

14387

No. _____

Supreme Court of Illinois

Warner

vs.

Peoria Marine & Fire Ins Co.

877
STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 169

14387

Manner
to
Benjamin Manner
and
1862
Superior

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Plas, 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 Third day of June in the year of our Lord One Thousand Eight 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. }

Wm. H. Higgins } Judges.

Grant Goodrich }

Charles Haven Prosecuting Attorney.

Anthony C. Hefling Sheriff of Cook County.

Attest, Walter Kimball Clerk.

Be it remembered that heretofore to wit in the thirteenth day of February in the year of our Lord one thousand eight hundred and sixty one there was issued out of and under the Seal of said Court a certain writ of Summons in a Suit wherein Charles Warner was plaintiff and The Georgia Marine and Fire Insurance Company was defendant; which said Summons with the Sheriffs return thereon indorsed is in words and figures as follows, to wit.

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" State of Illinois
Cook County, Ill.

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

We command you that you summon
The Peoria Marine & Fire Insurance Company
if it shall be found in your County, personally
to be and appear before the Superior Court of
Chicago of said County on the first day of the
next term thereof, to be holden at the Court
House in Chicago, in said County, on the first
Monday of March next to answer unto Charles
Warren of a plea, that it renders to the said
plaintiff Fifteen hundred dollars and - cents
which it owes to and unjustly detains from
him to the damage of the said Plaintiff as is
said in the sum of Twelve hundred dollars
And have you then and there this Writ, with
an endorsement hereon in what manner you
shall have executed the same.

Witness Walter Kimbale Clerk of
our said Court and the Seal
thereof at Chicago aforesaid, this
13th day of February A.D. 1861.

Walter Kimbale. Clerk."

(Sheriff's return)

"Executed the within Summons by
leaving a true copy of the same with J.

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Augustus Wright an Agent of said Company
the 13th day of February A. D. 1861. The
President of said Company not residing in
my County.

A. G. Hessing - Sheriff
By Wm P. Gray, Deput^y.

And thereafter to wit on the Twenty Second
day of February A. D. Eighteen hundred and
Sixty one, the said Plaintiff filed in the office
of the Clerk of said Court his Declaration in
said Suit: Which said Declaration is in
words & figures as follows, to wit

" Superior Court of Chicago
Of the March Term A. D. 1861.

State of Illinois
County of Cook

Charles Warner Plaintiff in
his suit by Bass & Mulvey his Attorney complains
of The Peria Marine & Fire Insurance Company
Defendant, who is Summored & of a Plea that
it tender to the said Plaintiff the sum of
Fifteen hundred dollars lawful Money of the
United States which it owes to and unjustly
detains from him.

To wit that whereas the said Plaintiff heretofore
to wit on the Eight day of December A. D. 1860
before the County Court within and for the
County of Milwaukee in the State of Wisconsin
by the judgment of said Court recovered of the
said Defendant, the sum of Ten hundred and
fifty ^{forty} two dollars and seventy five cents together
with the sum of Forty five dollars & seventy

four cents costs and disbursements amounting in the whole to the sum of Two hundred and eighty eight dollars and forty nine cents as by the records thereof remaining in said County Court within and for the County of Milwaukee in the State of Wisconsin now fully appears, which said judgment remains in full force and effect not reversed, satisfied or otherwise vacated, and the said Plaintiff hath not obtained any execution or satisfaction of or upon the said judgment or recovered as aforesaid, Whereby an action hath accrued to the said Plaintiff to demand and have of and from the said defendant, the sum of Two hundred and eighty eight dollars and forty nine cents parcel of the said sum above demanded.

And whereas also the said defendant Plaintiff afterwards to wit on the first day of January A. D. 1861 at the County of Cook aforesaid at the special instance and request of the said defendant lent to the said defendant and the said defendant there and there borrowed of the said Plaintiff a large sum of money to wit, the sum of Four hundred and eleven dollars and fifty one cents of like lawful money to be paid by the said Defendant to the said Plaintiff when it the said Defendant should be thereunto afterwards requested whereby and by reason of the said last mentioned sum of money being and remaining wholly unpaid, an action hath accrued to the said Plaintiff to demand and have of and from the said defendant the said last mentioned sum of Four hundred and eleven dollars

and fifty one cents, residue of price sum above demanded.

