulently intending, craftily & subtly to deceive & defraud the said plaintiff in this behalf hath not as yet paid the said several sums of money, or any or either of them, or any part thereof, to the said plaintiff (although often requested so to do; / but the said defendants to pay him the same hath hitherto wholly neglected & refused & still doth neglect & refuse

To the damage of the said plaintiff of Two hundred & seventy five dollars (\$275⁰⁰/₁₀₀) & therefore he brings his suit &c

Henry T. Stute

Plff's Atty

Copies of the promissory notes on which this action is brought.

"\$134.71" "Thirty days from date we for value rec'd promise to pay Norman Clark or bearer one hundred and thirty four and 71/100 dollars with interest at ten per cent"

"Chicago January 27: 1859 (Sig) "Cartee & Miller"
On the above note is the following endorsement
"Rec'd June 1st on this note forty dollars 1860 "\$40."

"\$111.57/100" "Thirty days from date we for value rec'd promise to pay Norman Clark or Bearer one hundred & eleven & 57/100 dollars with interest at ten per cent"

"Chicago Sept 17 1859." (Sig) "Cartee & Miller"
On the above note is the following endorsement,
"Rec'd April 23. 1859. on the within note thirty eight & 71/100 dollars" "\$38.71/100"

And afterwards to wit on the fourth day of February in the year aforesaid, there was filed in the office of the Clerk of said Court, a certain affidavit of Merits, in words and figures as follows

In the Superior Court of Chicago
Feb Term AD 1861

Norman Clarke
vs.
William H. Carter &
Henry Miller

State of Illinois }
Cook County } ss.

William H. Carter one of the Defendants in the above entitled cause being first duly sworn, on his oath says that the said Defendants have a good and valid defence to said cause, on the merits thereof, as he verily believes.

(W. H. Carter.)

Sworn to & Subscribed
before me this 4th day of
February AD 1861
(W. Kimball Clerk)

And afterwards to wit on the fifth day of February in the year aforesaid, there was filed in the Clerk's office aforesaid, a certain Plea, in words and figures as follows. to wit.

In the Superior Court of Chicago
of the February Term 1861

William H. Carter &
Henry Miller
ads
Norman Clark.

And the said Defendants by Thompson and Bishop 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 complained against them, and of this they put themselves upon the Country

Thompson & Bishop
Defendants-Atty.

And afterwards to wit on the sixth day of February in the year aforesaid, said day being one of the days of the February Term of said Court, the following among other proceedings was had in said Court and Entered of Record to wit

Norman Clarke

vs.
William Webster &

} Spumpoit

Henry Miller

This day comes the said plaintiff by R T Steele his Attorney and due personal service of process of summons issued in said cause having been had on the said defendants. and they being three times solemnly called in open Court come not. nor does any person for them ^{or either of them} but herein they make default. which is on Motion ordered to be taken and is hereby entered of Record. wherefore the said plaintiff ought to have and recover of and from the said defendants his damages sustained herein by reason of the premises. And the Court now here after hearing the allegations and proofs submitted by the said plaintiff and being fully advised in the premises assesses his damages herein to the sum of Two hundred and five dollars and eight cents,

Therefore it is considered that the said plaintiff do have and recover of and from the said defendants his damages of two hundred and five dollars and eight cents in form aforesaid assessed. and also his costs and charges in this behalf expended and thereof have execution.

And afterwards to wit on the twenty first day of February in the year aforesaid the following among other proceedings was had and entered of Record in said Court to wit

Norman Clark	}	Sgt.
^{vs.}		
William H Carter & Henry Miller		

And now comes the said defendant William H Carter by his Attorney and prays an appeal herein to the Supreme Court of this State which is allowed on filing appeal bond in the penalty of Three hundred and fifty dollars with security to be approved by a Judge of this Court and to be filed during this term of the Court.

And afterwards to wit on the twenty third day of February in the year aforesaid there was filed in the office of the Clerk aforesaid a certain Appeal Bond in words and figures as follow~~ing~~

Know All Men by these presents, That we William H Carter and George W Pickett and John Hughes all of the City of Chicago in the County of Cook & State of Illinois, are held and firmly bound unto Norman Clark in the sum of three hundred and fifty dollars lawful money of the United States to be paid to the said Norman Clark his Executors administrators and assigns to which payment well and truly to be made, we bind ourselves our heirs Executors and administrators and every of them firmly by these presents. Sealed with our seals this 21st day of February AD 1861.

The condition of this obligation is such that whereas the above named Norman Clark did in the Superior Court of Chicago at the February Term of said Court and on the 6th day of February AD 1861 recover a judgment against the above bound William H Carter and George W Miller for the sum of Two hundred and five dollars and eight Cts. together with costs of suit. from which judgment the said William H Carter and George W Miller have prayed an appeal to the Supreme Court of the State of Illinois which Appeal has been allowed

Now if the said William H. Carter and Henry Miller shall prosecute their Appeal and in case their said Appeal shall be dismissed, or the said Judgment shall be affirmed shall pay to the said Clerk the said Judgment together with all costs, interests and damages which may be adjudged against them in said suit or may grow due on said judgment then this obligation be void, otherwise to be and remain in full force and effect.

Approved
Grant Goodrich
Judge etc

W H Carter Seal
John Hughes Seal
G W Pickett. Seal

State of Illinois }
County of Cook } S.S.

I, Walter Kimball Clerk of the Superior Court of Chicago, in and for said County do hereby certify the foregoing to be a full and complete Transcript of, process & pleading on file in my office and of the orders and judgments entered of Record in said Court together with the Appeal Bond on file in a certain case wherein Norman Clark is plaintiff and William H



Carter and Henry Miller are defendants

In testimony whereof I hereunto subscribe
my name, and affix the Seal of said
Court. at the City of Chicago. in said
County this 25th day of March
1861 Walter Merrill Clerk

And now comes the said appellants
by Thompson & Bishop his attorneys and
assigns the following errors, to-wit:

1. The Court erred in rendering a judgment
by default while the defendants
were in Court.
2. The Court erred in rendering a
judgment by default while
there was on file a plea with
an affidavit of merit.

Thompson & Bishop
Atys for Appellants.

In the Supreme Court of Illinois
Third Division.

William H. Carter
Impleaded with
Henry Miller
Appellants

vs
Norman Clarke

~~Abstract.~~

2 Summons to William H. Carter & Henry Miller
and Return.

4 } Declaration, filed Jan'y 21, 1861
5 }
6 } Counts on promissory notes & Common Counts.
7 }
+ 8 }

9 Affidavit of merits filed Feb'y 4, 1861

10 Plea - General issue filed Feb'y 4, 1861

11 Judgment by default for \$205.08. Feb. 6, 1861

12 Appeal prayed and granted } Same

13 } Bond filed & approved. } Term
14 }

16 Errors Assigned

1. Rendition of judgment while defendants
were in Court

2 Rendition of judgment by default
while plea of affidavit of merits
were on file.

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Norman Clarke

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Wm H. Carter et al.

Filed Oct. 18. 1861
L. Seland
Clk.

Recd. 5/10. L. Seland
\$3.50
Paid W. Kimball Clerk

And now comes the said appellants
by Thompson & Bishop his attorneys and
assigns the following errors, to-wit:

1. The Court erred in rendering a judgment
by default while the defendants
were in Court.
2. The Court erred in rendering a
judgment by default while
there was on file a plea with
an affidavit of merit.

Thompson & Bishop
Atty for Appellants.