

13316

No. _____

Supreme Court of Illinois

Butts

vs.

^S
Rosæ

United States of America
State of Illinois, Cook County

Pleas 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 said 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 sixth day of February in the year of our Lord
Eighteen Hundred and sixty and of the Independence
of the United States of America the Eighty fourth,

Present the Hon John W Wilson Chief Justice
Of the Superior Court of Chicago
Van K Higgins and Grant Goodrich
Judges

Charles Haven, Prosecuting Attorney
John Gray, Sheriff of Cook County

Attest

Walker Kimball, Clerk

Be it Remembered that heretofore to wit: on the -
seventeenth day of December in the year of our Lord
One Thousand Eight hundred and fifty nine, William
Butts, by his attorneys Walker, Van Arman and
Dexter filed in the office of the Clerk of the Superior
Court of Chicago his certain declaration and
Copy of Account, in words and figures fol-
-lowing to wit:

Superior Court of Chicago

Of the January Term A.D. 1860. —

State of Illinois
County of Cook

ss.

William Butts plaintiff in this suit
by Walker Van Arman and Dexter his attorneys, complains
of John N. Ross, defendant in this suit, who was
summoned to answer the plaintiff of a plea of trespass
on the case on promises;

For that Whereas, the said defendant
heretofore, to wit: on the seventeenth day of December in the
year of Our Lord One Thousand Eight Hundred and
fifty nine at Chicago in said County of Cook, became
and was indebted to the said plaintiff in the sum of Five
Hundred dollars of lawful money of the United States
of America, for divers goods, wares, and merchandizes,
by the said plaintiff before that time sold and delivered
to the said defendant, and at the special instance and
request of the said defendant, and being so indebted to
the said plaintiff, the said defendant in consideration
thereof, afterwards, to wit: on the same day and year
and at the place aforesaid, undertook, and then and
there faithfully promised the said plaintiff, well and
truly to pay unto the said plaintiff the sum of money
last mentioned, when the said defendant should be
thereunto afterwards requested. And Whereas also,
the said defendant afterwards, to wit: on the same
day and year, and at the place aforesaid, in con-

-sideration that the said plaintiff had before that time, at the like special instance and request of the said defendant sold and delivered to the said defendant, divers other goods, wares, and merchandises of the said plaintiff, the said defendant then and there undertook and faithfully promised the said plaintiff that the said defendant would well and truly pay to the said plaintiff so much money as the last aforesaid goods, wares and merchandises, at the time of the sale and delivery thereof, were reasonably worth, when the said defendant should be thereunto afterwards requested; and the said plaintiff aver that the said goods, wares, and merchandises last mentioned at the time of the sale and delivery thereof, were reasonably worth the further sum of Five Hundred dollars, of like lawful money as aforesaid, to wit: at the place aforesaid, whereof the said defendant afterwards, on the same day and year, and at the place aforesaid, ^{had notice.} became and was indebted to the said plaintiff in the further sum of Five Hundred Dollars, of like lawful money as aforesaid, for money before that time lent and advanced by the said plaintiff to the said defendant and at the like request of the said defendant. And in the like sum for other money by the said plaintiff before that time paid, laid out, and expended for the said defendant, and at the like request of the said defendant. And in ^{the} like sum for other money by the said defendant before that time had and received

* And whereas also, the said defendant afterwards to wit: on the same day and year, and at the same place aforesaid,

to and for the use of said plaintiff. And in the like sum
for other money before that time and then due and owing
to the said plaintiff for interest upon and for the for-
-bearance of divers other sums of money before that
time and then due and owing from said defendant
to said plaintiff. And in the like sum for the price
and value of work then done and material for the
same provided by the plaintiff for the defendant
and at the like request of the defendant. And being
so indebted, the said defendant in consideration thereof
afterwards, to wit; on the same day and year, and at
the place aforesaid undertook, and then and there
faithfully promised the said plaintiff well and truly
to pay unto the said plaintiff the several sums of
money in this count mentioned, when the said defen-
-dant should be thereunto afterwards requested. -

