

No. 12626

Supreme Court of Illinois

Roberts.

vs.

Haskell.

107 = 42

Postens B. Roberts

vs

William H. Haskell

Agmon

134

12626

Prepared

X

1858

Be it Remembered that there was filed in the Clerk's office of the County Court on the 22^d day of December A.D. 1857 in the suit of William H. Haskell vs. Poteus B. Roberts the following Declaration which in words and figures is as follows To Wit.

William H. Haskell } County Court Peoria County
vs. } January Term A.D. 1858.
Poteus B. Roberts }

William H. Haskell Plaintiff in this suit complains of Poteus B. Roberts defendant in a plea of Trespass on the case upon promises. For that Whereas herebefore to wit at the said County of Peoria on the tenth day of May A.D. 1853 one Michael Ganone made his promissory note in substance as follows to wit.

\$200. Peoria Ill May 10th 1853

One year after date I promise to pay to Isaac Underhill or order two hundred dollars, for value received, with interest at six per cent per annum payable annually from the date hereof M. Ganone. And there I there delivered the said note to the said Underhill and the said Underhill then & there endorsed said note as follows to wit. pay to Poteus B. Roberts without recourse to me. I. Underhill & then & there delivered the same to said Roberts. And the said Roberts then & there endorsed the said note as follows to wit. pay William Brady or order P. B. Roberts and then & there delivered the same to said Brady & endorsed. And the said Brady then & there endorsed the said note as follows. Pay to William H. Haskell William Brady and then & there delivered the said note & endorsed to the said Plaintiff to wit at said Peoria County. And Plaintiff avers that on the 23^d day of May A.D. 1856. And that declaration was filed in said cause by said Plaintiff on the 13th day of August A.D. 1856. And that said Ganone pleaded to said action against him on the 20th day of November 1856 and at the March term of said Court A.D. 1857 said Plaintiff recovered a judgment upon said note against the said Ganone for the sum of two hundred and twenty three dollars & three cents and costs of suit taxed at three dollars & fifty cents. And that execution upon the said judgment issued to the Sheriff of said Peoria County against said Ganone on the 21st

Declaration

He commenced suit upon said note against said Ganone. And the said note was returned in said suit on said 23^d day of May A.D. 1856. And the said note was returned in said suit on said 23^d day of May A.D. 1856. And the said note was returned in said suit on said 23^d day of May A.D. 1856.

day of April 1857 and that said Execution was returned nulla bona by said Sheriff on the 22nd day of April 1857 By reason whereof and by virtue of the Statute in such case made and provided the said Defendant became liable to pay to said Plaintiff the said Sum of Money mentioned in said promissory note according to the tenor and effect thereof. And being so liable the said Defendant in consideration thereof then & there undertook and faithfully promised the Plaintiff to pay him the said Sum of money according to the tenor of the said note. And also for that whereas herebefore to wit on the tenth day of May A.D. 1855 one Michael Ganon made his certain other promissory note in Writing in substance as follows to wit \$200. Proua Ill May 10th 1855 One Year after date I promise to pay to Isaac Underhill or Order Two hundred dollars for value received with interest at Six per cent per annum payable annually from the date hereof.

M. Ganon
and then there delivered the same to said Underhill. And the said Underhill then and there endorsed said Note as follows. Pay to B. Roberts without recourse to me. Underhill and delivered the same so endorsed to said Roberts and the said Roberts then and there endorsed the said note as follows "Pay to William Brady or Order B. Roberts and delivered the Note so endorsed to said Brady and said Brady then and there endorsed the said note as follows "Pay William H. Haskell William Brady and then and there delivered the said note so endorsed to said Plaintiff to wit at said Proua County And said Plaintiff avers that said note still remains wholly due and unpaid And that at the time when said note became & fell due and payable said Ganon the maker thereof was wholly insolvent And that the institution and prosecution of Suit against said Ganon upon said note would have proved wholly unavailing. By reason whereof and by virtue of the Statute in such case made and provided the said Defendant became liable to pay to the Plaintiff the sum of money mentioned in said promissory note according to the tenor and effect of said note. And being so liable said Defendant then & there undertook and faithfully promised the Plaintiff to pay him the said Sum of money according to the tenor & effect of said promissory note

