

13966

No. _____

Supreme Court of Illinois

Aiken

vs.

Deal

Joshua Siken
vs.
Philip S. Deal

Exempt, Judgment by default
at the Peoria Circuit Court at April
term 1835.

State of Illinois,
Peoria County; ss,

Joshua Siken of the County of Peoria and
State of Illinois being duly sworn deposes and says that
on or about the twenty fifth day of August A.D. 1834, there
was an action or suit at Law Commenced against him,
by a summons issuing from the Peoria Circuit Court,
at Peoria aforesaid in the name of, and requiring him
to answer; as he this deponent then supposed understood
and believed to, William Compher and Philip S. Deal at
the next of term of said Court then ensuing, being the
term of October in said year. And this deponent
further says that the said Compher & Deal had
for some time previous to the commencement of the aforesaid
action, been partners in business and transacting business
under the name firm or style of Compher & Deal, at
Peoria aforesaid as merchants, and that mutual
accounts had accrued between this deponent and the
said firm of Compher & Deal, that this deponent sup-
posed believed and understood said summons and
said action to be commenced in the names of said
Compher & Deal, on, and for the recovery of money on their
partnership account against this deponent; whereas
in truth and in fact this deponent was ^{under a} mistake in
thus supposing and believing, as the said action and
the said summons was in the name of Philip S. Deal
only; the partner of said Compher as aforesaid, and
not in the name of said Compher & Deal.

And this deponent further says that never
having had any accounts dealing or business transactions
with the said Deal apart from said firm and in his
individual capacity; he was therefore more likely &
did receive from the officer serving said summons such
erroneous impression & belief as aforesaid; that the said
action was in the name of the said Compher & Deal as

plaintiffs. And this deponent further says that having urgent business that required his attention out of this State at and before the April term of said Court A.D. 1835 to which said term the said cause was continued called upon one Lewis Bigelow Esq. a practising attorney of said Circuit Court and informed him of this deponents intended absence from this State, and of this deponents desire that he the said Lewis Bigelow would attend to said cause as his attorney and defend the same in this deponents absence as aforesaid, and this deponent verily supposed and believed that he the said Lewis Bigelow Esq. would have attended to said cause; - but, either owing to the said suit or action having been in fact in the name of Philip B. Deal and not in the name of said Comphor Deal as this deponent believed and so informed the said Lewis Bigelow Esq., or ~~for~~ from some mistake or misapprehension, or some other cause unknown to this deponent, the said Lewis Bigelow Esq. neglected to attend to the same. This deponent previous to his departure

from this State as aforesaid, which said departure took place a short time previous to the said April term, filed with Isaac Waters then Clerk of said Court this deponents account against the said firm of Comphor & Deal and made an affidavit before said Clerk that the same was a true account from this deponents books, this deponent at that time also supposing that said suit or action was commenced by said Comphor & Deal for and on said partnership account and not in the individual name of said Deal alone as the same was in fact commenced.

And this deponent further says that a Judgment was rendered by default against him in the said cause in the name of Philip B. Deal as plaintiff at the said April term for the sum of two hundred and thirty nine dollars and eighty three ^{cents} ~~cents~~ damages.

And this deponent further says that he never at ^{any} time to his knowledge ~~see~~ recollection or belief had any or contracted any account or accounts or became

at the said ~~time~~ and thirty nine dollars and eighty three cents, damages. And this deponent further says that he never ^{any} at ^{any} time to his knowledge ~~or~~ recollection or belief had any or contracted any account or accounts or became

in any way indebted to the said Philip B. Deal in his separate and individual capacity apart from the said firm of Bomphor & Deal; but that all his dealing and accounts contracted, and indebtedness, was to and with the said firm of Bomphor & Deal and not with the said Deal the partner of said Bomphor in his separate & individual capacity as aforesaid.

And this deponent further says that an account was delivered to him a short time previous to the commencement of the said action, made out in the name and firm of said Bomphor & Deal against this deponent, and that all and every one of the items and charges contained in the account which was made out in the name of Philip B. Deal, and on which said judgment was rendered were also contained in the said account that was so made out in the partnership name of said Bomphor & Deal & delivered to this deponent

as aforesaid, and according to the said partnership account so delivered to this deponent and this deponent's account against said firm this deponent will be indebted to said firm which this deponent is ready and willing to pay of the same he fully says.

And this deponent further says that if he were to prosecute a suit or action against the said Bomphor & Deal for the recovery of the amount due on the account which this deponent has against the said firm of Bomphor & Deal he would be wholly unable to collect the same, as the said Bomphor & the said Deal are, as this deponent is informed and verily believes to be true; both insolvent and unable to pay their partnership or individual debts and accounts; and the said Deal has left this state as this deponent is informed & believes.

And this deponent further says that an injunction was granted by the Judge of the said Circuit Court; staying proceedings on the said judgment, enjoining & prohibiting the collection thereof; - but that said injunction was afterwards dissolved solely on account, and by reason of, an informality or defect in the injunction bond

used to obtain said injunction and not upon the merits of
said Bill.

And this deponent further says that great injustice will be done him, if he is compelled to pay and satisfy the said Judgment so rendered as aforesaid in favour of the said Philip B. Deal; as there is now, and was due before the commencement of the said action by the said Philip B. Deal, to this deponent. from the said firm of Comphor & Deal, after deducting all that this deponent is indebted to said firm ^{upon} account or otherwise, the sum of twenty eight dollars and seventy nine and a half Cents as this deponent has kept the mutual accounts between said firm & himself, & believes the correct just & true.

And this deponent further says that he has an amount of property and effects that is more than sufficient to satisfy said Judgment which is liable to an execution upon the same, and that he is now threatened with and liable to, the operation of said Execution.

And further this deponent prith not

State of Illinois
Leon County

Joshua Aikens

3rd Dec. December 21 A D 1836

Then personally appeared before me the undersigned a justice of the Peace Joshua Aikens who subscribed the foregoing Affidavit ~~and~~ ^{and} made solemn oath that the facts set forth in the foregoing Bill of Complaint are true according to his best knowledge information and belief

Cyrus L. Pease, J. Peace.
in and for the County aforesaid.

John A. Siken

at

Philip G. Seal

Att. of merits.

Jilca Jan. 13, 1837

Indusian

other refused

Dec. Term 1836

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