

No. **13950**

Supreme Court of Illinois

Lyle

vs.

Morse et al

STATE OF ILLINOIS.

SUPREME COURT.

Third Grand Division

No. 36.

Lyle

vs

~~Huttons~~

Morse et al

13050

Deposed

STATE OF ILLINOIS,
SUPREME COURT,

ss. The People of the State of Illinois,

To the Sheriff of the County of Henry County

Greeting:

Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Circuit Court of Henry County, before the Judge thereof, between John Lyle & Thomas Lyle

plaintiffs and George A. Morse impleaded with James Hutchins

defendant, it is said that manifest error hath intervened, to the injury of the said plaintiffs

as we are informed by their complaint, _____ the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; Therefore, We Command You, That by good and lawful men of your County, you give notice to the said George A. Morse

that he be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, to hear the records and proceedings aforesaid, and the errors assigned, if he shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said George A. Morse notice, together with this writ.

Witness, The Hon. JOHN D. CATON, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 8th day of April in the Year of Our Lord One Thousand Eight Hundred and Fifty-nine.

L. Leland
Clerk of the Supreme Court.
by J. B. Rice Deputy

I hereby accept service of the within
on this 17th day of April A.D. 1859,

Witness

Geo A Moore

J H Howe
att'y for deff

John Styles & Thomas Styles
Pls vs
George A Moore in-
pleaded with James Hulsekins
Sci Jac

Tried April 19. 1859
L Deland
Clerk



STATE OF ILLINOIS, } ss. The People of the State of Illinois,
SUPREME COURT,

To the Clerk of the Circuit Court for the County of Henry Greeting:

Because, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of Henry County, before the Judge thereof, between John Lyle and Thomas Lyle

plaintiffs and George A. Morse impleaded with James Hutchins

defendant, it is said manifest error hath intervened, to the injury of the aforesaid plaintiffs

as we are informed by their complaint, and we being willing that error should be corrected, if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the first Tuesday after the third Monday in April next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 5th day of April in the Year of Our Lord one thousand eight hundred and fifty-nine.

L. Deland

Clerk of the Supreme Court.
by J. B. Rice Deputy

John Lyle & Thomas Lyle
w 36

George A. Morse
Writ of Error

Filed April 3. 1859
L. Leland
Clerk

(11)

Pleas before the Hon John Wilson Drury
Judge of the Sixth Judicial Circuit in the State
of Illinois. At a regular term of the Circuit Court
in and for the County of Henry in the State of Illinois
begun and held at the Court House in Cambridge
in said County and State on the first Monday of
October in the year of our Lord One thousand eight
hundred and fifty seven

Present Hon. John Wilson Drury Judge
Justus F Dresser Sheriff
Thomas Wiley or Clerk

Know ye that on the 18th day of Sept AD 1857
John Lyle & Thomas Lyle by their Attorney Thos J Hen
derson filed in said court a precept for a
summons in the following entitled cause in
words and figures following to wit;

"State of Illinois }
"County of Henry } Henry County Circuit Court
October Term AD 1857

"John Lyle and Thomas Lyle
vs

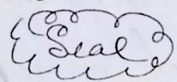
"James Neustelms and George A. Morse }

Clerk of the Circuit Court will please
"issue summons in above cause in a plea of Trespass
"on the case on promises directed to the Sheriff of said
"Henry County returnable to said term of said Court
"to the damage of said Plaintiffs of Eight Hundred dollars
" Thomas J Henderson
Attorney for Plaintiffs

(2)

(2)

And afterwards to wit on the day and year last aforesaid a summons was issued out of said court in said cause in words and figures following to wit:

"State of Illinois }
" Henry County } The People of the State of Illinois
" To the Sheriff of said County Greeting:
" You are hereby commanded to summon James
" Heuckins George A Morse to appear before the
" Circuit Court of Henry County at the next term
" thereof to be holden at Cambridge on the 1st Mon
" day of October next to answer the complaint of
" John Lyle and Thomas Lyle in a plea of Trespass
" on the case on promiss. Damages \$800.
" And have you then and there this writ
" Witness Myself & Clerk of said court and
" the seal thereof this 18 day of Sept 1837
"  J. Wiley & Clerk

And afterwards to wit on the 22^d day of Sept AD 1837
the said plaintiffs by their attorney file their declaration
in said cause in words and figures following to wit:

State of Illinois }
County of Henry } Of the October Term AD 1837
of the Henry County Circuit Court
John Lyle and Thomas Lyle plaintiffs
in this suit by Thomas J Henderson their attorney
complain of James Heuckins and George A Morse

(3)

(3)
Defendants in this suit who were summoned in
a plea of Trespass on the Case on promises.

For that whereas the said Defendants here-
tofore to wit; On the thirty first day of May in the year
of our Lord One Thousand eight hundred and fifty five
at Keokuk Illinois to wit; at the County of Henry
aforesaid Made and signed their certain promissory
note in writing and then and there delivered the
same bearing date the same day and year aforesaid
to the said plaintiffs in and by which said note
said defendants by the name style and descrip-
tion of James Hewletts and George A Morse jointly
and severally promised to pay said plaintiffs by
the name style and description of J & T Syle or
bearer the sum of five hundred dollars in one
year from the date thereof for value received by means
whereof and by force of the statute in such case
made and provided the said defendants became
liable jointly and severally to pay said Plaintiffs
said sum of Money mentioned in said note and
being so liable in consideration thereof then and
there undertook and promised jointly and severally
to pay the same to said Plaintiffs according to the
tenor and effect true intent and meaning of
said note to wit; at the place aforesaid.