Yet the said defendant although often requested so to do hath not as yet paid the said sum of Fifteen hundred dollars above demanded, nor any part thereof to the said plaintiff but so to do, hath hitherto wholly refused and still doth refuse to the damage of the said Plaintiff of Twelve hundred dollars and therefore he brings his suit &c.

Raf & Callahan
Attorneys for Plaintiff.

And hereafter to wit on the sixth day of March A. D. eighteen hundred and sixty one the said Defendant by Scammon, Meloy & Fulew its Attorneys, filed in the office of the Clerk of said Court, its Certain Plea to the jurisdiction in said suit; Which said Plea is in words & figures as follows, to wit.

"In Superior Court of Chicago
Cook County, Illinois.

Charles Warner

vs

The Peoria Marine &
Fire Insurance Company

In Debt

Plea to the Jurisdiction

And the said defendant in its own proper person comes and says, that this Court ought not to have or take further cognizance of the action aforesaid, because it says; that the said supposed causes of action and each and every one of them, (if any such have occurred to the said plaintiff) accrued,

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+ accrued out of the Jurisdiction of this Court, that
is to pay at Milwaukee, in the County of
Milwaukee, in the State of Wisconsin, and within
the Jurisdiction of the County Court, within and
for the County of Milwaukee in said State of
Wisconsin, and not within the County of Cook,
or elsewhere within the Jurisdiction of this
honorable Court, and defendant further avers
that the said Plaintiff resides at the City of
Milwaukee, County of Milwaukee and State of
Wisconsin, and did at the time of the
Commencement of this Suit, and not within the
County of Cook aforesaid, and that this defendant
is a Corporation duly established by law at and
within the City of Peoria and ^{the} County of Peoria,
and State of Illinois, and there has its office,
and principal place of business; and that its
President and chief officers reside in said City
and County of Peoria, and not within the
County of Cook aforesaid, and was by law
established and has its principal place of business
there at the time of the Commencement of this
Suit, and that process in this Suit was served
on one J. Augustus Wright at and within the
County of Cook aforesaid, he being then and
there an Agent of this defendant, and that the
said defendant is ready to verify, It therefore he
prays judgment whether this Court can or will
take further Cognizance of the action aforesaid

Allen G. Tappan. V. Pres.

H. Holland. Secy

+ As witness the hands of the V. President and
Secretary and the Seal of the said Corporation

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This sixth ^{11th} day of March 1861. (Seal)

That Samuel W. Fuller being duly sworn on oath says that the matters and things set forth and pleaded in the plea above pleaded are true in substance and in fact.

Subscribed and sworn to by Samuel W. Fuller.
before me this 6th day of ^{11th}
March 1861
John Forsythe
Notary Public.

And thereafter to wit on the sixteenth day of March A. D. Eighteen hundred and sixty one the said Plaintiff by his said Attorneys, filed in the Office of the Clerk of said Court, his replication to said Plea, which said replication ^{and Demurrer thereto} is in words and figures as follows, to wit.

" State of Illinois Superior Court
Cook County . . . S. of Chicago.
Charles Warner
vs
The Peoria Marine & Fire Insurance Company. In debt.

And the said Plaintiff as to the Plea of the said defendant says notwithstanding anything by the said defendant above alleged, that this Court ought not to be precluded from having further cognizance of the action aforesaid, because he says that he denies that the said corporation, The Peoria Marine & Fire Insurance Company, defendant in this suit is established by law, at the City of Peoria, in

the County of Peoria, and State of Illinois, and avers that said Defendant has an office, where it transacts a large amount of business in said Cook County, That one or more of the Directors of said Company reside in said last mentioned County, and that said J. Augustus Wright agent of said Company, resides and keeps an office in the said County of Cook And this the said Plaintiff is ready to verify. Wherefore he prays judgment And that the Court here may take Cognizance of the action aforesaid And that the said Defendant may answer over of

Bass & Mulvey
Attys;

" Defendant denied
By its Attys
Seammon McLaugh & Fuller."

And afterwards to wit, on the twenty seventh day of March (being one of the days of the March Term of said Court) A. D. Eighteen hundred and sixty one, the following proceedings were had in said cause and interest of record in said Court, to wit.

" Charles Warner
vs
The Peoria Marine & Fire Insurance Company
Debts.

