

No. 14537

# Supreme Court of Illinois

Ball

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vs.

Miller

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71641  7

IN THE  
SUPREME COURT OF ILLINOIS,  
Third Grand Division.

April Term, A. D. 1862.

DANIEL H. BALL,  
Plaintiff in Error.

vs.

I  
WILLIAM A MILLER,  
Defendant in Error.

ERROR TO  
DEKALB CIRCUIT COURT.

PLACITA.

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DECLARATION, promissory notes and warrants of attorney annexed thereto, and cognovit filed in the office of the clerk of said court, in vacation, after September term, to wit, on the first day of December, A. D. 1860.

*Declaration.*

1, 2, & 3

Declares in debt upon two writings obligatory, executed under seal by plaintiff in error to W. H. Allen, and by him endorsed to Rufus Hopkins, and by Hopkins endorsed to defendant in error.

*First Writing Obligatory.*

3, 4, 5, 6

Executed under seal by plaintiff in error, dated September 1st, 1860, for the payment, ninety days after date, to William H. Allen for sixteen hundred and four dollars and

*Filed April 29, 1862*  
*L. P. Leland*  
*Refuse*  
*Filed April 21, 1863*  
*W. H. Allen*  
*2 Dollars 00*

*44-8-159*  
*14537*

thirty-four cents with ten per cent. interest, and if not paid when due, with two per cent. per month damages, until paid.

4      *Warrant of Attorney.*

States that plaintiff in error is indebted to William H. Allen, on above note, for sixteen hundred and four dollars and thirty-four cents; recites the terms of the note and authorizes any attorney of any court of record, to "sign a cognovit confessing a judgment in favor of said W. H. Allen or his assignee, upon said note for the above sum with interest and damages at the rate aforesaid, if said note is not paid on the day when it became due; together with all costs, also the sum of ten dollars, as attorney's fee, for entering up said judgment, and also to file a cognovit for the amount that may be unpaid, and to release all errors," &c., &c.

7      *Affidavit of Wm. H. Allen.*

Swears to the signature of plaintiff in error, to said note and power of attorney.

7      *Assignment of Wm. H. Allen.*

Assigning above note without recourse to Rufus Hopkins.

7      *Assignment of Rufus Hopkins.*

Assigning said note to defendant in error without recourse.

7, 8      *Second Obligation in writing.*

Executed under seal by plaintiff in error, dated September 1st, 1860, promising to pay W. H. Allen six hundred and ninety-five dollars and forty-five cents with ten per cent. interest, and if not paid when due, with interest at two per cent. per month until paid, as damages for non-



payment, and authorizing any attorney "to confess judgment in favor of the holder hereof for the amount then due and costs, with ten dollars attorney fees, and to consent to immediate issue of execution," &c., &c.

*Affidavit of W. H. Allen.*

8 .

Swears to the signature of plaintiff in error, to above note and power of attorney.

*Assignment of W. H. Allen.*

9

Assigns the above note, without recourse, to Rufus Hopkins.

*Assignment of Rufus Hopkins.*

9

Assigns above note to defendant in error, without recourse.

*Cognovit.*

9, 10

Admits that plaintiff in error, "executed the writing obligatory in the said plaintiff's (defendant in error) declaration mentioned, and says: "That the said sum of twenty-two hundred and ninety-nine dollars and seventy-nine cents is justly due," and admits damages "including the sum of twenty dollars for his reasonable attorney's fees for entering this judgment, over and above his other costs and charges by him in this behalf expended to the amount and of sum seventy-seven dollars and forty-nine cents," &c., &c.

*Judgment Entry.*

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Recites, that on December 1st, A. D. 1860, plaintiff filed his declaration, in an action of trespass on the case, on promises, against the said defendant, and also a warrant of attorney sealed by said defendant, the execution of which is duly proven, authorizing the confession of judgment against said defendant, in favor of said plaintiff, for the amount due upon a certain promissory note, annexed to said warrant of attorney, also for the sum of twenty dollars,

attorney's fees, besides costs of suit; that defendant's attorney files cognovit, &c.

"It is, therefore, considered and ordered by the court that the said plaintiff have and recover of the said defendant his debt and damages to the said sum of two thousand three hundred and seventy-seven dollars and twenty-eight cents so as aforesaid confessed; together with his costs and charges by him, about his suit on this behalf expended, and that he have execution for the same."

12

*Certificate of Clerk.*

#### ASSIGNMENT OF ERRORS.

1. The court erred in entering the judgment in an action of debt, for the aggregate of principal, interest and attorney's fee, without specifying the amount of either the debt or damages.

2. The court erred in entering the judgment for a greater sum than appeared by computation to be due and owing, at the time upon the obligations declared on.

3. Neither of the warrants of attorney, annexed to the obligations upon which the judgment was entered, authorized the confession of a judgment for so large an amount as entered.

4. The court erred in entering judgment in favor of the above named defendant in error, upon the obligations described in his declaration.

5. The court erred in entering the judgment upon two obligations, to each of which was annexed a warrant of attorney, authorizing a confession of judgment upon that obligation *only*, annexed to such warrant of attorney.

6. <sup>The</sup> ~~The~~ proof of the execution of the obligations, upon which the judgment was rendered, was not sufficient to warrant the entering of the judgment at the time, and in the manner and form as entered.

E. S. SMITH, HART & CLYDE,

*For Plaintiff in Error.*