And also for that whereas heretofore to Wit at said Peoria County
on the first day of December A.D. 1857. said Defendant
was indebted to the Plaintiff in the further sum of three hundred
dollars for so much money before that time paid out and expended
by the Plaintiff to the Defendants use at his special instance
& request. And in the further sum of three hundred dollars for so
much money then & there had and received by the Defendant to the
Plaintiffs use And in the further sum of three hundred dollars
for so much money then & there found due & owing from the Defen-
dant to the Plaintiff upon an account then & there stated between
them. And being so indebted the said Defendant then & there
undertook and faithfully promised the Plaintiff to pay him
the said several sums of money when he should be thereto
afterwards requested Yet the said Defendant though often
requested hath not paid the said several sums of money or
any part thereof but hath hitherto refused & still does re-
fuse so to do to the damage of Plaintiff as he says in the sum
of four hundred dollars for which he brings suit &c.
H. B. Hopkins
Plff. Attorney

Clerk issue summons in within named cause to Sheriff
of Peoria Co returnable to January term.
Action Assumpsit. damages 400 \$
Hopkins Plff atty.

And also on the same day. To Wit the 22nd day of December A.D. 1857 there
issued from the Office of the Clerk of the County Court, a Summons
in the words and figures following

To Wit
State of Illinois, }
Peoria County } ss The People of the State of Illinois to the Sheriff
of said County - Greeting.
We command You that you Summon Porteus B. Roberts.
if he shall be found in your County, personally to be and appear
before the County Court of said Peoria County, on the first day of
the next Term thereof, to be holden at the Court House

Summons

in Peoria, in said Peoria County, on the first day of January 1858 to answer unto William H. Haskell in a plea of ^{Non-}Assumps on the case on Promises to the damage of the said plaintiff as he is in the sum of Four Hundred Dollars. And have you then and there this Writ with an endorsement thereon, in what manner you shall have executed with the same.



Witness, Charles Kittelle, Clerk of our said Court, and the Seal thereof at Peoria, aforesaid, this 24th day of December A.D., 1857. Cha^s Kittelle clerk.
Geo H Kittelle Dpty clk

which Summons was afterwards returned endorsed as follows.

Return

State of Illinois }
Peoria County } I have duly served the within by reading the Same to the within named P B Roberts as I am therein commanded Decemb 24. 1857.

F. W Smith Sheriff

Fees - Service 10. Mileage 5. Return 10. - 65.

And afterwards on the 1st day of February, 1858, there was filed in the office of the Clerk of the County Court. by the attorney for Defdr a plea in the words and figures following To Wit

Wm H. Haskell } County Court of Peoria County.
vs. } Feb Term A D 1858.
Porteus B. Roberts }

Plea

And now comes the Defendant by Purple Pratt his attorney and for Plea says he did not at the time when he assumed and promise in Guannes and form as the Plaintiff has above thereof complained against him. And of this he puts himself upon the County Co. Purple & Pratt
Deft atty

All evidence admissible under Special pleas properly pleaded to be admitted under general issue

Purple & Pratt.
H B Hopkins
for Plff

at Peoria towards, To Wit: on the fourth day of February. 1858. there was filed in the Office of the Clerk of the County Court. a promissory Note, which is of the following words and figures

To Wit:

\$200

Peoria, Ill: May 10th 1855

One Year after date I promise to pay to Isaac Underhill or order, Two Hundred Dollars, for value received, with interest at six per cent, per annum, payable annually from the date hereof

M. J. Ganouy

with the following Endorsements:

To Wit:

"Pay to Porteus B Roberts, without recourse to me.

