

No. 12612

Supreme Court of Illinois

Schoonhoven.

vs.

Gott.

71641  7

United States of America }
State of Illinois, Kane County }

Came before the Honorable Isaac L. Wilson,
Judge of the Thirteenth Judicial Circuit in the State
of Illinois and presiding Judge of the Kane County
Circuit Court at a Term of said Court began and
held at the Court House in Geneva in said County on
the Ninth day of February in the year of our Lord one
Thousand eight hundred and fifty seven.

Present the Hon. Isaac L. Wilson Judge
George Corwin Sheriff

Wttest

Paul R. Wright

Clerk

Be it remembered that whereas herebefore on
the 19th day of April AD 1856 a precise security for
costs and declaration were filed in the Office of the Clerk of
said Kane County Circuit Court which said precise
was in the words and figures following to wit:

State of Illinois }
The Circuit Court of }
Kane County }

Of the Term of May 1856

James B. Lott

vs

Ind Assumpsit

Nicholas Schoonsover

Please Issue a summons in the above
entitled Cause returnable at the next May Term of this Court
in an action of trespass on the Case on premises.

Plffs Damages five hundred dollars
 Clerk of Kane County } Sedgwick & Walker
 Circuit Court } Atty. for Off.

And which said security for costs
 was in the words and figures following to wit-

State of Illinois }
 The Circuit Court of }
 Kane County }
 James B. Gott }
 vs }
 Nicholas Schoonover }

Of the Term of May ^{AD} 1856

In Assumpsit.

I do hereby enter myself security for
 costs in this cause & acknowledge myself bound to pay
 or cause to be paid all costs which may accrue in this
 action either to the opposite party or to any of the Officers of this
 Court in pursuance of the laws of this State
 Dated this 16th day of } J. W. Walker
 April AD 1856 }

And which said declaration was in the
 words and figures following to wit-

State of Illinois }
 Kane County Circuit Court }

Of the Term of May
 AD 1856

Kane County ss James B. Gott plaintiff in
 this suit by Sedgwick & Walker his attorney complains
 of Nicholas Schoonover defendant in this suit who has been
 summoned &c of a plea of trespass on the case upon promises

For that whereas the said defendant heretofore to wit
 on the 20th day of March AD 1854 at Ann Arbor in the

State of Michigan to wit- at the said County of Kane made his certain promissory note in writing bearing date the day and year last aforesaid and thereby then and there promised to pay O. Hawkins or order two hundred dollars with acc. (with interest meaning) for value received one year from date thereof which period elapsed before the commencement of this suit and then and there delivered said note to said O. Hawkins and the said O. Hawkins then and there endorsed the same to the said plaintiff, and said plaintiff avers that said note was made in the State of Michigan and that the rate of interest by the laws of the State of Michigan at date of said note and now is seven per cent per annum, of all which the said defendant then and there had notice and then and there in consideration of the premises promised to pay the said plaintiff the amount of the said note according to the tenor and effect thereof.

And also for that whereas the said defendant heretofore to wit- on the first day of April A.D. 1856 at the said County of Kane was indebted to said plaintiff in the sum of Five Hundred Dollars for money lent and advanced to & paid laid out and expended for the said defendant by said Plaintiff at the request of said defendant. and in five hundred dollars for money had and received by the said defendant for the use of said Plaintiff and being so indebted the said defendant in consideration of the premises respectively then and there promised to pay the said several sums of money in the several counts of this declaration mentioned to the plaintiff on request. Yet he hath disregarded his

promises and has not paid any of said money or any part thereof to the plaintiff though often requested so to do to wit. at the time when and place where the said note became due and payable according to the tenor and effect thereof & oftentimes since to wit. at the leonity of Kane aforesaid but has neglected and refused and still does refuse to the damage of said plaintiff of Five Hundred Dollars and thereon he brings suit &c.