And whereas also the said defendants
afterwards to wit; On the thirty first day of
May in the year of our Lord one thousand

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Eight hundred and fifty five at Kewanee Illinois
that is to say at the County of Henry aforesaid
under the name style and description of James
Hutchins and George A Morse made their certain
other promissory note or instrument in writing
bearing date a certain day and year therein
mentioned to wit: the day and year last aforesaid
and thereby then and there jointly and severally
promised to pay the said Plaintiffs under the
name style and description of J & T. Lyle or bearer
one year from the date thereof five hundred dollars for
value received and then and there delivered the said
last mentioned promissory note or instrument in
writing to the said Plaintiffs. By means whereof
and by force of the statute in such case made and
provided the said defendants then and there became
liable jointly and severally to pay to the said plain-
tiffs the said sum of money in the said last men-
tioned promissory note specified according to its
tenor and effect and being so liable they the
said Defendants in consideration thereof
afterwards to wit: On the day and year last afo-
said at the County aforesaid jointly and severally
underlook and then and there faithfully promised
the said Plaintiffs to pay them the said sum
of money in the said last mentioned prom-
issory note or instrument in writing specified
according to the tenor and effect to wit intent

(5)

and meaning of said note, to wit: at the place aforesaid.

And whereas also the said Defendants afterwards to wit: On the first day of September in the year of our Lord one thousand eight hundred and fifty seven to wit: At the said county of Henry became indebted unto the Plaintiffs in a large sum of money to wit: Eight hundred dollars for money before that time lent and advanced to and paid laid out and expended for said Defendants by said Plaintiffs at said Defendants request and for money before that time had and received by said Defendants to and for the use of said Plaintiffs And also in the like sum for goods wares and Merchandize before that time sold and delivered by said Plaintiffs to said Defendants at the special instance and request of said Defendants And also in the like sum for the labor care and diligence of said Plaintiffs before that time done and performed by said Plaintiffs for said defendants and at the like special instance and request And also in the like sum for money found to be due from the Defendants to the Plaintiffs on an account then and there stated between them and being so indebted they the said defendants in consideration thereof then and there undertook and promised to pay said

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plaintiffs said last mentioned sum of money
when therunto afterwards requested

Yet the said Defendants not regarding their
said promises and undertakings but contriving
&c although often requested so to do hath not
paid said plaintiffs either of said sums of
money or any part thereof but so to do hath
hitherto wholly neglected and refused and
still doth neglect and refuse to the damage
of said Plaintiffs of Eight Hundred Dollars
and therefore they bring suit &c

Thomas J Henderson

Attorney for Plaintiff

To James Houtchins and
George A Morse

Defendants in said suit,

Gentlemen

You will take notice that the
following is a copy of the note referred to in the
foregoing Declaration and which I will offer
in evidence on the trial of said cause to wit:

"Kewanee Illinois May 31st 1885

"For value received I promise to pay to J. T
"Lyle or bearer six hundred dollars in one
"year from date"

(Signed)

"James Houtchins"

"George A Morse"

Thomas J Henderson

Attorney for Plaintiff

(6)

Copy of Account declared on

James Hutchins & George A Morse	
To John Lyle & Thomas Lyle	Dr
To Money loaned	\$800.00
" Money had & received	\$800.00
" Goods Wares, Merchandise sold & delivered	\$800.00
" Labor done and performed	\$800.00
" Money due on an account stated	\$800.00

Thomas J Henderson
Atty for Pltffs

And Afterwards to wit on the 29th day of Sept
AD 1837, the Sheriff returned the summons
in this cause issued ~~and~~ as aforesaid, with
~~and~~ an endorsement thereon in words and
figures following to wit

"The Defendants James Hutchins & Geo A Morse
"not found in my county this 25th day of
"September AD 1837 I H Dresser Sheriff
by J A Pratt Deputy

And, Afterwards to wit on the 1th day of Oct.
AD 1837, it being the 3^d day of the term aforesaid
the following proceedings were had in said
cause to wit:

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John Lyle
Thomas Lyle

vs

Trespass

James Keetchins
Geo A Morse

At this day came the
plaintiffs in this cause by Thos Henderson
their attorney and it appearing to the court that
the said defendants have not had due notice
of the pendency of this suit. It is therefore ordered
by the court that this cause be continued for
service. And that an Alias summons issue
herein returnable to next term of this court

And afterwards to wit on the 2^d day of December
AD 1837. an Alias summons was issued
out of said court in said cause in words
and figures following to wit;

State of Illinois

Henry County } As The People of the state of
Illinois To the Sheriff of said County Greeting
You are hereby commanded to summon

James Keetchins George A Morse to appear
before the Circuit Court of Henry County at
the next term thereof to be holden at Cambridge
on the 2^d Monday of April next to answer
the complaint of John Lyle & Thomas Lyle
in a plea of Trespass on the case on promises
Damages \$800. And have you then and