I. Underhill."

"Pay to William Brady or order

P. B. Roberts.

"Pay to William C. Haskell

William Brady.

And also on the same day to wit the fourth day of February 1858. there was filed in the Office of the Clerk of the County Court, a Deed of Mortgage; in the words and figures following:

To Wit:

November 9th 1855 Know all men by these presents that I Michael Ganouy of the City and County of Peoria in the State of Illinois in consideration of the sum of eleven thousand seven hundred and fifty dollars to me paid by Mary Rosa Ganouy of the said City of Peoria widow the receipt of which is hereby acknowledged do hereby grant, sell and transfer unto the said Mary Rosa Ganouy her heirs and assigns forever all my right title interest and claim in and to the following described real Estate whether held by me in fee simple or under lease for years as follows to Wit: Lots no seven (7) Eight (8) ten (10) Eleven (11) in Block no eleven (11) and lot no two (2) in block no ten (10) all in Riggs addition to the City of Peoria in the County of Peoria and State of Illinois also part of lot no six (6) in Block no thirty three (33) in the Original Town now City of Peoria aforesaid the same being twenty three and half (23 1/2) feet front on

Harrison Street by Twenty two (22) feet in depth and adjoining the alley. Also part of lot no two (2) in Block thirty nine (39) in Taylor & Hakesley, addition to said Peoria the same being thirty two and a half (32 1/2) feet front on Hudson Street by fifty seven (57) feet deep and adjoining lot one (1) on the North east and lot. four (4) on the South east abutting two story frame building recently erected by me on Block forty Two in Underhill, addition to said Peoria the ground on which the same stands being held by me under lease from the said Underhill also lot no. Seven (7) in Eastman's Subdivision of the north west Quarter of Section number eight (8) in Township no eight (8) north of ~~the~~ Base line range no eight (8) East of the fourth principal meridian in said County of Peoria, also all the right and interest which I have in the buildings & improvements situate on lot no one (1) in Block no four (4) in the said Original Town of Peoria and the leasehold interest which I have in the same lot no one (1) and which interest includes the following described parts of said lot to wit: thirty, thirty three and a half feet on Fulton Street by twenty two feet deep and adjoining the alley. also forty feet front on Fulton Street commencing seventy three and a half feet above the alley extending up Fulton Street and being seventy two feet deep Together with all the improvements hereinafter and appurtenances to the same belonging or which may exist and being to the same during the period for which this Mortgage is given. To have and to hold the same unto the said Mary Rosa Ganone her heirs and assigns forever. Provided however And this instrument is upon this express condition that if the said Michael Ganone his heirs executors or administrators shall pay or cause to be paid both said Mary Rosa Ganone her heirs executors or administrators the said sum of eleven thousand Seven hundred and fifty dollars with interest in two Years from the date hereof. then this deed shall be null and void otherwise in full force. And it is further provided that neither the said Mary Rosa Ganone nor her heirs executors or administrators shall at any time sell transfer or assign or hypothecate the Mortgage or any part thereof or any interest therein without the assent in writing of the said

Shall absolutely discharge and release the amount of the mortgage

X Michael Ganone his heirs executors or administrators and any
sale transfer assignment or by pollucation as aforesaid without
the written assent^{*} shall release the property herein mortgaged
And shall entitle the said Michael Ganone to have the said
Mortgage released and Cancelled. In Witness Whereof I the said
Michael Ganone have hereunto set my hand and the first day
of November in the Year Eighteen hundred and fifty four #1
M Ganone Seal

State of Illinois }
Peoria County } I John B. Warner a Justice of the peace
in - for said County this day personally ap-
peared before me Michael Ganone whose name appears.
Subscribed to the foregoing deed as having executed the same
and who is personally known to me to be the real person whose
name is subscribed to said deed as having executed the
same and acknowledged that he executed the same as his
voluntary act and deed for the purposes therein expressed
Witness my hand this 2nd day of November 1855.
John B. Warner Seal

State of Illinois } W. I Enoch Sloan Clerk of the Circuit Court
Peoria County } and ex officio Recorder for the County of
Peoria in the State of Illinois do hereby certify
that the foregoing is a full and correct copy from the Records
of a Mortgage & of the Certificate of acknowledgment thereof
as the same stands Recorded on pages 539 & 540 vol C.
in the Recorder's Office of Peoria County.

