

12779

No. _____

Supreme Court of Illinois

Moir et al

vs.

Hopkins et al

71641  7

65

~~187~~ ~~34~~ ~~47~~

~~James Moir Esq~~

~~William B. Hopkin~~

William B. Hopkin

65 vs
James Moir Esq

1859

~~Chapman~~
12779

no 1859

Band \$2000-

State of Illinois }
Henderson County }

Now before the Honorable
John S. Morrison Judge of the South Judicial
Circuit of the State of Illinois, at a Special
term of the Circuit Court of said County, begun
and held at the Court House in Coquawka
on the third Monday of the month of
December in the Year of our Lord one
thousand Eight hundred and fifty seven
it being the twenty first day of said Month
in said Year,

Present Hon John S. Morrison Judge
James H. Stewart State Atty
W. M. Graham Sheriff
Hugh L. Thompson Clerk

James Moir and Robert Moir }
partners in trade under the }
name firm & style of }
Moir & Brothers assignees of }
J. Le Blandin & Brother }

William B. Hopkins
Benjamin Harrington
Stephen S. Phelps

Dispersed on the
Case on former

But remembered that heretofore tried
on the 11th day of December AD 1857, the
plaintiffs by their attorney filed their
Declaration which reads in the words
and figures following to wit:

State of Illinois The Special term of the
County of Henderson Circuit Court of said
County, to be holden on the
third Monday of December
AD 1857.

James Moir and Robert Moir partners in
trade under the name firm and style of
Moir & Brothers plaintiffs in this suit com-
plain of William B Hopkins, Benjamin Ham-
mington and Stephen S. Phelps the defendants
in this suit who have been summoned to
answer unto said plaintiffs in a plea of
Trespass on the case on promises. For that
whereas the said William B Hopkins Benjamin
Hamington and Stephen S. Phelps by the name
of W B Hopkins, Benj Hamington and S. S.
Phelps on the 5th day of September AD 1856,
at Oquawka, Iowa; at the County aforesaid
made three certain promissory note in writing
and then and there delivered the same to
J. L. Blandin & Brothers and thereby promised
by the name of W B Hopkins Benj Hamington

and S. S. Phelps to pay the said J. C. Blandin
and Brother or order the sum of fifteen
hundred and Eighteen dollars with ten
per cent interest from the date thereof in
one Year after the date thereof which period
had elapsed before the commencement of this
suit; And the said J. C. Blandin & Brother by
the name of J. C. Blandin & Brother, then and
therein endorsed the same to the said plaintiffs,
by the name of J. C. Blandin & Brother. Whereof the
said William B. Hopkins, Benjamin Harrington
and Stephen S. Phelps then and there had
notice, and then and there in consideration
of the premises promised by the name of Wm
B. Hopkins, Benj. Harrington and S. S. Phelps
to pay the amount of the said note to the said
James Moir and Robt Moir by the said name
of their firm of Moir & Brother according to
the tenor and effect thereof; And forthwith
Whereas the said defendants on the 15th day
of September A D 1857, at the County aforesaid
was indebted to the said plaintiffs in the
sum of Two thousand dollars for money
then and there paid by the said plaintiffs
for the use of the said defendants at their request
and in the sum of Two thousand dollars
for money then and there received by the
said defendants for the use of the said plaintiff.
And in the sum of Two thousand dollars

for money found to be due from the said
defendants to the said plaintiffs on an
account then and there stated between them.
And Whereas the said defendants afterwards
on the day last aforesaid in consideration
of the premises then and there promised
to pay the said last mentioned several sums
of money to the said plaintiffs on request
But they have disregarded their promises
and have not nor either of them paid the
said several sums of money nor either of
them nor any part thereof to the damage
of the said plaintiffs of Two thousand dollars
and thereupon they bring suit &c