(8)

there this writ Witness Wiley & clerk
of said Court and the seal thereof this
2^d day of Dec 1837
~~Frederic~~ Wiley & clerk

And afterwards to wit. on the 12th day of
Dec 1837. The Sheriff returned said summons en-
dorsed in words and figures as follows to wit
"I have served the within summons by
"reading the same to the within named
"George A Morse Dec 5th AD 1837
" J H Dresser Sheriff Henry county
per L D Bishop, Deputy

And afterwards to wit at the April Term of
said court AD 1838, . And on the 14th day of
April it being the 3^d day of said term, comes
the said defendant Geo A Morse by J H Howe
his atty and pleads to said plaintiffs declara-
tion ^{in said cause} in words and figures following to wit,
The State of Illinois }
Henry County } Circuit Court
April Term 1838

George A Morse
impleaded with
James Hutchins } Assumpsit
ads
John Lyle &
Thomas Lyle } "Pleas

(9)

1st And now comes the said George A Morse Defendant impleaded in this case with James Hentchins who has not been served with process and by J H Howe his attorney defends the wrong & injury when &c and says that he did not assume or promise in manner & force as the said plaintiffs have above thereof complained against him and of this he puts himself upon the country &c

J. H. Howe Attorney for Defendant
And Pltffs doth the like by
Henderson Smith et al Attys

2

And ^{for a} further plea in this behalf the said defendant Geo A Morse by leave of the court here for this purpose first had obtained &c says "acts non" because he says that the said promissory note mentioned referred to and set forth in the said first and second counts of the Pltffs declaration is one & the same & not other & different notes and was made executed & signed by one James Hentchins as principal and was signed by him the said George A Morse as surety only for said James Hentchins and not as principal as by said note would seem and appear and as in the said first & second counts of the Plaintiffs declaration alleged.

(10)

and solely & exclusively for the accommodation of said James Keulchins and for no other use or purpose whatever and that he the said George A Morse then & there had & received & derived no benefit whatever therefrom all of which the said John & Thomas Lyle then & there well knew

And the said defendant George A Morse further avers that on the 14th day of June A.D. 1836 & after said note became due the said George A Morse being unwilling to remain surety & liable on said note longer applied to said John & Thomas Lyle & James Keulchins and requested of them that he might be discharged and acquitted of & from said note & his name erased therefrom & he be fully discharged from all liability on account of said note, And the said George A Morse further avers that the said John and Thomas Lyle then & there in consideration of the premises and the request of the said George A Morse agreed by & with the said George A Morse and the said James Keulchins that they would fully discharge and acquit the said George A Morse of & from all liability on account of said note in consideration that the said James Keulchins would then & there give them in his place some other security for the payment of said note & thereupon the said George A.

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Morse avers that the said James Hutchins then & there in consideration of the premises did offer to make and execute to said John & Thomas Lyle a mortgage on certain Real estate situate in the town of Kewanee Keokuk County Illinois to wit: Lot No 6, in Block No. 13 with the appurtenances &c thereto belonging in lieu of said George A Morse for security on said note and on condition that the said John & Thomas Lyle would then & there fully acquit & discharge the said George A Morse from all liability on said note & the said John & Thomas Lyle then & there in consideration of the premises accepted said security to wit said mortgage on said real estate in lieu of the said George A Morse & then & there in consideration of the premises and that the said James Hutchins would at any time when thereto requested by the said John & Thomas Lyle make execute & deliver said mortgage for the purposes aforesaid to the said John & Thomas Lyle then & there agreed with the said James Hutchins & the said George A Morse to discharge & acquit said George A Morse of and from all liability on account of said note And the said George A Morse further avers that the said James Hutchins in accordance with said agreement then & there offered to said John & Thomas Lyle to make execute and deliver to them said mortgage but the said John & Thomas Lyle then & there waived the making & execu-

(12)

ting of said mortgage at that time on the ground & for the reason & no other) that they had not then time to attend to the same but that the said John & Thomas Lyle then & there in consideration of the premises fully acquiesced & discharged the said George A Morse of & from all liability on account of said note And the said George A Morse further avers that the said James Hentchins from & after that time was always ready & willing & able to make execute & deliver said mortgage to said Plaintiffs for the purpose aforesaid and after offered to the plaintiffs so to do but that the said plaintiffs on their own account & for their own convenience & accommodation & without any fault or negligence on the part of the said James Hentchins or the said defendant postponed the execution of said mortgage for want of time to attend to it from time to time until the commencement of this suit And this the said defendant is ready to verify,

Wherefore he prays judgment if the said plaintiffs ought further to maintain their aforesaid action thereof against him &c

J H Harve Atty &c

3

And for a further plea in this behalf the said George A Morse by leave of the court first had and obtained says "actio non" because he says that the said promissory note in said first & second counts of the plaintiffs declaration

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mentioned is one & the same & not other and different notes and was made and executed by one James Henshaw as principal and was signed by the said defendant as surety only & for the accommodation of said James Henshaw exclusively & for no other use or purpose whatever and not as principal as by said note would seem and appear all of which the said John & Thomas Lyle then & there well knew And the said George A Morse further avers that on or about the 14th day of June AD 1836 at Keewau in the County & State aforesaid the said John & Thomas Lyle made and entered into an agreement with the said James Henshaw by the terms of which agreement the said John & Thomas Lyle then & there agreed for a consideration in money then & there paid and agreed to be paid by said by said James Henshaw to them the said John & Thomas Lyle to wit for the sum of one hundred dollars to extend & they then & there did in consideration thereof extend the time of the payment of said note for the period of one year from and after the time when said note became due whole said agreement & extension was without the knowledge consent agreement or approbation of the said defendant surety on said note as aforesaid All of which the said defendant