Ledgwick & Walker
Attys. for. Plff

Copy of Note & act declared on

"One year from date for value received I promise to pay O Hawkins or order two Hundred Dollars with interest March 20th 1854

Witness

3

Nicholas ^{his} Schoonover
mark

G Mercer 3

Endorsed Pay James B Gott or order

O Hawkins

To money lent &c

\$ 500-

" " " had & recd

500-

And whereas afterwards to wit- on the 9th day of June AD 1856 there was issued a Summons from the said Clerk's Office under the hand and official seal of the Clerk thereof which is in the words and figures following to wit.

State of Illinois

The People of the State of Illinois

Kane County

to the Sheriff of said County greeting

Now Command you that you summon

Nicholas Schoonhoven if he shall be found in your County personally to be and appear before the Circuit Court of said County on the first day of the next term thereof to be holden at the Court house in Seneca in said County on the second Monday of August next to answer unto James B. Gott in a plea of assumpsit to the damage of said plaintiff as he says in the sum of five hundred dollars and have you then and there this writ with an endorsement thereon in what manner you shall have executed the same.

Seal

Witness Luther Dearborn Clerk of our said Court & the seal thereof at Seneca in said County this 9th day of June AD 1856

L. Dearborn
Clerk

Upon the back of which summons is the following return to wit.
Personally served by reading to the within named Nicholas Schoonhoven

Elgin May 27th AD 1856

Service 30
17 miles 85
return 10
\$1.45

L. P. Barker, Sheriff Kane
by G. W. Renwick dep.

And whereas afterwards to wit. on the 18th day of February AD 1857 the same being one of the days of the aforesaid Kane County Circuit Court Court at the February Term thereof the defendant by his attorney filed in said Court a motion which is in the words and

figures following to wit.

State of Illinois }
Kane County } ss.

Kane County Circuit Court
February Term AD 1857

Nicholas Schoonhoven }

vs }

James B. Gott. }

Assumpsit

The said defendant by S Wilcox
now comes and moves the Court to dismiss this suit
because the writ in this case is against Nicholas Schoonhoven
and the declaration in the case is against Nicholas
Schoonover and that therefore there is a variance between
the said writ and declaration

S Wilcox

Defts Atty

State of Illinois }
Kane County } ss

S Wilcox being first duly
sworn on his oath says that he has read and
knows the contents of the above motion and
that the matter therein stated are true in substance
and fact

Subscribed & sworn to before. Silvanus Wilcox.
on this 10th day of February
AD 1857.

P. R. Knight
Clerk

And afterwards to wit on the ~~tenth~~ day of February

1857 the same being one of the days of the aforesaid Kane County Circuit Court at the said Term thereof the following among other proceedings were then & there had and entered of record to wit-

James Blott	}	Assumpsit
Nicholas Schoonhoven		

This day comes the defendant by Wiley his attorney and moves to dismiss this writ for variance between the writ and return - the court being fully advised overrules the same - and it appearing to the court that no plea has been filed in this case as heretofore ordered by the rules of the court as entered of Record - it is therefore considered by the court that the plaintiff have judgment against the defendant for want of a plea - and it further appearing to the court that the plaintiff demand was founded upon an instrument of writing for the payment of money only - it is also ordered that the clerk assess the plaintiff's damages and the clerk having subsequently reported as due from the defendant to the plaintiff the sum of Two Hundred & thirty five Dollars it is therefore ~~ordered~~ considered by the court that the plaintiff have ~~had~~ and recover from the defendant the sum of Two hundred & thirty five dollars and his costs in this suit expended & have execution therefor.

Thereupon comes Wiley attorney for the defendant and prays an appeal to the Supreme Court of this State which is allowed upon condition that the defendant enter into bond to the Plaintiff in the penal sum of Five hundred dollars with Thomas Schoonhoven security within forty days.

And whereas afterwards to wit: on the 6th day of March A.D. 1857 the said defendant filed an appeal bond in the Office of the Clerk of said Court which is in the words and figures following to wit-

Know all men by these presents that we Nicholas Schoonhoven and Thomas Schoonhoven of the County of Kane and State of Illinois are held and firmly bound unto James B. Gott, in the sum of Five Hundred Dollars to be paid unto said Gott, to the payment of which well and truly to be made we bind ourselves our heirs executors administrators and assigns jointly severally and jointly by these presents

Sealed with our seals and dated this fifth day of March. A.D. 1857.