By C. M. Harris their attorney

Quantico September 5th 1856
One Year after date for value received we or
either of us promise to pay He Plaudin & Brother
fourteen hundred and Eighteen dollars
with ten per cent interest from date

Wm B Hopkins

Benj. Hamington

S. S. Phelps

The foregoing is a copy of the promissory
note ~~see~~ upon which the aforesaid suit
was brought, C. M. Harris atty for Pffs thereon

For Value received we assign the within
to Moir & Brothers

J. L. Blaudin & Bro

The foregoing is a copy of the assignment
made on the back of the note aforesaid

C. M. Harris atty for Bluffs

And afterwards at a term of the Court holden
in said county, to-wit: on the 21st day of December
A.D. 1857, the Court caused a general order to
be entered upon the Records of said Court which
reads in the words and figures following, to-wit:

"It is ordered by the Court that in all acts
on promissory notes, when pleas are filed, an
affidavit must accompany the same of the
defendant or some one for him, that he has
a good and sufficient defense to the cause
of action or a part thereof, and in default
of such affidavit, the pleas filed will be
stricken from the files, and judgment by
default for the want of a plea entered, and
that such plea and affidavit must be
filed on or before the second day of the
term"

And afterwards, to-wit on the 24th day of
December A.D. 1857, the defendants by their
attorneys filed their pleas 1 & 2, which

read in the words and figures following, to-wit

"State of Illinois } Henderson Circuit Court
Henderson County } December Term AD 1857.

Moir et al }
vs }
Hopkins et al }

And said defendants come
and defend the wrong injury when to
and say that they did not undertake and
promise as in the said Declaration alleged
and of this they put themselves upon the country
re "Stewart & Harding Sept, attys"

And for further plea in this behalf the
defendants say acted none because to
they say that the sole and only consideration
for which the note used on was given was
a Steam Boiler and machinery for a Steam
Mill, sold by one J. L. Harding & Brother to said
Hopkins and Harrington and the warranty
the said boiler and machinery were reason-
ably fit and proper for the purpose they were
intended and for no other consideration
And defendants aver that said boiler and
machinery were intended for use in a
Steam mill at Ogansville Illinois, for which
boiler & machinery and the warranty

three of the defendants, the said Phelps receiving
no consideration being merely security on
said Note, executed the note sued on, And
defendant avers that said Steam Boiler and
machinery for said Steam Mill was not
reasonably fit and proper for the place where
they were intended as aforesaid, but on the
contrary they are unfit and improper, in
this, that they were unsound and defective
and failed to answer the purpose for which
they were intended and warranted as
aforesaid, wherefore they say that the
consideration of said Note has wholly
failed and that they are ready to verify.
Stewart & Harding atty for Defs

And afterwards on the same day, to wit: on
the 24th day of December AD 1857, the Court
caused an order to be entered upon the Records
of said Court which reads in the words and
figures following, to wit:

James Moir &
Robert Minor

vs

William B Hopkins
Benjamin Hammonford
Stephen S Phelps

Assumpset

This day came the plaintiffs

by their attorney and moved the Court to strike
the defendants pleas from the files, thereupon
it is ordered by the Court that the said pleas be
stricken from the files of this Court they having
been filed in contravention to a rule thereof.
And the said defendants having been three
times solemnly called came not nor any
person for them to defend this suit but made
default, thereupon it is considered by the
Court that the plaintiffs have and recover of
the said defendants their damages and
as those damages are unknown to the Court
it is ordered by the Court that the Clerk assess
the same, and the Clerk having assessed
and reported the same at the sum of
Sixteen hundred and three dollars and
twelve cents, Therefore it is considered by
by the Court that the plaintiff have and
recover of the said defendants the sum
of sixteen hundred and three dollars
and twelve cents the amount so assessed
by the Clerk as aforesaid together with their
costs by them in this suit expended and
may have execution therefor, Thereupon
came the defendants and prayed an appeal
to the Supreme Court, which is allowed by the
Court, the defendants to file bond in the sum
of three thousand dollars to be approved

the Clerk, Bond and bill of exceptions to be
filed within thirty days from the date hereof"