And whereas, also, the said defendant afterwards, to wit;
on the same day and year, and at the place aforesaid,
accounted together with the said plaintiff of and
concerning divers other sums of money, before that
time due and owing from the said defendant to the
said plaintiff, and then and there being in arrear and
unpaid, and upon such accounting, the said defendant
then and there was found to be in arrear, and indebted
to the said plaintiff in the further sum of Five Hun-
-dred dollars, of like lawful money as aforesaid. And
being so found in arrear and indebted to the said plaintiff
the said defendant, in consideration thereof afterwards

to wit: on the same day and year, and at the place aforesaid
 undertook, and then and there faithfully promised the said
 plaintiff, well and truly to pay unto the said plaintiff
 the said sum of money last mentioned, when the said
 defendant should be thereunto afterwards requested

Nevertheless, the said defendant (although
 often requested, &c) has not yet paid the several sums
 of money above mentioned, or any or either of them, or
 any part thereof to the said plaintiff, but to pay the
 same or any part thereof, to the said plaintiff, the said
 defendant has hitherto altogether refused, and still
 doth refuse, to the damage of the said plaintiff of
 Five Hundred Dollars, and therefore the said plaintiff
 brings suit &c

Walker, Van Arman & Dexter

Plaintiff's Attorneys

Copy of the Account sued on.

Jefferson, Cook Co. Ill. 10th December 1859.

Mr. John H. Ross.

Bought of William Buttz.

4 (Four) Cows	at \$20 each	\$80.00
6 (Six) do	" \$14 "	84.00
1 (One) Calf	" \$10 "	10.00
		<u>\$174.00</u>

John H. Ross

To William Buttz Dr.

To Money lent and advanced	\$ 500. 00
To Money paid, laid out and expended	\$ 500. 00
To Money had and received to and for the use of said Plaintiff	" " \$ 500. 00
To Goods, Wares & Merchandise sold and delivered	\$ 500. 00
To Labor and Services	\$ 500. 00
To Balance due on account stated	\$ 500. 00

And afterwards on the fourth day of January in the Year of Our Lord One Thousand Eight Hundred and Sixty, John H. Ross filed in the office of the Clerk of said Court his demurrer in words and figures following, to wit:

William Buttz
vs
John H. Ross

In the Superior Court of Chicago
Of the January Term A.D. 1860.

And the said defendant comes and defends the wrong and injury when he, and says that the said several counts of the said declaration, and the matters and things therein contained, in manner and form as the same are before pleaded and set forth are not sufficient in law, nor are either of said counts of said declaration sufficient in law for the said plaintiff to have and maintain his aforesaid action thereof against him the said defendant, and that he is not bound by the law of the land &c.

A. S. Blackwell J.D.

And afterwards to wit: on the sixteenth day of -
February in the year last aforesaid, said day being one
of the days of the February term of said court, the following
among other proceedings was had in the said court, and
entered of record, to wit:

William Butts (
vs
John H. Ross) Defendant.

This day comes said plaintiff by
Walker Van Arman & Dexter his attorneys, and defendant
by Robert S. Blackwell his attorney, also comes, and counsel
being heard on defendant's demurrer to plaintiff's declara-
-tion in this cause, and the court being fully advised
overrules the demurrer, whereby defendant remains
undefended against said plaintiff and it is ordered that
he plead over instantly, and defendant saying nothing
further in bar or preclusion of plaintiff's action, and no
plea being interposed it is ordered that his default be
and is hereby entered of record (want of plea) wherefore
said plaintiff ought to have and recovers of said defendant
his damages sustained herein. And thereupon reference
is had to the Court to assess damages hereafter.

And afterwards, to wit: on the eighteenth day of
February in the year last 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:

William Butts
vs } Assumpsit
John N. Ross }

And now again comes said plaintiff by his attorney as aforesaid, and default of said defendant having been taken and entered of record herein, against him on the sixteenth day of February instant, and reference being had to the Court to assess damages and the Court now here after hearing the proof and allegations submitted by said plaintiff and being fully advised in the premises, assessed her damages herein to the sum of One Hundred and Seventy four dollars.