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is ready to verify wherefore he prays judgment of the said Plaintiffs ought further to maintain their aforesaid action thereof against him &c

J H Horne atty for the defr

4 And for a further plea in this behalf the said defendant by leave of the court &c says

"Actis non" because he says that the said promissory note in said first and second counts of the plaintiffs declaration mentioned ~~there~~ is one & the same & not other & different notes and was at the time when &c made & entered into by one James Hutchins as principal and was then & there signed by ^{said} defendant as surety only for said James Hutchins & for his accommodation & for no other use or purpose whatever and not as principal as by & from said note would seem and appear all of which the said John & Thomas Syle then & there well knew

And the said defendant further avers that soon after said note became due to wit on the 14th day of June A.D. 1836 at Keweenaw aforesaid the said John & Thomas Syle made & entered into an agreement with said James Hutchins without the knowledge consent or agreement of the said defendant by the terms of which agreement the said Plaintiffs then & there agreed to extend & then & there did extend the time ~~appointed~~ of payment of said note one year from the

(15)

time the same became due by its terms tenor & effect for a certain consideration then & there paid & agreed to be paid to the said Plaintiffs by the said James Henselins to wit for the consideration of one hundred dollars. And the said defendant further avers that at the time said agreement was so made & entered into the said James Henselins was solvent & able to pay said note but that at the expiration of said one year from the time said agreement was so made and entered into the said James Henselins was wholly insolvent & bankrupt & unable to pay said note all of which the said defendant is ready to verify.

Wherefore he prays judgment if the said Plaintiffs ought further to have or maintain their afore said action against him the said defendant &c

J H Howe

Atty for Defr

And afterwards to wit on the day and year last aforesaid, the said Plaintiffs by their attys Beardsley & Henderson, file their demurrer to said defendants plea in words & figures following to wit:

State of Illinois

County of Henry

vs Henry County Circuit Court April Term AD 1838

(16)

John & Thomas Lyle

^{vs}
George A Morse
James Keetchins

And the said plaintiffs as to the said plea of the said defendant George A Morse by him secondly above pleaded say that the same and the matters and things therein contained the manner and form as the same are above pleaded and set forth are not sufficient in law to bar or preclude them the said plaintiffs from having or maintaining their aforesaid action thereagainst the said defendant George A Morse and that they the said plaintiffs are not bound by law to answer the same And this they are ready to verify Wherefore by reason of the insufficiency of the said plea in this behalf the said plaintiffs pray judgment and their damages by reason of the not performing of the said several promises and undertakings in the said declarations mentioned to be adjudged to them &c

Beardsley & Henderson

Plffs attys

And the said plaintiffs as to the said plea of the said defendant George A Morse by him Thirdly above pleaded say that the same and the matters and things contained the manner and form as the same are pleaded and set forth

(14)

are not sufficient in law to bar or preclude them the said plaintiffs from having or maintaining their aforesaid action thereof against the said Defendant George A Morse and that they the said plaintiffs are not bound by law to answer the same and this they are ready to verify wherefore by reason of the insufficiency of the said plea in this behalf the said plaintiffs pray judgment and their damages by reason of the not performing of the said several promises and undertakings in the said declaration mentioned to be adjudged to them &c

Beardsley & Henderson
Plffs attys

And the said plaintiffs as to the plea of the said defendant George A Morse by him fourthly above pleaded say that the same and the matters and things therein contained the manner and form as the same are above pleaded and set forth are not sufficient in law to bar or preclude them the said plaintiffs from having or maintaining their aforesaid action thereof against the said Defendant George A Morse and that they the said plaintiffs are not bound by law to answer the same and this they are ready to verify wherefore by reason of the insufficiency of the said plea in this behalf the said plaintiffs pray judgment and their damages by reason of the not performing of the said several promises and undertakings in the

(18)

said Declaration mentioned to be adjudged
to them &c

Beardsley & Henderson

Plffs attys

And afterwards to wit at the term last aforesaid
and on the 8th day of the term thereof it being
the 20th day of April AD 1838, the following proceedings
were had in said cause to wit;

John Lyle

Thomas Lyle

vs

James Keitchins

George A Morse

Assumpsit

At this day came the said
plaintiffs by Henderson their attorney and the
said defendants by Wilkinson Pleasant & Howe
his attys and this cause coming on to be heard
leave given to withdraw demurrer and
also leave given to reply double, Demurrer
to second replication sustained

And afterwards to wit, on the 21st day of April
and on the 9th day of the term ^{last} aforesaid, the
said plaintiffs by their attorneys and reply
in words and figures following to wit

And now said plaintiffs as to said
plea of said defendant George A Morse

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by him secondly above pleaded say "procludi
non because they say that the said promissory
note in the first and second counts of plaintiffs
said declaration mentioned was not signed
by said defendant as surety as in said plea
is alleged and of this the said plaintiffs
put themselves on the Country &c

