

12938

No. _____

Supreme Court of Illinois

Turner

vs.

Flint

~~FILED~~

State of Illinois }
County of Cook } P.

Filed before the Honorable John M. Wilson, sole Judge
of the Cook County Court of Common Pleas within and for
the County of Cook and State of Illinois at a Special Term
of said Cook County Court of Common Pleas begun and held
at the Court House in the City of Chicago on the fifth Monday
being the twenty ninth day of November in the year of our
Lord eighteen hundred and fifty eight due notice of the time
and place of the holding said Special Term of Court having
been printed and published in the "Daily Democrat" the
Conservative Newspaper of the City of Chicago, said Notice
having been printed and published twenty days previous to the
holding of said Special Term of Court in accordance with the
Statute in such case made and provided, and in pursuance
of an Order made by the Judge of said Court on the Sixth
day of November A.D. Eighteen hundred and fifty eight.

Present Hon. John M. Wilson Judge
Charles Haven Presenting Attorney
John Gray Sheriff

Attess. Walter Kimbale. Clerk.

Be it remembered that heretofore to wit on
the seventeenth day of May A.D. Eighteen hundred and
fifty eight there was filed in the Office of the Clerk of the Cook

County Court of Common Pleas proceeds for Summons in
the words and figures following, to wit,

"State of Illinois

Cook County } S.

Hempson, D. S. Clerk

E. Whetstone Wheeler & Co.

Hempson. partners under

style of "Flint, Wheeler & Co."

vs.

Horatio A. Turner . . }

June Special Term 1858.

Cook County Court of Common
Pleas.

In debt.

Do. \$1000

Do. \$500.

Clerk will please issue to Sheriff of
said County as above returnable to next Special term &c
Seammon & Fuller

Atty. &c

And Hempson accordingly on the said seventeenth day
of May A. D. Eighteen hundred and fifty eight Summons
issued out of and under the Seal of said Court in the
words and figures following to wit.

"State of Illinois

County of Cook } S.

The People of the State of Illinois to
the Sheriff of said County greeting

We command you that you summon Horatio A. Turner
if he shall be found in your County personally to him and

appear before the Cook County Court of Common Pleas of said
County on the first day of the ^{Spring} Term thereof to be holden at
the Court House in the City of Chicago in said County on the
second Tuesday of June next to answer unto Thompson &
S. Hunt, C. Thatcher Master and Daniel Thompson in a
plea that he render unto the said plaintiffs their debt in the
sum of One thousand dollars, which he owes unto and so
unlawfully detains from the said plaintiffs to the damage of
said plaintiffs as they pay 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.

Witness Walter Kimball Clerk of our said
Court and the Seal thereof at the City of Chicago
in said County this 19th day of May A. D. 1858.

Walter Kimball, Clerk."

Anderson. "Served by reading to the within named defendant
this 19th of May 1858.

John L. Wilson, Sheriff

By George Anderson, Deputy."

And thereafter to wit on the twenty ninth day of May
A. D. Eighteen hundred and fifty eight the said plaintiffs
filed in the Office of the Clerk of said Court their Declaration
in the words and figures following to wit

"State of Illinois Cook County Court Common Pleas.
Cook County ... } Special June Term A. D. 1858.

J. B. S. Felt, C. T. Wheeler and David Thompson merchants
doing business, under the name, style and description of
Thos Wheeler & Co. Plaintiffs in this suit complain of Horatio
N. Turner defendant duly summoned &c of a plea that he
render to said Plaintiffs the sum of two thousand dollars
which he owed to and unjustly detained from them. For that
herefore to wit on the first day of February A.D. 1855 at
said County of Cook and State of Ill. then being the owner of
and in possession of the following described premises to wit

The lot of land situated in the South branch of the
Chicago River 125 feet front on Clark Street & the same on
the river and immediately adjoining the yard of J. L. Jones &
presently occupied by Horatio, Sonceaster Hoⁿ, by his certain
lease of that date did demise and lease said premises to one
John Volk from the first day of February A.D. 1855 to the first
day of April A.D. 1858 at and for a yearly rent to wit
Twenty hundred dollars payable on the first day of May
August, November and February of each year and the last
two months on the fourth year payable at the maturity of
the lease on the first of April 1858 as will fully appear from
said lease ready here in Court to be produced in the Trial of
this cause And the Plaintiffs aver that the said Horatio Jones
on to wit, on the day of the date of said lease assigned the
said lease to R. T. Hyde, who afterwards on the day last aforesaid
said assigned the same to one Robert Krugh & J. B. S. Felt
on to wit the second day of October A.D. 1856 and the said
Krugh afterwards on the same day last aforesaid assigned

and delivered the same to the said J. S. Flint, who on the same day assigned and delivered the same to plaintiffs.