In Witness Whereof I have hereunto set my hand and
affixed the Seal of said Court at my office at Peoria
on the 4th day of July 1855. Enoch Sloan, Clerk
Seal

And also on the same day, To Wit: on the 4th day of February A.D. 1857.
on a trial of said cause, the Jury found their verdict, which
was filed in the Office of the Clerk of the County Court in the words
and figures following To Wit.

Haskels Plaintiff

vs.

Roberts Defendant. - We the Jury find for the Plaintiff,
and assess the damages \$232.80.
E. Clarkson, Foreman.

And afterwards, To Wit: on the 3rd day of February A.D. 1858.
there was filed in the Office of the Clerk of the County Court
the Defendants Motion in the words and figures following
To Wit.

William H. Haskell

vs.

Porteus B. Roberts.

} And now comes the Defendant and
moves the Court for a new Trial in this
cause for the following reasons To Wit.

1st The Court admitted improper evidence in behalf of
the Plaintiff

2nd The Court permitted improper questions to be put
to witnesses on behalf of Plaintiff

3^d The Court excluded proper testimony offered by
Defendant.

4th The Court gave improper instructions at the request and
on behalf of Plaintiff

5 The Court refused proper instructions asked
by defendant

6 The Verdict of the Jury is against the Law.

7 The Verdict of the Jury is against the evidence

8 The Damages are excessive -

Russell & Pratt.

Atty for Deft.

And also on the same day To wit on the 5th day of February
A.D. 1858. there was filed in the Office of the Clerk of
the County Court, the defendants Motion, in the words
and figures following To Wit:

William H. Haskell

vs.
Porteus B. Roberts. — And now comes the Defen-
dant and moves the Court for
arrest of judgment in this cause for the following
reasons

1st The Declaration in this case does not sustain
the Verdict

2nd There is manifest error in the Record

3^d For other errors

Purples & raily

Defd's atty.

And afterwards To Wit: on the . . . day of . . . 1858. there
was filed in the Office of the Clerk of the County Court of this
county a Bill of Exceptions which is in the following words
and figures To Wit:

William H. Haskell { County Court of Peoria County,
vs. { February Term A.D. 1858.
Porteus B. Roberts.

But remembered that in the trial of this
cause the Plaintiff to maintain the issues herein on his part
offered in evidence the following Note and the endorsement
thereon

" \$200 Peoria Ill., May 15th 1855

" One Year after date, I promise to pay Isaac Underhill, or
" order, Two Hundred Dollars, for Value received with interest, at
" Six per cent, per annum payable annually from the date hereof.

M. Hanson

" Pay to Posters B. Roberts,
without recourse to me
I Underhill,
" Pay to William Brady or order
P B Roberts.
" Pay to William H. Haskell
William Brady.

to the introduction of which said Note and endorsement in evidence the Defendant by his counsel then and there objected but the Court overruled said Objection and permitted said Note and endorsement to be read to the jury - to which ruling of the Court in overruling said Objection and permitting said Note and endorsement to be read in evidence the Defendant by his counsel then and there excepted.