By Henderson Smith et al

Their attorneys

And the said defr doth the like

by J H Howe atty for Defr

2^d

And for further replication
in this behalf as to said defendants said second
plea by him secondly above pleaded said plaintiffs
say procludi non because they say that the said
supposed agreement of said plaintiffs to discharge
said defendant from liability on said note as
in said plea mentioned was wholly and without
consideration in this to wit that such agreement
of said plaintiffs (if any such was made) was
made upon the parol promise and agreement
of said James Hutchins in said plea named
that the said Hutchins would secure said prom-
issory note in plaintiffs said declaration men-
tioned by a certain indenture of mortgage to be
executed by the said Hutchins thereby con-
veying to the plaintiffs certain real estate

(20)

conditioned for the due payment of said
note to said plaintiffs and which said agree-
ment of said Hutchins was never executed
or performed by him; and said plaintiffs aver
that said agreement of said Hutchins so being
a parol agreement to convey real estate was
and is wholly void in law and furnishes
no valid consideration for the said supposed
agreement of said plaintiffs and thus they are
ready to verify Wherefore they pray judgment
ac By Henderson Smith et al
Their attys

3^d

And for further replication in this behalf
as to said defendants (Geo A Morse) said
second plea by him above pleaded said
plaintiffs say preclude non because they
say that they did not discharge said defendants
from liability on said note in plaintiffs dec-
laration mentioned in manner and form
as in said plea is alleged and of this they
put themselves on the Country for trial

By Henderson Smith et al
Their attys

And defrs do the like

By J H Howe attys

4
(21)

And for further replication in this behalf as
to said defendants (George A Morse) said some
plea by him secondly above pleaded said plain-
tiffs say precludi non because they say that the
said James Henshaws in said plea mentioned
has not always been ready able and willing
to execute the said mortgage in said plea men-
tioned as in said plea is alledged and of this
they put themselves on the country for trial &c

By Henderson Junr et al
Their attys

And defr doth the like

By J H Howe atty

5th

And as to said third and fourth pleas of
said defendant (George A Morse) by him thirdly
& fourthly above pleaded said plaintiffs say
precludi non because they say that the said
promissory note in plaintiffs said declaration
mentioned was not signed by said defendant
as security only as in said plea is alledged
and of this they put themselves on the country
for trial &c

By Henderson Junr et al
Their attys

And defr doth the like

By J H Howe atty

(22)

And for further replication in this behalf as to said defendants (George A Morse, said third & fourth pleas by him thirdly & fourthly above pleaded, said plaintiffs say preclude now because they say, that they did not for the consideration in said pleas mentioned or for any other consideration extend the time for the payment of said note in plaintiffs said declaration mentioned as in said pleas is alleged and of this they put themselves on the country for trial &

By Henderson & Smith et al
Their Attorney

And the said defendants the like
by J H Howe atty

And afterwards a writ came the 28th of April at the term last aforesaid, at which the 17th day of the term thereof the defendant by his attorney files his replication in words and figures following to wit:

And the said George A Morse as to the Replication of the Plaintiffs by them secondly above replied says that the same & the matters & things therein contained are not sufficient in law for the said Plaintiffs to have or maintain their said action thereof against him & that he is not bound by law to answer

(23)

the same & this he is ready to verify

Wherefore he prays judgment if the said Plaintiffs ought further to have or maintain their said action thereof against him &c

J H Howe atty for defr
And for causes of demurr the defr assigns the following

1 The said Replication is a replication in confession and avoidance but does not confess

2 The allegation & subject matter of said Replication is not warranted by law

J H Howe atty for Plff

And afterwards to wit at the term ^{last} aforesaid and on the 18th day thereof the following proceedings were had to wit:

John & Thomas Lyle

vs.

James Neatchins

Geo A Morse

} Assumpst

At this day this cause being again called, motion is made by defendant for continuance. And the court having heard the motion and being fully advised on the premises, sustains the motion. It is therefore ordered by the court that this cause be and the same is hereby continued at the cost of the said defendants to the next term of this court

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And afterwards to wit at the October Term
AD 1838 of said Circuit Court and on the 14th
day of Oct. it being the 10th day of the term
the following proceedings were had in said cause
to wit

John Lyle

Thomas Lyle

vs

James Hutchins

George A Morse

Assumpsit

At this day came the said
plaintiffs herein by Henderson their attorney and
the defendant George A Morse by Howe Wilkinson
in Pleasants his attorneys and this cause now
coming on to be heard and issue being joined
herein It is ordered by the court that a jury
be called and thereupon to try this cause came
the jurors of a jury of good and lawful men to wit
J Sheppard. S B Randall A J Gardner J Jacobson
Thomas Bolen Moses Kesser J B Harding M B
Ogden J. J. Mc Ivor H C Patterson E Blackwell
and H H Davis who were duly selected chosen
and sworn to well and truly try this cause and
a true verdict give according to the evidence
And the jury having heard the evidence the
arguments of the counsel and all things herein
retire to consider of their verdict

(25)

And afterwards to wit at the term last aforesaid and on the 12th day thereof and the 16th day of Oct. the following proceedings were had in said cause to wit:

"At this day comes the jurors aforesaid and present their verdict in said cause in words and figures following to wit "We the jury in the above entitled cause do find the issue for the defendant" S B Randall foreman" which is approved by the court And thereupon comes the said Plaintiffs by their attys and enter their motion for arrest of judgment and also for a new trial And the court having heard the motions and the reasons offered therefor and being now fully advised in the premises Orders that the same be and they are hereby overruled Whereupon It is considered and adjudged by the court that the defendants have and recover of the plaintiffs the amount of their costs in this behalf expended and they have execution therefor against the said Plaintiffs.