And the Plaintiffs aver that said John Volk to whom said premises were demised assigned his interest therein to Defendant on or about the first day of January A. D. 1857 and Defendant then entered into possession of said premises and has ever since continued to hold possess and enjoy the same under the plaintiffs as their tenant pursuant to the terms of said lease.

And the plaintiffs aver that afterwards to wit on the first day of April A. D. 1858 a large sum of money to wit the sum of Nine hundred dollars parcel of the sum above demanded became and was due and owing from the defendant to the plaintiffs for the rent of said premises as aforesaid which the defendant withheld and refused to pay whereby an action hath accrued to the plaintiffs to have and recover of the Defendant the said sum of Nine hundred dollars parcel of the sum above demanded, yet the defendant has not paid the same or any part thereof To the Plaintiffs damage of Five hundred dollars, Wherefore they bring suit by their Attorneys

Benjamin T. Fuller."

Martha M. Turner

To Flint Whelan & Co. Dr.

To rent of the above described premises from the first of September A. D. 1857 to the first day of April A. D. 1858.

(Copy Lease)

This Indenture made this first day of February in the year of our Lord one thousand eight hundred and fifty five, between

William Jay of the City of Chicago, State of Illinois of the
first part and John Volk of the City of Chicago, Ill: of the
second part Witnesseth That the said party of the ~~second~~^{first} part
for and in consideration of the covenants and agreements hereinafter
mentioned to be kept and performed by the said party of the second
part his executors administrators and assigns has demised and
leased to the said party of the second part, all those premises
situate lying and being in the City of Chicago, in the County of
Cook and State of Illinois known and described as follows, to wit:

The lot of Land situated on the South Branch of the Chicago
River 125 feet front on Clark Street & the same on the River
and immediately adjoining the yard of J. L. Jones & Co and
recently occupied by Storck, ~~Leopold~~^{Leopold} & Co To have and to hold
the said above described premises with the appurtenances, except
the Office now on said Lot, unto the said party of the second
part his executors administrators and assigns from the first day
of January in the year of our Lord One thousand eight hundred
and fifty five for and during and until the first day of April
1858. Three years and two Months.

And the said parties of the second part in consideration
of the leasing of the premises aforesaid by the said party of the
first part to the said party of the second part do, Covenant and
agree unto the said party of the first part his heirs executors
administrators and assigns to pay to the said party of the first
part as rent for said demised premises the sum of Fourteen
hundred dollars per year rent payable on the first day of
May, August, November & February of each year and the

last two Months in the fourth year payable at the maturity of the lease on the First of April 1868.

And the said party of the second part further covenants with the said party of the first part, that at the expiration of the time in this lease mentioned he will yield up the same demised premises to the said party of the first part in as good condition as when the same were entered upon by the said party of the second part, less by fire or inevitable accident and ordinary wear excepted.

It is further agreed by the said party of the second part that neither he nor his legal representatives will underlet paid premises or any part thereof or assign this lease, without the written assent of the said party of the first part first had and obtained thereto.

It is expressly understood and agreed by and between the parties aforesaid that if the rent above reserved or any part thereof shall be behind or unpaid on the day of payment when the same ought to be paid as aforesaid, or if default shall be made in any of the covenants herein contained to be kept by the said party of the second part his executors administrators and assigns, it shall and may be lawful for the said party of the first part his heirs executors or administrators agent, attorney or assigns at his Election to declare said lease ended, and into the said demised premises, or any part thereof, either with or without process of law to enter and the said party of the second part or any other person or persons occupying in or upon the same to be put remove & put out, using such force as may be necessary

in doing, and the said premises again to repossess and enjoy
as in first and former Estate and to distrain for any
rent that may be due thereon, upon any property belonging to
the said party of the second part, whether the same be exempt
from execution or distress by law or not, and the said party of
the second part in that case hereby agrees to waive all legal
right which he may have to hold or retain any such property
under any exemption laws now or here in this State or in any
other way. Meaning and intending hereby to give to the said
party of the first part his heirs, executors, administrators and
assigns a valid and first lien upon any and all the goods, &
chattels or other property belonging to the said party of the second
part as security for the payment of said Rent in manner aforesaid
anything heretofore contained to the contrary notwithstanding
And if at any time said term shall be ended at such election
of said party of the first part his heirs executors, administrators
or assigns, as aforesaid, or in any other way, the said party of
the second part his executors administrators and assigns do
hereby covenant and agree to surrender and deliver up said above
described premises and property peaceably to said party of the
first part his heirs executors administrators or assigns immediately
upon the determination of said term as aforesaid and if he shall
remain in the possession of the same Ten days after notice of
such default, or after the termination of this lease, in any of the
ways above named he shall be deemed guilty of a forcible detainer
of said demised premises under the Statute and shall be subject
to all the conditions and provisions above named, and to recover

and removal, forcibly or otherwise, with or without process of law
as above stated -