The condition of the above obligation is such that whereas the said James B. Gott did on the 10th day of February A.D. 1857 recover in the Kane County Circuit Court of the State of Illinois a judgment against said Nicholas Schoonhoven for the sum of two hundred and thirty five dollars together with his costs and charges from which judgment the said Nicholas Schoonhoven immediately prayed an appeal to the Supreme Court which was allowed by the Judge of said Circuit Court on condition the said Nicholas Schoonhoven and said Thomas Schoonhoven as his surety file this bond in the penal sum of Five Hundred Dollars within forty days from the said day of the term of said Court conditioned as the law directs.

Now therefore if the said Nicholas Schoonhoven shall pay the said judgment, costs, interest, and damages in case the said judgment shall be affirmed and shall prosecute his said appeal with due diligence then this obligation to be paid otherwise to remain in full force and virtue.

Witness

John S. Wilson

Nicholas ^{his} Schoonhoven
J. ^{mark} Schoonhoven.



And whereas afterwards to wit, on the 18th day of April AD 1857 a Bill of exceptions was filed in the office of the Clerk of said Court which was in the words and figures following - to wit:

State of Illinois }
Kane County } as
Nicholas Schoonhoven }

Kane County Circuit Court
February Term AD 1857

vs
James B. Gott

Assault

Be it remembered that on this 10th day of February AD 1857 in the Kane County Circuit Court in the State of Illinois at the February Term thereof the motion entered in writing and filed on said day made by the defendant by his counsel in the above entitled cause to dismiss the said cause for the reason that there was alleged by the defendant a variance between the writ and declaration filed by the plaintiff herein came on to be heard and the Court after argument of counsel and due consideration overruled said motion to which opinion and decision of the Court the said defendant by his counsel excepts and then and there excepted and prays that this Bill of Exceptions may be signed and sealed by the Court which is done

Isaac G. Wilson



State of Illinois
Kane County

Page 10 -

I, Paul R. Wright, Clerk of the Circuit
Court of said County, do Certify that the foregoing
is a true & complete copy of the following papers
in file in my Office in the suit of James B.
Gott v Nicholas Schoonhoven, to-wit: the "Receipt"
"Security for Costs," "Summons," ^{with return thereon} "Declaration,"
"Motion to dismiss," "Appeal Bond," & "Bills of
Exceptions;" and also of the final judgment
with order allowing Appeal to the Supreme
Court.
Witness Paul R. Wright Clerk
of said Court and the Seal
thereof at Geneva this 18th day
of April 1857. P. R. Wright
Clerk



Nicholas Schoonhoven

vs
James B. Gott

Record -

Filed April 21, 1857
V. Leland
Clerk

State of Illinois - Supreme Court
April Term AD 1857 -

Nicholas Schoonhoven
vs ^{appellant} } Appeal from Kane
James B. Lott }

And now comes the said
appellant by S. Milox his attorney and says that
the proceedings in and judgment of the Court
below in this cause are erroneous in the
following particulars to wit.

1st The Court erred in overruling appellants
motion to dismiss the suit because of the
variance between the writ and declaration
in the cause

2^d The Court erred in rendering judgment
against the appellant. he not being within
the jurisdiction of the Court by the service of a
summons upon him or appearance -

For which errors and reasons the
said appellant prays that the judgment
in this cause in the Court below may be
reversed set aside & made void and the
cause dismissed

April 21st 1857 -

S. Milox
att'y for appellant.

¹²⁴
Nicholas Schoonhoven
vs
James B. Gott

Assignment of
Errors —

Filed April 21, 1857
S. Leland
Clerk

State of Illinois

Supreme Court. April Term A.D. 1857

Nicholas Schoonhoven

vs
James B. Gott.