And afterwards to wit on the 21st day of Oct 1838 and at the term of the court last aforesaid, comes the said Plaintiffs by their attorneys, and file their Bill of Exceptions in the above cause for an appeal from the judgment of this court

(26)

To the Supreme Court of the State of Illinois
in compliance with the statute in such cases
made and provided, which Bill is in words
and figures following to wit:

John Lyle &
Thomas Lyle

vs

George A Morse
impleaded with
James Hutchins

Bill of Exceptions

Be it remembered that
at the foregoing Term of said Court the above
entitled cause coming on to be heard, to support
the issues on their part, the said Plaintiffs
offered in evidence a promissory note in
the words and figures following to wit:

"Keewauke Illinois May 31st 1835

"For value received I promise to pay to J &
"J Lyle or bearer six hundred dollars in one
"year from date

Signed James Hutchins

George A Morse "

And on the back of said note appeared the
following endorsement,

"Received one hundred dollars on this note
which note with the aforesaid endorsement
thereon was by plaintiffs Counsel read in
evidence to the jury without objection

(24)

And to sustain the issues on the part of George A Morse Deft. ON Loomis being sworn in the half of said defendant and at his instance testified as follows

The Plaintiff counsel here propounded to said witness the following question

"State whether the Defendant signed the note offered in evidence by the Plaintiffs as principal or surety?" To which question addressed to said witness the said Plffs by their counsel then & there objected but the Court overruled the objections to which decision of the Court the Plffs then & there excepted & said witness was permitted to answer as follows, "He signed the note as surety"

Witness further testified that before James Heatchum the other signer of said note left the town of Newau in said Henry County and some time in the early part of the summer of 1837 and about the time of said Heatchum's failure he (the witness) had a conversation with John Lyle one of the Plffs in which conversation said John Lyle enquired of witness if he knew whether Deft Morse had any security in his hands belonging to said Heatchum; witness replied that he was not certain whether he had or not Said John Lyle then remarked to witness that he supposed Deft Morse considered himself discharged from said note long ago that about the said

(28)

note became due Deft Morse told us (meaning said John & Thomas) that he (Morse) was not willing to stand as security on the note any longer and that said John further said "we (said John & Thomas) was to get other security and Hutchins was to give us a mortgage on a certain lot"

That he (said John) had been several times to get the mortgage but that sometimes his brother (said Thomas) went there sometimes Hutchins was gone or went ready or busy"

Witness further testified that said John further said that after Hutchins failed we (meaning said John & Thomas) went to get the mortgage and Hutchins refused to give it. That Hutchins said we had had plenty of time to get the note secured within a year and that now they could not have the security witness further testified that said John remarked something about losing by said Hutchins but could not remember exactly what

On cross examination said witness stated that said John Lyfe said nothing about his having discharged Morse the Deft that said John stated as witness has before related namely that Morse stated that he did not want to stand security any longer that they (the P-Defts) could get other security and that Hutchins as Morse said had agreed

(29)

to give it. Witness further says that this conversation occurred about a week after the note became due and upon being further interrogated witness said that he had an indistinct recollection and thought that said John (Plf) assigned as a reason for asking if Morse had any security of Hutchins in his hands that he might get hold of that land.

And to support the issues on the part of Defr said Defr introduced as a witness in his behalf Geo W Samson who being duly sworn testified as follows.

That in the spring or summer of 1837 after James Hutchins failed and the next day after he failed witness was at the livery barn of Hutchins & Bullen in the town of Newane. One of said Plfs namely John Lyle was also there and said to witness that he wanted to speak to him whereupon witness and said John went into a stable of said barn when said John asked witness if it was true that Hutchins had gone up or failed? to which witness replied that he was not aware of the fact and presumed it was not so. Witness then asked said John if he had got his borrowed money of Hutchins meaning as witness

(30)

stated a sum of one hundred or one hundred
& fifty dollars that said Hutchins had
borrowed of Plfs) said John replied he
had not witness then remarked to said
John if he (Hutchins) has gone up he wont
wrong you said John then stated that Hutchins
owed them (the Plfs) a good deal beside that sum
and that he didnt know but they should lose
witness cant say how much but thinks from
fifteen hundred to two thousand dollars or
thereabouts witness further stated that a short
time before said Hutchins left in Sept or
October last he had another conversation
with said John and asked him if he offered
to take security on Hutchins household
and wait three or five years said John replied
that he told said Hutchins that if he (Hutchins)
would do it he (said John) would wait and
that if he (Hutchins) died in the mean time
he (said John) would discharge the mortgage
for the benefit of his (Hutchins) widow
witness further states that he cannot
certainly say whether said John told him
that he offered to wait without interest but thinks
he did, witness further states that in the
conversation in the barn of Hutchins and
Bullrich above referred to said John spoke
of the note now in suit and spoke of it in

(31)

such a way as to convey the idea to witness that the note now in suit formed part of said sum of fifteen hundred or two thousand dollars spoke of by said John. In this conversation or some other the Plf John said he supposed the defr Morse considered himself discharged from said note.