This day comes the said Plaintiff by Bass & Mulvey his Attorneys and the said Defendant by Seammon McLaugh & Fuller its Attorneys also come, and this cause coming on to

be heard upon the Demurrer of the said defendant to the replication of the said Plaintiff, and was argued by counsel and the Court being fully advised in the premises is of the opinion that the replication aforesaid, and the matters and things therein contained are sufficient in law to support this action Therefore it is considered by the Court that the demurrer be overruled, with leave to Defendant to rejoinder in ten days.

And afterwards to wit on the tenth day of June (being one of the days of the June Term of said Court) A.D. Eighteen hundred and sixty one, the following further proceedings were had in said cause, and entered of record in said Court, to wit:

Charles Warner
 vs
 The Pacific Marine & Fire Insurance Company
 In Debt

This day comes the said Plaintiff by Bass & Mulvey his Attorneys and the said Defendant Scammon DeBazzy & Co. his Attorneys not present, and thereupon the said Plaintiff says he will no longer prosecute his said suit as to personal Count in his declaration, Defendant making no further Answer, upon agreement of the parties made now here in open Court, this cause is submitted to the Court for trial upon the issues joined herein on plea "Not held record." without intervention of a Jury and the Court now here after hearing the Evidence and being fully advised in the premises

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funds issued for Plaintiff on the said Plead, and
funds the said Defendant indebted to the said
Plaintiff, as in his Declaration herein alleged to
the sum of One thousand and eighty eight
dollars and forty nine cents debt and assessed
his damages for detention of the said debt to the
sum of Thirty two dollars & sixty five cents.

Therefore it is considered that the said
Plaintiff do have and recover of and from the
said Defendant his debt of One thousand and
Eighty eight dollars and forty nine cents, and
also his damages of Thirty two dollars & sixty
five cents in form aforesaid found and assessed
by the Court and also his costs and charges in
this behalf expended, and thereof have execution.

And afterwards to wit on the thirteenth day
of June (being yet of the June Term of said
Court) A.D. Eighteen hundred and sixty one,
the following further proceedings were had in
said Cause and entered of record in said Court,
to wit.

Charles Warner
vs
The Marine & Fire Insurance Company

Debt - Motion of

This day again comes
the said Defendant by Scammon, McBayg
& Fuller its Attorneys, and submit Motion herein
for a New Trial, and also Motion to set aside
the judgment entered of record herein.

And afterwards to wit on the fourteenth day of June (being yet one of the ^{sayd} Term) A. D. 1861 the following further proceedings were had in said cause and entered of record in said Court, to wit.

"Charles Warner...
vs
The Pacific Marine and
Fire Insurance Company } Debt.

This day again comes the said Plaintiff by Bass & Mulvey his Attorneys and the said Defendant by Scammon McBaggy & Fuller its Attorneys also comes and the cause again coming on to be heard and upon the Motion of the said Defendant heretofore submitted to set aside the Order of judgment entered of record and for a new trial in said cause was argued by Counsel and the Court being fully advised in the premises overrules the Motion to set aside the order of judgment and also the Motion for a new trial in said cause, to which decision and ruling of the Court in overruling said Motions the said Defendant now here excepts and thereupon enters exceptions to the ruling and decision of the Court and prays an Appeal herein to the Supreme Court of this State from the judgment of this Court, which is allowed upon filing Appeal Bond in the penalty of Sixteen hundred dollars with Security to be approved by a Judge of this Court and to be filed during the continuance of this term of the Court.

And thereafter to wit on the Twenty ninth day of June A. D. Eighteen hundred & sixty one the said Defendant filed in the Office of the Clerk of said Court its Assent Bond in said Cause which Bond is in words and figures as follows, to wit.

"Know all Men by these Presents That we the Peoria Marine and Fire Insurance Company of Peoria, Ill: and Samuel Howell of the County of Cook and State of Illinois and Philo Hollander and William R. Phelps both of Peoria Illinois are held and firmly bound unto Charles Warner in the penal sum of Sixteen hundred dollars lawful Money of the United States, for the payment of which well and truly to be made we find ourselves our heirs executors and administrators, jointly severally and firmly by these presents.

Witness our hands and seals this fourteenth day of June A. D. 1861.

The Condition of the above obligation is Such That whereas the said Charles Warner died on the tenth day of June A. D. 1861 in the Superior Court of Chicago in and for the County of Cook and State aforesaid and of the same term thereof A. D. 1861 recovered a judgment against the above bounden the Peoria Marine & Fire Insurance Company in an action of debt for the sum of One thousand and eighty eight dollars and forty nine Cents debt and Thirty two dollars and sixty five Cents damages besides costs of suit; from which said judgment of the said Superior Court the said Peoria Marine and Fire Insurance Company has prayed for and obtained an Appeal to the Supreme Court of said

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Stall.