And afterwards, to-wit: on the 22^d day of
January AD 1858, the defendants, filed their
Appeal Bond which reads in the words &
figures following, to-wit:

"Know all men by these presents that we
William B Hopkins, Benjamin Hamington and
Stephen S. Phelps as principals and John
S Phelps as security of the County of Henderson
and State of Illinois are held and firmly
bound unto James Moir and Robert Moir
in the penal sum of Three thousand dollars
for the payment of which well and truly to
be made us and each of us bind ourselves
our heirs, executors and administrators
jointly and severally and firmly by these
presents, sealed with our seals and dated
at Ogawatha this 22^d day of January Anno
Domini one thousand Eight hundred and
fifty eight. The condition of the above
obligation is such that whereas on the
24th day of December 1857, James Moir and
Robert Moir recovered a Judgment against
William B Hopkins, Benjamin Hamington
Stephen S. Phelps for the sum of \$1613.12 1/2
dollars and costs of suit from which Judgment

the said William B Hopkins. Benjamin
Harrington & Stephen S. Phelps shall pay the
Judgment, costs interest and damages in
case the Judgment shall be affirmed, and
duly prosecute said appeal, then this
obligation to be void, otherwise to remain
in full force and effect

Wm B Hopkins (Seal)

Benj Harrington (Seal)

Stephen S. Phelps (Seal)

A. S. Phelps (Seal)

Taken and entered into before me at my office
and the Secrecy approved by me this 22nd day
of January 1858. Hugh L Thompson Clerk

State of Illinois

Henderson County

Hugh L Thompson Clerk
of the Circuit Court within and for said
County and do hereby certify that the
foregoing is a true full and complete
copy of the Record in said cause, as
appears from the Records on file in said
Office.

In Testimony whereof I have
hereunto set my hand and
affixed the Seal of said Court at
Quincy, this 7th day of February
A.D. 1858. Hugh L Thompson Clerk

James Allen et al

vs

William B. Stephens et al

et al said appellants

come by their attorneys and say
that in the above record in said
case there is manifest manifest
error and assign for error the
following causes

1. The court erred in striking
the defendants pleas from the
file.

2. The court erred in
rendering judgment by default
against defendants.

3. The court erred in
not rendering judgment for
defendants.

Wherefore they pray that
said judgment may be
reversed.

Respectfully
Atty. for appellants
And now come the defendants in
error and for joinder in error
say that error both not intervene
in the record proceedings, open and
wherefore they pray that the same
may be affirmed. *William B. Stephens*

~~1858~~ ~~1858~~
James Blair Stal
" 301
Wm B. Hopkins
Stal

Record

founder in
over

Filed April 21, 1858
L. Leland
clerk

Filed May 6, 1858
L. Leland
clerk

Refiled April 27, 1858
L. Leland
clerk

Supreme Court O'lowo
Term 1858.

Hopkins et al

vs
Ezra Anderson
Plaintiff

Suggestions by defendant

1. The record contains no bill
of exceptions, and, therefore, it
does not appear for what
cause the Court struck the
defendants, ~~below~~, from
the files.

Every intendment is in favor
of the judgment, and, if under
any state of fact the judgment
can stand, this Court will not
reverse it.

Rich vs Hathaway, 18 Mc 348;
Lytlehart vs Pritchard, 17 Mc 307;
Miller vs Metzger, 16 Mc 390

Idid 293, 297, 138; ~~as the number~~
~~of cases in Freeman's Digest~~

11 Mc 620, 4 Sil 326, 14 Mc 58

15 Mc 297, ~~as all the cases decided~~
~~in this Court upon the subject~~

It is probable, that there were
rules of Court, requiring the defen-
dant to endorse the pleas with names
of parties, number of cause, or
to notify plaintiff of filing same;
or to notify the Court.