} appeal from Rame

The appellant by S. Wilcox his attorney makes the following points in this case. to wit -

- 1st That the declaration did not in the names of the parties correspond and agree with the writ. The name of the defendant in the declaration being Schoonover and in the writ being Schoonhoven
- 2^d That there being a manifest variance between the writ and declaration in the above particulars the Court erred in overruling the appellants motion or plea in abatement to dismiss the suit.
- 3^d That the Court had no jurisdiction over the person of the appellant - he not having been brought into Court by summons - appearance or otherwise and consequently the Court erred in rendering judgment against the appellant -
- 4th That by Law the Court ought to have given judgment in favor of appellant & against appellee for costs —

S. Wilcox
att'y for appellant -

124 47
Nicholas Schoonhoven

vs

James B. Gott

Points made by appell-
ant in this case

Filed April 23, 1884
L. Selund
Clerk

STATE OF ILLINOIS.

SUPREME COURT, APRIL TERM, 1857.

NICHOLAS SCHOONHOVEN, }
vs. }
JAMES B. GOTT. }

Assumpsit.

POINTS OF APPELLANTS.

The person sued as defendant in the Writ is named Nicholas Schoonhoven.

The person declared against as defendant in the declaration is named Nicholas Schoonover.

These names are materially different in orthography and sound.

The declaration should correspond with the writ, in the names of the parties as well as in other particulars.

1 Chitty Plea 223—224, 5th American Ed., 1828.

7 Bac. Ab. 474, (B) 4.

2 Cowen Treatise 583, and cases cited.

Tidd Practice 402.

The defendant can take advantage of a variance between the writ and declaration, by motion or plea in abatement.

Cruikshank vs. Brown, 5 Gill. 77.

Rust vs. Frothingham, Breese 259.

In this case, defendant raised the objection of the variance, and presented the fact of a variance by written statement thereof, supported by affidavit and motion to dismiss on account thereof, substantially a plea in abatement.

There is no legal service of process in this case on the defendant. The summons is dated June 9th, 1856, and the summons appears to have been served May 26th, 1856, as by the return of the officers. This gives the Court no jurisdiction of the person of the defendant, and no appearance having been entered, no judgment could be rendered against the defendant.

S. WILCOX, Attorney for Appellant.

Nicholas Schoonhoven

vs

James B. Gott

Points of Appellant

no judgment could be rendered against the defendant.

diction of the person of the defendant, and no appearance having been entered, May 28th, 1838, as by the record, the officers. This gives the Court no jurisdiction is dated June 1st, 1838, and the summons appears to have been served. There is no legal return of process in this case on the defendant. The answer dismisses on account of irregularity, substantially, a plea in abatement.

fact of a variance by written statement thereof supported by affidavit and motion in this case, defendant raised the objection of the variance, and presented the first vs. Knottingsham, case 238. Orthography vs. Dr. (11th. 11. tion' by motion or plea in abatement.

The defendant can take advantage of a variance between the writ and declaration.

11th Practice 405.

2 Cowen Treatise 223, and cases cited.

1 Bos. & P. 414 (11th. 1.

1 Chitty Plea 338—551, 309 American Ed. 1833.

well as in other particulars.

The declaration should correspond with the writ, in the names of the parties as

These names are materially different in orthography and sound.

Schoonhoven.

The person declared against as defendant in the declaration is named Nicholas. The person and as defendant in the Writ is named Nicholas Schoonhoven.

Points of Appellant.

James B. Gott.

vs

Nicholas Schoonhoven.

Verdict.

State of Illinois.

Supreme Court, April Term, 1838.

S. WILCOX, Attorney for Appellant.

Filed April 21, 1838

Attest
Clerk

STATE OF ILLINOIS.

SUPREME COURT, APRIL TERM, 1856.

NICHOLAS SCHOONHOVEN, }
vs.
JAMES B. GOTT. }

Assumpsit.

POINTS OF APPELLANTS.

The person sued as defendant in the Writ is named Nicholas Schoonhoven.