Now therefore if the said Peoria Marine and Fire Insurance Company shall duly prosecute its said Appeal with effect and moreover pay the amount of the judgment costs, interests and damages rendered, and to be rendered, against it in case the said judgment shall be affirmed in said Supreme Court, then the above obligation to be void otherwise to remain in full force and virtue.

In witness of its execution of this Bond the Peoria Marine and Fire Insurance Company has caused these presents to be signed by its President and attested by its Secretary with the Seal of the office affixed in the City of Peoria in the State of Illinois this day of June A. D. 1861.

Peoria Marine & Fire Insurance Company By (Seal)

Isaac Underhill, President

C. Holland - Secretary

Phil's Holland (Seal)

W. R. Phelps (Seal)

Saml Stone (Seal) "

And thereafter to wit on the third day of April A. D. Eighteen hundred and sixty ^{two} ~~one~~ there was filed in the Office of the Clerk of said Court, a Certain Stipulation in said cause; Which Stipulation is in words and figures as follows, to wit.

Charles Barber

vs

The Peoria Marine and Fire Insurance Company

Appeals from the Superior Court of Chicago

It is hereby stipulated

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and agreed, for the purposes of this Appeal, that the Transcript of the record in this case may be made up containing the following papers

1. Declaration
2. Summons.
3. Plea to the Jurisdiction
4. Replication and Demurrer to the Same
5. Judgment of the Court overruling Demurrer to Replication
6. Final Judgment
7. Appeal Bond.

It being admitted and agreed for the purposes of this Appeal that on the trial, the Plaintiff produced and read in evidence the Transcript of a record of a Judgment set out and declared upon in his Declaration upon which a Judgment was entered in his favor in this case: Which was all the evidence in the case.

It is agreed that the Copy of the said Judgment Record be omitted from the Transcript of the proceedings in this case.

And the said Marine & Fire Insurance Company Appellants in this case stipulate to assign no error on the record in this case except those which relate to the sufficiency of the Defendants Plea to the Jurisdiction, and Defendants Replication thereto and the judgment of the Court in overruling Defendants demurrer to said Replication.

Paul & Mulvey
Attys for Plaintiff
Seamon Debayz Appeller. for deft.

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The original being lost the clerk may copy
our copy of the Plea to the Jurisdiction
for the Original.

"Bass & Mulvey."

State of Illinois
Cook County. *ES*

I Thomas B. Carter Clerk
of the Superior Court of Chicago, within and
for the County of Cook and State of Illinois
do hereby Certify the above and foregoing to
be a full, true and correct Transcript of
the Process, Declaration, Plea to the Jurisdiction
& Demurrer thereto - Appeal Bonds and Disputations
now on file in my office, together with the
Orders and Judgment entered of record in said
Court, in a certain suit therein pending, wherein
Charles Warner was Plaintiff and The Pacific
Marine and Fire Insurance Company was
Defendant.

In witness whereof I the said
Thomas B. Carter have hereunto
set my hand and affixed the Seal
of said Court at Chicago in said
County this 5th day of April
A. D. 1869.

Thomas B. Carter Clerk

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Supreme Court of Illinois
3rd and Division.

April Term 1862

The Peoria Mining
& Fire Insurance
Company } Appellant
Charles Hamer, Appellee

And now comes the said
Appellant and says that
in the foregoing record & proceedings
there is manifest error in this.

1. That the Court erred in over-
ruling Defendant's (appellant's) demurrer
to Plaintiff's application to Dep't
plea to the Jurisdiction

2. That the Court erred in retaining jurisdiction of said
cause and rendering judgment for the Plaintiff

3. That the Court erred in not dismissing said cause
for want of Jurisdiction.

By its Atty
Cammie McLaughlin Fuller

And the said Charles Hamer says that
in the record & proceedings aforesaid there
is no error and submits the same
as he cannot here for trial

April 11th 1862

Pass & Malony
Attorneys for
Appellee

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Superior Court of Chicago

Charles Warner
— ats. —

Peoria Marine and
Fire Insurance Company

Record.

Filed April 12, 1842

L Leland
Clerk

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