On cross examination witness states that he is inclined to think that when said John told him that he supposed Morse considered himself discharged from said note he also stated that he (said John) did not consider Morse discharged but of this he (witness) is very uncertain.

The foregoing is substantially all the evidence introduced at the trial of said cause both on the part of Plaintiffs and defendants.

Whereupon said Plfs by their counsel asked the court to instruct the jury as follows

1 The note introduced in evidence by the plaintiff is sufficient to sustain the Plfs right to recover in this suit so far as the first plea of Defr puts at issue the facts charged in Plaintiffs declaration.

2 Unless from the evidence in this case the jury believe that the defr Morse signed the note described in Plaintiff declaration as

Given

(32)

Given

Surety then without regard to any other fact put at issue by the proceedings in this case the jury should return a verdict for the Plaintiffs

3

Given

The question whether the Defr Morse signed the note offered in evidence as surety cannot be properly proved by the assertions conversations or admissions of the signers of said note so as to affect the Plaintiffs in this suit unless the Jury further find from the evidence that the Plfs acquiesced in or admitted the fact so claimed or asserted by the signer or signers of said note

4

Given

The endorsement of the sum of money appearing on the back of the note offered in evidence is evidence of payment of so much of the principal of said note and is not evidence in this case to sustain the allegations contained in the 3^d and 4th pleas of defendant namely that in consideration of a certain sum of money to wit the sum of one hundred dollars alleged to have been paid by James McIntosh to the Plfs the said Plfs agreed to extend the time of the payment of said note for the period of one year after same had or should become due

(33) 5

Unless from the evidence in this case the jury believe that the Plaintiffs in consideration of the sum of one hundred dollars as mentioned in the 3^d & 4th pleas of said Defr agreed to extend the time for the payment of said note for the period of one year then so far as said 3^d & 4th pleas are concerned the jury should return a verdict for the Plfs and the burthen of proof is on the defendant to prove that the time of the payment of said note was so extended upon the conditions mentioned in said pleas

Given

6

If the jury believe from the evidence in this case that the plaintiffs or either of them before the commencement of this suit sought to obtain a security by way of mortgage for the indebtedness of James Keulemans to them including the note now in controversy such attempt on their part is entirely consistent with a liability of Defr to pay said note and does not thereby release or discharge the defendant therefrom

Given

7

If from the evidence the Jury believe that the defendant Morse at or about the time the note in controversy became due or at any other time before or since applied to the plaintiffs and notified them by word

Given

(34)

of months that he would not stand liable on said note any longer and at the same time requested them to collect or otherwise secure said note such notice and request on the part of said morse does not thereby discharge or release him from his liability on said note

8

If, from the evidence in this case the jury believe that the Plfs or either of them agreed to extend the time of the payment of the note offered in evidence for the period of one year or any other length of time still if such agreement was not made upon the consideration stated in the pleadings the plaintiffs are not bound by it and such agreement constitutes no bar to the plaintiffs right of recovery in this suit

9.

It is not an alteration of a contract in any particular the fact that the contract is not enforced when it becomes due and no party to such contract is thereby released unless it be in the case of a surety who had made demand in writing that such contract be paid

And the said Deft on his part asks the court to give the following instructions to the Jury:

1 If the Jury find from the evidence that the defendant Morse signed the note upon which this suit is brought as surety in fact then they will regard him in this case in considering and applying the testimony as a surety and not as a principal

2 If the Jury find from the evidence that at or about the time the note in question became due the defendant Morse sought the plaintiffs or told them that he was unwilling to remain surety on said note longer and that the plaintiffs then agreed by parol or otherwise to release defendant Morse and take other security from James Keutchnus the principal in said note & that said Keutchnus then ~~principal~~ agreed to give other security on said note in lieu of said Morse then the defendant Morse is discharged from

(36)

said note and the Jury will find
for the defendant

3

If the Jury find that the agreement men-
tioned in the foregoing instruction was
made by Parol or otherwise then it is
entirely immaterial whether the Plaintiffs
Lyle ever got other security or not or whether
Hutchins was able to give it or not but
that the agreement of the Lyles to discharge
Morse upon Hutchins agreement to give
other security discharges Morse whether it
was ever executed or not and the jury
should find for the defendant

Given

4

That the acts as well as the declarations
of the Plaintiffs are competent evidence
tending to prove the agreement referred
to and may be so regarded by the Jury

Given

5

That such an agreement as is referred to
in the foregoing instructions may as well
be proved by the acts conduct & declarations
of the Plaintiffs as by other testimony and
if so proved the Jury are bound to regard
it

Given

6

It is not necessary to constitute a
perfect defense to this action that Morse

(37)

Given

The defendant should prove that the Plaintiffs in express terms agreed to discharge said defendant Morse from his liability as surety - if they are satisfied from any other proven expressions or acts of the Plaintiffs that it was the agreement of the parties that he (Morse) was so discharged and that the Plaintiffs were to take a mortgage or other security from Hutchins or any one else in the place and stead of Morse -