The person declared against as defendant in the declaration is named Nicholas Schoonover.

These names are materially different in orthography and sound.

The declaration should correspond with the writ, in the names of the parties as well as in other particulars,

1 Chitty Plea 223—224, 5th American Ed., 1828.

7 Bac. Ab. 474, (B) 4.

2 Cowen Treaties 583, and cases cited.

Tidd Practice 402.

The defendant can take advantage of a variance between the writ and declaration, by motion or plea in abatement.

Cruikshank vs. Brown, 5 Gill. 77.

Rust vs. Frothingham, Breese 259.

In this case, defendant raised the objection of the variance, and presented the fact of a variance by written statement thereof, supported by affidavit and motion to dismiss on account thereof, substantially a plea in abatement.

There is no legal service of process in this case on the defendant. The summons is dated June 9th, 1856, and the summons appears to have been served May 26th, 1856, as by the return of the officers. This gives the Court no jurisdiction of the person of the defendant, and no appearance having been entered, no judgment could be rendered against the defendant.

S. WILCOX, Attorney for Appellant.

Nicholas Schoonhoven

vs

James B. Gott

Points of Appellant

S. WILCOX, Attorney for Appellant.

no judgment could be rendered against the defendant.

dition of the person of the defendant, and no appearance having been entered, May 20th, 1850, as for the return of the officers. This gives the Court no jurisdiction is dated June 3d, 1850, and the summons appears to have been served. There is no legal service of process in this case, on the defendant. The summons is on account thereof, substantially a plea in abatement.

fact of a variance by written statement thereof, supported by affidavit and motion in this case, defendant raised the objection of the variance, and presented the

fact as "Richmond," pages 250.

Chickadee vs. Brown, 2 Cobb, 11.

tion, by motion or plea in abatement.

The defendant can take advantage of a variance between the writ and declaration.

That practice 403.

3 Cases Treatise 223, and cases cited.

1 Brox 70, 474 (B) &

1 Opinions 123—234, 5th American Ed., 1838.

well as in other authorities.

The declaration should correspond with the writ, in the names of the parties as

these names are materially different in orthography and sound.

Schoonhoven.

The person named as defendant in the declaration is named Nicholas

The person named as defendant in the Writ is named Nicholas Schoonhoven.

Points of Appellant.

James B. Gott.

vs.

Nicholas Schoonhoven.

Verdict.

State of Illinois.

Superior Court, April Term, 1850.

STATE OF ILLINOIS.

SUPREME COURT, APRIL TERM, 1857.

NICHOLAS SCHOONHOVEN, }
vs. }
JAMES B. GOTT. } Assumpsit.

POINTS OF APPELLANTS.

The person sued as defendant in the Writ is named Nicholas Schoonhoven.

The person declared against as defendant in the declaration is named Nicholas Schoonover.

These names are materially different in orthography and sound.

The declaration should correspond with the writ, in the names of the parties as well as in other particulars,

1 Chitty Plea 223—224, 5th American Ed., 1828.

7 Bac. Ab. 474, (B) 4.

2 Cowen Treatise 583, and cases cited.

Tidd Practice 402.

The defendant can take advantage of a variance between the writ and declaration, by motion or plea in abatement.

Cruikshank vs. Brown, 5 Gill. 77.

Rust vs. Frothingham, Breese 250.

In this case, defendant raised the objection of the variance, and presented the fact of a variance by written statement thereof, supported by affidavit and motion to dismiss on account thereof, substantially a plea in abatement.

There is no legal service of process in this case on the defendant. The summons is dated June 9th, 1856, and the summons appears to have been served May 26th, 1856, as by the return of the officers. This gives the Court no jurisdiction of the person of the defendant, and no appearance having been entered, no judgment could be rendered against the defendant.

S. WILCOX, Attorney for Appellant.

no judgment could be rendered against the defendant.