Such rules, no one can question

The power of the Court to make,
and for aught that appears there
plans may have been stricken
from the files for other cause
than the rule copied by the
clerk into the record.

It is for the party complaining
to show ~~affor~~ affirmatively
by bill of exceptions, the
grounds of the Court's action,
as those grounds may be
the existence or non-existence
of facts.

2 The rule of Court copied into
the record is no part of the
record upon which this Court
will act. It is no part of the
case, if the record of this
suit. M. & Gould v. Arnold
14 Ill 58, and cases above cited.
The rule, therefore,
has nothing to do with the
case.

3 No exception was taken to
the decision of the Court in
striking the plans from the
files. This, of course, is fatal
for this Court will only notice
exceptions at the time & place to
the case, Greenough's Digest, 823

4 But, I hope the Court will decide upon the power of the Circuit to make such ~~an order~~ ^{is} a rule although it ^{is} not necessarily material as to the result upon this record. Nor, do I care how it is decided.

It is important to the public that the power be settled by this Court. Some can question the power of Courts of General Common Law jurisdiction, to adopt rules of practice; but the extent of that power is another ~~question~~ question.

O. M. Miller
for defendants in
~~error~~

5. The record shows that the photos were ~~striken~~ ^{removed} from the ~~record~~ ^{record} files "because they were filed in controversy" of a rule of Court. Of what rule? This, the record fails to ~~show~~ show.

No 301

Hopkins v. E. E. E.
Moore v. E. E. E.

Argument
by defendant
Counsel

Filed May 18, 1858
L. Leland
clerk

No 65) James Moir & others }
vs } The Supreme Court
William B. Hopkins } April Term 1859.
vs }

In this case the defendants Pleaded
2 Pleas.

1st The General Issue —

2nd - Failure of Consideration —

The Circuit Court had made a rule
that in suits on promissory notes pleas
Setting up defence must be sworn
to. And because these pleas were not
verified by affidavit, they were stricken
from the files and a default entered

The Point I make in the case is —
that without Special Authority from the
Legislature the Circuit Court could not
make any such rule — The Statute.

People, Stat., Vol 2 - P. 823. Sec.
16. authorized a defendant to plead
as many pleas as he may deem necessary

to his defence.

There was in this case no abuse of the privilege - The Pleas were meritorious and constituted a full defence to the action

The Court had no power or authority to make a rule in contravention of the Statute declaring that pleas filed in any case must be verified by affidavit - If such a rule could be made in cases of suits on notes, it could be made in any and all other cases

The Rule and the decision of the Circuit Court are both plain violations of the Statute, and for that reason the Judgment ought to be reversed

People for Apprs

Whom all men by these presents that we
Stephen S. Phelps William B. Hopkins,
Benjamin Harrington and William
L. Hutchinson and Arthur S. Phelps

do hereby
make constitute & appoint George D.
Hendry our true & lawful attorney
for us & in our names to make &
execute any & all bonds necessary
in his opinion to be given in the
cases of James Moir & Robert Moir
vs Stephen S. Phelps and after
said plaintiffs against said
Phelps, Hopkins & Harrington now
pending in the Supreme Court of Illinois
for the purpose of securing a writ of
Error & Superedeas therein - duly
ratifying all that our said attorney
shall do in the premises -

Witness our hands & seals this
day of May, A.D. 1838

Stephen S. Phelps	Seal
Wm B Hopkins	Seal
Benj Harrington	Seal
	Seal
Arthur S Phelps	Seal

attest

W. H. Phelps

505-303-
L. S. Phelps & Co
In 85-13
G. W. Hendon

Proalty

Filed May 22, 1878
L. S. Phelps
Clerk

Quins Moir. Grad
no 65) ²⁴ 13

Wm. B. Hopkins
& others.

Argument.