The said party of the second part has the privilege of
leaving the above premises on the first day of April 1856 by
paying up the rent to that date, or he may continue the whole
term as above stated -

In testimony whereof the said parties have hereunto set
their hands and seals the day and year first above written.

Herani Voy } (Seal)

By A. Kristie }

John Volk } (Seal)

On which said lease are the following endorsements

" I hereby assign the within lease to A. T. Gile who
is the owner of the property within described.

Herani Voy "for Kristie"

" I hereby assign the within lease to J. A. S. Flint &
D. Knight who is the owner of said lot described.

A. T. Gile."

" I hereby assign my interest in the within lease to
Thompson A. S. Flint, having sold him the undivided half
of the lot.

Oct 2. 1856."

"D. Knight"

" For value received I hereby assign the within
lease to Flint, Wheeler & Co.

T. A. S. Flint."

And thereafter to wit on the Ninth day of June A. D.
Eighteen hundred and fifty eight the said Defendants filed in
the Office of the Clerk of said Court his Demurred to said
Plaintiffs Declaration in the words and figures following to
wit,

Horatio N. Turner } Clerk County Court of Common
at } Mac. June Special Term 1858
J. S. S. Hunt et al }

And the said Horatio N. Turner
comes and defends the wrong and injury where to and says
that the said Plffs ought not to have or maintain their afore
said action thereof against him because he says that the
Declaration aforesaid and the matter therein contained are
inefficient in law to have and maintain the action aforesaid of
the Plaintiffs against him, to which Declaration the said defendant
has no necessity nor is by the law of the land bound in any
way to answer the same & this he is ready to verify.

Wherefore for want of a sufficient declaration in this behalf he
the said deft prays judgment that the said Plffs may be barred
from having their action thereof against him.

Thompson & Co. Esq.

for Deft."

And the said Deft hereby assigns and shews to the Court
here according to some of Statute, the following causes of demurrer
that is to say.

The Declaration shews that the Lease sued on was
assigned by both parties to it originally and this Suit is brought

in the name of the last assignee against the assignee of the first.
The declaration shows that the Plffs cannot maintain suit
in their own names.

2nd No attornment or promise to pay rent by Turner to Plffs
is averred.

3rd The said Declaration is otherwise insufficient, uncertain,
inconsistent and informal.

Thompson & De Puhl
for Deft.

And thereafter to wit on the nineteenth day of June A.D.
Eighteen hundred and fifty eight said Plaintiffs filed in the
Office of the Clerk of said Court, their Answer in Demurrer to
the words and figures following, to wit.

Thompson & S. Flint
and C. Hatchler Wheeler

vs
Horatio M. Turner

And the Plaintiffs join in Demurrer
by their Attorneys.

Scammon & Fuller.

And afterwards to wit on the fourth day of December
(being one of the days of the said November Special term of
said Court) A.D. Eighteen hundred and fifty eight, the
following, among other, proceedings, were had and entered of
record in said Court to wit.

Thompson, J. S. Flint and
C. Fletcher Wheeler and
David Thompson Debt.

(re)

Horatio N. Turner . . . }

On this day comes the said Plaintiffs
by Seannion & Fuller their attorneys and the said defendant by
Thompsons & Le Pihl his attorneys also comes, and Counsel
being heard on the Demurrer of the said defendant to the said
Plaintiffs declaration in this cause and due deliberation being
thereupon had and the premises fully understood it appears to
the Court that the said Demurrer herein pleaded in bar by
the said defendant to said Plaintiffs declaration in this cause is
not sufficient in law to bar the said Plaintiffs from having
maintaining their action against the said defendant, the demurrer
is therefore overruled, with leave to the said defendant to plead
over, and the said defendant elects to stand by his said
demurrer, whereby the said defendant remains therein undefended
against the said Plaintiffs, and being three times solemnly
called in open Court, and not nor does any person for him
but herein he makes default, and pays nothing further in bar
or proclusion of said Plaintiffs action against him; Which is
in Motion ordered to be taken and his default is hereby entered
of record for want of a Plea. Wherefore said Plaintiffs ought
to have and recover of the said Defendant their debt in their
declaration mentioned and also their damages sustained herein
by detention thereof, and the Court now here after hearing the

allegations and proofs submitted by said Plaintiffs, and being fully advised in the premises, we do said Defendant to owe and be indebted to said Plaintiffs as in this Declaration alleged to the sum of Seven hundred and thirty one dollars and eighty six Cents debt and assess their damages for detention of said debt to the sum of One Cent.