The Plaintiff then called, E. G. Johnson, John T Lindsay, Henry Sander, M. R. O'Brien, A. L. Merriman, Henry Grove, J. W. McCoy, Frederick Miller, Thornton Wolf, Edwin Smith, J. W. Smith, each of whom being severally sworn testified in substance that they knew Michael Gannon - and had known him since the Spring of 1856. - That on the 10th day of May A.D. 1856. and from that time to the commencement of this Suit they had deemed said Gannon insolvent and unable to pay his debts. The question was also asked each of said Witnesses "whether said Gannon was on the 10th day of May A.D. 1856 and from that time to the commencement of this Suit had been reputed to be notoriously insolvent in the place where he resided" to the asking of which said questions the Defendants at the time severally objected but not as to the form of the questions, but the Court overruled said objections and permitted said questions to be asked and answered by each of said Witnesses to which several rulings of the Court in overruling said objections and in permitting said questions to be asked and answered by the Witnesses the Defendant at the times severally excepted. Said Witnesses then testified that said Gannon was reputed to be notoriously insolvent on the 10th day of May A.D. 1856.

and had been so reputed ever since that time
The Plaintiff then produced John A McCoy and M R Owen
two Justices of the Peace of Peoria who produced their respective
Dockets and the papers on file in their offices and the Plaintiff off-
ered in evidence the records of various judgments and executions
against Ganoni and the return of the Constables thereon of "No.
property found" said judgments. Executions and Returns of amount-
ing to Eleven in number varying from 17 to 200 dollars, bore date
during the Spring, Summer and fall of 1850 - to this evidence
the Defendant objected but the Court overruled said objection
and permitted said Records to go on evidence to which ruling of
the Court in overruling said objection and permitting said ev-
idence to be given to the jury the Defendant then said there
excepted.

On cross examination of Plffs witnesses. Dft. proved that Ga-
noni during the Summer of 1850 built one building worth
two Thousand Dollars being on Lot 1 Block 4 in Peoria.

The Plaintiff produced the following certified copy of a mort-
gage from Michael Ganoni to Rosa Ganoni.

November 2nd 1855 Know all men by these presents that I, Michael Ganoni of the
city and county of Peoria in the State of Illinois in consideration
of the sum of eleven thousand seven hundred and fifty dollars to
me paid by Mary Rosa Ganoni of the said City of Peoria
widow the receipt of which is hereby acknowledged do hereby
grant sell and transfer unto the said Mary Rosa Ganoni her
heirs and assigns forever all my right title interest and claim
in and to the following described real estate whether held by me
in fee simple or under lease for years as follows to wit: Lots Nos
seven (7) Eight (8) ten (10) eleven (11) in Block no eleven (11)
and lot no two (2) in Block no ten (10) all in Riggs addition to
the city of Peoria in the county of Peoria and State of Illinois
also part of lot no six (6) in Block no thirty three (33) in the
original town now city of Peoria aforesaid the same being sev-
enty three and half (73 1/2) feet front on Harrison Street by sev-
enty two (72) feet in depth and adjoining the alley, also part
of lot no two (2) in Block thirty nine (39) in Taylor & Blake
llys addition to said Peoria the same being thirty two and a

half (32 1/2) feet front on Hudson Street by fifty seven (57) feet deep and adjoining lot one (1) on the North east and lot four (4) on the South east also the two story frame building recently erected by me on block forty two in Underhill's addition to said Peoria the ground on which the same stands being held by me under lease from the said Underhill also lot no seven (7) in Eastman's subdivision of the north west quarter of section number eight (8) in Township no eight (8) north of the base line range no eight (8) east of the fourth principal meridian in said county of Peoria, also all the right and interest which I have in the buildings & improvements situate on lot no one (1) in Block no four (4) in the said original town of Peoria and the leasehold interest which I have in the same lot no one (1) and which interest includes the following described parts of said lot. to wit: thirty three and a half feet on Fulton Street by seventy two feet deep and adjoining the alley also forty feet front on Fulton Street commencing seventy three and a half feet above the alley extending up Fulton Street and being seventy two feet deep. Together with all the improvements hereditaments and appurtenances to the same belonging or which may exist and being to the same during the period for which this mortgage is given. To have and to hold the same unto the said Mary Rosa Ganonis her heirs and assigns forever. Provided however and this instrument is upon the express condition that if the said Michael Ganonis his heirs executors or administrators shall pay or cause to be paid to the said Mary Rosa Ganonis her heirs executors or administrators the said sum of eleven thousand seven hundred and fifty dollars with interest in two years from the date hereof then this deed shall be null and void otherwise in full force. And it is further provided that neither the said Mary Rosa Ganonis nor her heirs executors or administrators shall at any time sell transfer or assign or hypothecate this mortgage or any part thereof or any interest therein without the assent in writing of the said Michael Ganonis his heirs executors or administrators and any sale transfer assignment or hypothecation as aforesaid without the written assent shall absolutely destroy and extinguish the security of this mortgage shall release the property herein mortgaged and