A. P. Pyle

Filed Apr. 22, 1889

L. Leland
Clerk

Hopkins v. St. Louis
 or
 Motion to set aside order for
 supersedeas.

The assignment of error,
 having any foundation in
 the record, is that the Court
 struck from the files the defen-
 dant's pleas.

1 No bill of exceptions
 was taken and it only appe-
 -ars from the record, that
 the pleas were stricken from
 the files "having been filed
in contravention of a rule of
 Court." What the rule was, does
not appear - no facts, or
 grounds are mentioned
 excluding the existence
 of sufficient grounds.

It may be, that the rules of
 Court required the defendant

to endorse the plea with
the names of the parties,
the number of the cause;
or to notify the court of the
filing, or the clerk, or the
opposite party; or that they
were filed in violation of
some other rule, clearly
within the power of the court,

2 No exception was taken
to the decision of the court
and the grounds of it
may not in fact
obliterate the record.

The ~~rule~~ rule copied
into the record by the
clerk, is no part of the
record. 14 Mc 58.

3 The defendants should
have accepted the
decision of the Court &
have taken a bill of
exceptions, showing the
grounds of the decision.

If under any state of fact
the judgment can stand
in the absence of bill of excep-
tions, the Court will not
reverse the judgment.

18 Mc 548, 17 Mc 307,
16 Mc 390, and all the cases.

O. B. Skinner
for defendants

301
65. 13

Phelps do
my 3 Enr
Moir do

Motion to
sit aside
acknowledgment of
Superiority

Rossini

Filed May 13. 1858
L. Leland
Clk

JAMES MOIR & ROBERT MOIR, }
Partners, &c.,
vs.
WILLIAM B. HOPKINS, ET. AL. }

SUPREME COURT
OF ILLINOIS,
THIRD GRAND DIVISION,
APRIL TERM, 1858.

APPEAL FROM HENDERSON CIRCUIT COURT.

This was an action of assumpsit. Declaration filed December 11, 1857, counting upon a promissory note made by defendants.

Defendant, December 24th, 1857, filed pleas numbered 1 and 2.

Plea No. 1 was the general issue.

Plea No. 2 set up a failure of consideration.

On December 21, 1857, the Court caused a general order to be entered on the records of said Court, which set out in the record as follows: "It is ordered by the Court that in all actions on promissory notes, when pleas are filed, an affidavit must accompany the same of the defendant or some one for him, that he has a good and sufficient defense to the cause of action or a part thereof, and in default of such affidavit, the pleas filed will be stricken from the files, and judgment by default for want of a plea entered, and that such plea and affidavit must be filed on or before the second day of the term."

On December 24, 1857, the following order was entered in said case:

"This day came the plaintiffs by their attorney and moved the Court to strike the defendants' plea from the files. Thereupon it is ordered by the Court that the said pleas be stricken from the files of this Court, they having been filed in contravention to a rule thereof." * * And the said defendants having been three times solemnly called came not, nor any person for them, to defend this suit, but made default: whereupon judgment was rendered for the plaintiffs. Defendants prayed an appeal. Appeal allowed.

PURPLE & HARDING,

for Appellants.

JAMES MOIR ET. AL.,
 vs.
 WILLIAM B. HOPKINS ET. AL. }

And said appellants say that in said record there is manifest and manifold error, wherefore they pray that said judgment may be reversed, &c. And for causes of error they assign the following:

1. The Court erred in striking the pleas of the defendants from the files.
2. The Court erred in rendering judgment by default against defendants.
3. The Court erred in not rendering judgment for defendants.

PURPLE & HARDING,

Attorneys for Appellants.