Therefore this Court do award said Plaintiffs do have and receive of the said defendant their debt of Seven hundred and thirty one dollars and eighty six cents and also their damages of One Cent in sum aforesaid by the Court here found and assessed together with their costs and charges in this behalf expended and have execution therefor.

And thereupon the said Defendant prays an Appeal herewith the Supreme Court which is allowed upon filing Appeal Bond in One thousand dollars with security to be approved by the Judge of this Court within ten days from this day.

And thereafter to wit on the Eighteenth day of December A. D. Eighteen hundred and fifty eight the said defendant accordingly filed in the Office of the Clerk of said Court his Appeal Bond in the words and figures following to wit,

Know all Men by these Presents That we Horatio W. Sumner and Wendell Guthrie of Chicago, Cook County and State of Illinois are held and firmly bound unto Thompson A. S. Foster, C. Fletcher Wheeler and Daniel Thompson of the same

place in the sum of one thousand dollars Lawful Money of
the United States, for the payment of which well and truly
to be made we bind ourselves our and each of our heirs
executors administrators and assigns jointly severally finally
by these presents.

Sealed with our Seals and dated this 18th day of
December 1858.

Whereas judgment was rendered in the Cook
County Court of Common Pleas on the tenth day of December
instant in favor of the above named Thompson & S. S. Thier
vs. Fletcher Wheeler & Daniel Thompson and against the above
bounden Horatio M. Turner for the sum of Seven hundred
thirty one and 86/100 debt and one cent damages from which
said judgment the said Horatio M. Turner has prayed an Appeal
to the Supreme Court of the State of Illinois. Now therefore
the condition of the above obligation is such that if the said
Horatio M. Turner shall well & truly pay the said judgment
costs, interest and damages in case said judgment shall be
affirmed in said Supreme Court and also shall prosecute
his said Appeal with effect and without delay, then this
obligation to be void, otherwise of full force and virtue.

Approved by me

John W. Wilson

H. M. Turner (Seal)

H. G. Turner (Seal)

Judge &c

State of Illinois &

Cook County . . . &c

Handels G. Turner being duly sworn doth

deposed and pay he executed the foregoing Bond, that he is a
freeholder in the City of Chicago in the County and State afore-
said - that he is worth the sum of Two thousand dollars over
and above all his debts and liabilities and real estate of
property except by law from execution.

Subscribed and sworn to before me this 18th day of December A.D. 1858

W. Kimball. Clerk.

State of Illinois }
County of Cook } p

I Walter Kimball Clerk of the Cook County
Court of Common Pleas within and for the County and State
aforesaid do hereby certify the foregoing to be a full true and
correct Transcript of the papers now on file in my office
together with all proceedings entered of record in said Court
in a certain Suit therein, wherein Thompson, I. S. Flint and
others are Plaintiffs and Horatio M. Turner is defendant.

In testimony whereof I the said
Walter Kimball have hereunto set my
hand and affixed the Seal of said
Court at Chicago in said County this
twelfth day of April A.D. 1859.

Walter Kimball Clerk



State of Illinois }
Supreme Court }.

Horatio N Turner appellant } April 1. 1839.

J. J. S. Thirt et al appellus }

And now comes the said Horatio
N. Turner appellee by J. W. Thompson & Co. for
his attys and says that there is manifest
error in the within verdict, which he
humbly assigns as follows, viz.

The said Court of Common Pleas
erred in overruling the demurrer filed
in said cause by said appellant;

1st because the declaration shows this suit
to be upon an instrument not negotiable
and the plaintiffs being assignees thereof
cannot sue at law in their own names,

2^d Because no promise or covenant by deft,
to pay the stipulated rent & plaintiffs is averred,

3^d Because no grant or sale of the land
to plaintiffs is averred,

4th because no proper transfer of the lease
either to the plaintiffs or to the deft is averred,

5th because said declaration is otherwise
insufficient uncertain & informal, -

J. W. Thompson & Co. Attys
for Appellant,

State of Illinois
Cook County Court of
Common Pleas.

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J. S. Hunt & others

vs

Horatio N. Turner & others

Record &

cert. from

Filed April 26 1887
L. Leland
clerk

James S. H.