Arrest of the person of the defendant, and no appearance having been entered, May 30th, 1850, as by the return of the officers. This gives the Court no jurisdiction is dated June 3d, 1850, and the summons appears to have been served. There is no legal service of process in this case on the defendant. The summons is on account thereof, substantially a plea in abatement.

Fact of a variance by written statement thereof, supported by affidavit and motion in this case, defendant raised the objection of the variance, and presented the fact as follows: *Brant vs. Frothingham*, *Mass.* 250.

Grisham vs. Brown, 2 Gill, 17.

non, by motion or plea in abatement.

The defendant can take advantage of a variance between the writ and declaration. *Id.* *Practice* 403.

3 *Common Pleas* 388, and cases cited.

1 *Rec. App.* 114, (B) 1.

1 *Chitty* *Plow* 233—234, 5th *American Ed.*, 1838, well as in other particulars.

The declaration should correspond with the writ, in the names of the parties as these names are materially different in orthography and sound.

Schoonhoven.

The person declared against as defendant in the declaration is named *Nicholas Schoonhoven*. The person named as defendant in the Writ is named *Nicholas Schoonhoven*.

Points of Appellate.

James B. Gott.

vs.

Nicholas Schoonhoven.

Vacant.

State of Illinois.

Supreme Court, April Term, 1851.

Nicholas Schoonhoven

vs.

James B. Gott

Points of Appellate. #

2 Spear 46-

20 Pick 436 } Edmund

6 Alla 679 } Barnham
Barnham

5 Pilar 72 } Esimandi
Esimandi

1 man 174

4 Cur 148 acc

7 Oak 159-

2 Eng 70

2 " 394

9 Barb 202

2 N 654-

10 East 83

2 Rall 135-

3 Pine 219

State of Illinois }
Superior Court }

April Term
A.D. 1838

James B. Gott ^{appellant}

Nicholas Schoorover ^{appellee}

And now comes the
said appellee by Mr. Walker
his attorney and says that in
the record & proceedings aforesaid
wherein the said appellant
has alleged there is manifest
error, there is no error
says the judgment below
may be affirmed &c

Mr. Walker
Atty for Appellee

Filed & entered by Clerk of Court
S. Milroy
Atty for appellant

Schoonhoven
Ge H²¹
No. 4

Filed April 22. 1848
L. Leland
Clk.

SUPREME COURT, APRIL TERM, A. D. 1857.
STATE OF ILLINOIS—

NICHOLAS SCHOONHOVEN, *Appellant*,
vs.
JAMES B. GOTT, *Appellee*, } Appeal from Kane.

ABSTRACT.

1 Assumpsit commenced in the Kane County Circuit Court, April 19th, 1856. On
2 said day the Appellee filed in the Clerk's office of said Court, a precipe, security for
3 costs and declaration in the cause; in each of which papers the plaintiff is named,
4 James B. Gott, and the defendant, Nicholas Schoonhoven.

5 June 9th, 1856, a summons was issued, and therein the parties are named James B.
6 Gott, plaintiff, and Nicholas Schoonhoven, defendant, which was served on Appellant,
and filed as the writ in the cause.

7 At the February Term, A. D. 1857, the Appellant appeared and filed (Feb. 10th,)
8 a motion in writing alleging that the writ was against Nicholas Schoonhoven, and the
declaration against Nicholas Schoonover, and therefore
there was a variance between the writ and declaration, and praying the dismissal
of the suit on account thereof; which motion was supported by affidavit, and moved
the Court to dismiss said suit because of said variance; which motion the court over-
ruled; to which decision of the court the Appellant excepted, and the Appellant appear-
ing no further in the case, the court rendered judgment against him.

The Appellant prayed an appeal and brings the cause here, and assigns for error the
decision of the court overruling said motion and rendering judgment against Appel-
lant.

S. WILCOX,
Att'y for Appellant.

James B. Gott
~~124~~ 49

Filed April 21, 1857
S. Leland
- CLK

Plum 9 + almond 5

Nicholas Schoontjens

vs
James B. Gott.

Schoontjens

47

1858

X

Preferred

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