~~55~~ ~~50~~ - ~~77~~
65.-13

James M. Hall

vs

W. B. Hopkins

Abstract

Filed April 26. 1838

J. L. Bond

Abstract

STATE OF ILLINOIS,
SUPREME COURT,

} ss. The People of the State of Illinois,
To the Clerk of the Circuit Court Court for the County of Henderson Greeting:

Because, In the record and proceedings, as also in the rendition of
the judgment of a plea which was in the Circuit Court
Court of Henderson County, before the Judge thereof, between
James Moir & Robert Moir

partners in trade under the firm name & style of Moir & Brothers assigns
of J. C. Blundin & Brother
plaintiff; and William B. Hopkins Benjamin Harrington
& Stephen S. Phelps

defendants, it is said mani-
fest error hath intervened, to the injury of the aforesaid Defendants

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

Witness, The Hon. John D. Caton, Chief
Justice of our said Court, and the Seal
thereof, at Ottawa, this 22nd day of
May — in the Year of Our Lord
one thousand eight hundred and fifty-eight.

J. Leland
Clerk of the Supreme Court.

by J. B. Rice Deputy

William B. Hopkins
 Father vs

James Moir et al.
 Writ of Error

This writ of Error is
 made a Supersedeas
 & as such is to be obeyed
 by all ~~concerned~~ Con-
 cerned. — L. Leland
 Clerk

by J. B. Rice
 Deputy

Filed May 22. 1858
 L. Leland
 Clerk.

Know all men by these presents that we Stephen
Phelps William B. Hopkins and Benjamin
Hamington as principals and Abner
C. Harding and Arthur S. Phelps
as sureties are held and firmly
bound unto James Moir and
Robert Moir partners in trade under
the name firm & style of Moir & Brothers
in the special sum of Two thousand
Dollars (\$2000) for the payment of which
well and truly to be made we bind ourselves
our heirs executors & administrators.
In witness whereof

The condition of their obligation is
Such that whereas on the 24th

December A.D. 1857 a judgment was
against the aforementioned defendants
rendered in the Circuit Court of Henderson

County Illinois for the sum of \$1603.12 &
in a suit wherein said obligors were plaintiffs and said principals obligors
of record were defendants. ^{Costs of suit} from which judgment a writ of
Error has been prosecuted by said principal obligors aforesaid

of said State and whereas the said Supreme
Court on May 6th 1858
have ordered the same to be made a Super-

Sedeas. Now if the said Stephen S. Phelps
William B. Hopkins, Benjamin Hamington shall pay
said judgment and all costs interest and damages
in case the said judgment shall be affirmed, and shall
and prosecute said writ of error, then this obligation to be
void otherwise to be & remain in

JAMES MOIR & ROBERT MOIR,	}	SUPREME COURT
<i>Partners, &c.,</i>		OF ILLINOIS,
vs.		THIRD GRAND DIVISION,
WILLIAM B. HOPKINS, ET. AL.		APRIL TERM, 1858.

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On December 24, 1857, the following order was entered in said case:

"This day came the plaintiffs by their attorney and moved the Court to strike the defendants' plea from the files. Thereupon it is ordered by the Court that the said pleas be stricken from the files of this Court, they having been filed in contravention to a rule thereof." * * And the said defendants having been three times solemnly called came not, nor any person for them, to defend this suit, but made default: whereupon judgment was rendered for the plaintiffs. Defendants prayed an appeal. Appeal allowed.

PURPLE & HARDING,
for Appellants.

JAMES MOIR ET. AL.,
vs.
WILLIAM B. HOPKINS ET. AL. }

And said appellants say that in said record there is manifest and manifold error, wherefore they pray that said judgment may be reversed, &c. And for causes of error they assign the following:

1. The Court erred in striking the pleas of the defendants from the files.
2. The Court erred in rendering judgment by default against defendants.
3. The Court erred in not rendering judgment for defendants.

PURPLE & HARDING,
Attorneys for Appellants.

~~187~~ 65-18

Pat. Mon. Deal

Wm. B. Hopkins

Abstract

Filed Apr. 26, 1858.

L. Iceland
Clerk

Re-filed Apr. 29, 1858.
L. Iceland Clerk.