Therefore it is considered said plaintiff do have and recover of said defendant his damages of One Hundred and Seventy four dollars in form aforesaid assessed and also his costs and charges in this behalf expended and have execution therefor

And thereupon said defendant pray appeal herein to the Supreme Court which is allowed on filing bond in sum of Three Hundred dollars with security to be approved by the Court in ten days

And afterwards on the Twenty first day of Feb.

uary in the year last aforesaid, John H. Ross filed in the office of the Clerk of said Court his appeal bond in words and figures following, to wit;

Know all men by these presents that we John H. Ross and George Kennedy of the City of Chicago in the County of Cook and State of Illinois are held and firmly bound unto William Cutts of the same place (Cook County) in the sum of Three Hundred Dollars, lawful money of the United States of America to be paid to the said William Cutts, his executors, administrators and 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 and dated the twenty first day of February, One Thousand Eight Hundred and sixty.—

Whereas on the Eighteenth day of February A.D. 1860. on a trial then and there had in a cause then pending in the Superior Court of Chicago in the County of Cook and State of Illinois, wherein William Cutts was plaintiff and John H. Ross was defendant, a judgment was recovered against the said John H. Ross, for the sum of One Hundred and Seventy four dollars and whereas also the said defendant then and there prayed an appeal to the Supreme Court of the State of Illinois, which prayer of the said defendant was granted by the said Court. Now, therefore the condition of

this obligation is such that if the above bonded
John H. Ross 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 and in that event, this
obligation shall be void else to remain in full force and
virtue. —

Approved Feb 21/60
Grant Goodrich
Judge

John H. Ross (Seal)
George Kennedy (Seal)

State of Illinois
Cook County ss.

George Kennedy, being first duly sworn
upon his oath deposes and says that he is a resident of the
City of Chicago, and of the County of Cook and State of Illinois
that he is worth over and above all his just debts the sum
of Three Hundred Dollars and further affiant saith not.

George Kennedy

Sworn to & Subscribed
before me this 21st day
of February A.D. 1860.
Walter Kimball
Clerk

State of Illinois
County of Cook & SS

J. Walter Kimball Clerk of the
Superior Court of Chicago, in and for said County
do hereby certify that the foregoing is a full true
and Complete Transcript of all the pleadings on
file in my office and of the proceedings ^{& Judgment} ~~of~~
of Record in said Court. in the case wherein
William Butts is plaintiff and John H. Rop is
defendant.

In testimony whereof I hereunto
subscribe my name and affix the
Seal of said Court, at the City of
Chicago in said County the 6th
day of April A.D. 1860.

Walter Kimball Clerk



John H. Ross } In the Supreme Court
vs } of the State of Illinois
William Butts } Third Grand Division
Of the Term of April 1860.

Appeal from the Superior
Court of Chicago.

And on this day comes the said
appellant by N. S. Macmillan his
attorney and says that in the record
of the proceedings aforesaid and
in the rendition of the judgment
aforesaid, manifest errors hath in-
tervened to his prejudice, in this
to wit:

1. That it appears by the said record
that the said Superior Court erred
in overruling the demurrer of the said
appellant to the declaration of
the said appellee filed in the
said Superior Court of Chicago.

2. It appears by the record aforesaid
that the said Superior Court
erred in rendering a judgment

for the said appellee when by
the law of the land the said
judgment ought to have been
rendered for the said appellant
And this he is ready to verify &c.

Wherefore and for other errors
appearing upon the face of the
record aforesaid &c the said
appellant prays that the said
judgment may be reversed, set
aside, annulled and for nothing
estimated and that the said ap-
pellant may be restored to all
things he has lost by occasion
thereof &c.

N. A. McNeill
Attorney for Appellant.

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William Burt
at.
John H. Rap

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Filed Apr. 25. 1860
L. Deland
Clk.

\$174.00
65
\$170.00 Dep

\$5.00 Clk.