7

Given

If the Jury finds from the evidence that defendant Morse signed this note as surety and that after it became due the Plaintiffs Lyle extended the time of payment of said note one year or any length of time for the consideration of one hundred dollars & without the consent of defendant Morse such extension releases Morse & the Jury should find for the defendant

8

Given

That the Law and courts are anxious to protect Sureties and that any material change in the relations between the principal Hutchins and the Plaintiffs Lyle or any departure by them from the original contract by a new contract

(38)

for other security or other contract by which the liability of Morse is materially changed varied enlarged overextended discharges Morse and the Jury should find for the defendant (See Parsons on contracts & cases there cited)

9

Given

The true rule for interpreting a contract is to endeavor to ascertain the real intent & meaning of the parties who entered into it & to attach a meaning & force to it in accordance with such intent & meaning when arrived at

And to the giving of said instructions on the part of said Defr the said Plfs by their counsel then & there excepted

Whereupon said cause was submitted to the Jury who returned the following verdict; "We the jury find for the defendant" S B Randall foreman"

And thereupon said Plfs entered their motions in arrest of judgment and for a new trial which motions are in the words & figures following

(39)

State of Illinois
Henry County

} ss In the Circuit Court of
- said County at the October
Term thereof AD 1838

John Lyle &
Thomas Lyle
vs

George A Morse
impleaded with
James Hutchins

And now comes the said
Plfs by Beardsley Henderson & al their at-
torneys after verdict & before Judge and
move said Court to arrest judgment in the
above entitled cause for reasons apparent
on the face of the pleadings herein and par-
ticularly for the insufficiency & informality
of said Defts said several pleas by him
secondly above pleaded.

Beardsley Henderson & al
attys for Plfs

And now comes the said Plfs by Beardsley
Henderson & al their attys and move said
Court for a new trial in the above enti-
tled cause for the following reasons to wit
1 Because the Court at the trial of said
cause before the Jury admitted evidence
in behalf of Defts that was then & there object-
ed to by Plfs and which should have been

(40)

excluded by the court from the consideration of the jury

2 Because the court refused in instructions to the jury asked for by said Plfs on the trial of said cause before the jury

3 Because the court erred in giving the instructions asked by said Defr and which were then & there objected to by Plfs and which should have been refused or excluded from the consideration of the jury at the trial of said cause

4 Because said verdict was contrary to law and evidence

all which is submitted by
Beardsly Henderson & al
Attys for Plfs

which several motions in arrest & new trial coming on to be heard the court overruled them and refused to arrest the judgment in said cause or grant said Plfs a new trial herein.

To which decisions of said court refusing to arrest judgment & refusing to grant said Plfs a new trial said Plfs then & there excepted and there upon said court entered judgment for Defr upon the verdict

(41)

herein,

And forasmuch as the matters aforesaid do not appear of record herein said Plfs. pray that this bill of exceptions be allowed and signed & sealed and made part of the record in said cause all which in open court is done at the term aforesaid

Signed;

J W Drury Judge (Seal)

State of Illinois }
Henry County } H. J. Thomas Wiley & clerk
of the Circuit Court in and for said county do hereby certify that the foregoing is a full and complete copy of the record and proceedings in the above entitled cause as appears of record in my office

Witness Thomas Wiley ^{clerk} and the seal of said court at office in Cambridge
this 28th day of March AD 1839

Thomas Wiley & clerk
By Wm L Dabrymple Deputy

State of Illinois In the Supreme Court
 Third Grand Division of in & for the Division of
 State apd here at Ottawa Aft. Jan 1859.
 John Lytle & Thomas Lytle } Pls in Error
 " }
 George A. Miner, impounded } deft in Error
 with James Kullshinn }

And now comes said Pls in
 the above entitled cause and say
 that in the record & proceedings and also
 in the rendition of the judgement, herein,
 in the Court below, manifest error
 hath intervened, to the injury of said
 Pls, in this twist: -

1. Because the Court below sustained
 defendants demurrer to Pls replication,
 number two, (2) -
- 2 Because the Court refused to carry back
 said demurrer and sustain it to depts
 plea number two, (2)
3. Because, the Court below admitted evidence
 as the trial of said cause, in behalf
 of deft, which was objected to by Pls,
 and which should have been excluded
4. Because the Court below gave to
 the jury instructions ~~to the jury~~ number one (1) two (2)
 three (3) four (4) five (5) six (6) seven
 (7) eight (8) and nine (9) asked by

since Defendant, and which said court
instructions should have been refused

5 Because the Court before overruled
Plaintiff's motion for a new Trial -

6 Because the Court refused to
grant judgment in said cases -

Harvey & Smith
Attys for Plt

And now comes the defendant in error
by Leland Leland his attys & says
that there is no error in the record or pro-
ceedings aforesaid or in giving the verdicts
aforesaid & prays that said verdicts
may be in all things affirmed.

Leland Leland

For under in error

for att in error

Filed April 20. 1859

L Leland Clerk

1859 APR 20 11

~~15~~ 36
John Lyle
Thomas Lyle
vs

James Neutelius
George A Morse

Court Record
Certified Copy

Filed April 5th 1859
L. Leland
Clerk

\$ 10.50