State of Illinois } ss. I Clerk of the Circuit Court and ex officio Recorder for the
County of Peoria in the State of Illinois do hereby certify that the foregoing is a full
and correct copy from the records of a Mortgage of the certificate of acknowledgment thereof as the same
stands recorded on Page 539 & 540 of the Records of the County of Peoria in the 11th day of July 1855. Given at Peoria Ill.
this 2nd day of November 1855. J. B. Warner Clerk.

shall entitle the said Michael Ganone to have the said mortgage released and cancelled. In Witness Whereof I the said Michael Ganone have hereunto set my hand and this first day of November in the Year Eighteen hundred and forty five

Michael Ganone Seal
State of Illinois }
Peoria County } J. John B. Warner a Justice of the Peace in -
for said county. This day personally appeared before me Michael Ganone whose name appears subscribed to the foregoing deed as having executed the same and who is personally known to me to be the real person whose name is subscribed to said deed as having executed the same and acknowledged that he executed the same as his voluntary act and deed for the purposes therein expressed. Witness my hand this 2nd day of November 1855

Here inserted
John B. Warner. Seal
And for the purpose of laying the proper foundation for the admission of said copy in evidence produced the Plaintiff who testified as follows - The original Mortgage of which this is a copy is not in my possession or power to produce on this trial I was never in my possession I never saw it - never enquired for it know nothing about it and never did It is all Greek to me - The Plaintiff then offered the certified copy in evidence to the introduction of which in evidence the Defendant objected - but the Court overruled said objection and permitted said copy to be read to the jury - to which ruling of Court the defendant then and there objected and excepted

The Plaintiff here rested his case

The Defendant then produced Isaac Underhill who being sworn testified that he knew the parties to this suit that he was the payee of the Note given in evidence - that he endorsed it without recourse on him -

The Defendant then offered to prove by said Witness and by the Books of the Plaintiff then produced the following facts

That Underhill the payee of the note endorsed said note in Blank to the Plaintiff in this suit - that Underhill sold the Note to the Plaintiff some time in May 1856 and before the note fell due That the Plaintiff sold and transferred the Note (without endorsing it) to the Defendant before the Note fell due - That the Defendant endorsed said note to one William Brady who in turn after said note became due endorsed the same back to the Plaintiff in this suit said last endorsement only being made after said note became due said last endorsement being on the 13th day of May A.D. 1856 - And the Defendant offered in evidence the following entries in the Plaintiff Books

" Sold J. Underhill Lot Jewellery		\$ 550.00
" Rec ^d M ^r Canone Note.	\$ 200 #	
" H ^c Schnubly	200 #	
" B ^r Ellis.	100 #	
M ^r Potters	50 -	\$ 550 #

Bot of R^b Roberts.

Horse Buggy & Harness.

Pays him as follows.

1 M ^r Canone Note.	\$ 200 =	
1 H ^c Schnubly "	200 #	
Cash	50	\$ 450 #

Purchased Jo Genockey

pd in Potters Note . 50.00

Watch. 100.00

Mare

150.00

\$ 300.00 .

May 13 1856.
Sold Sorrell Horse To Brady.
For M^r Canone Note.

\$ 200 #
75 #

to all which said evidence the Plaintiff objected And the Court sustained the Objection and excluded all of said evidence to which ruling of the Court in sustaining said Objection And in excluding said Evidence the Defendant then And there excepted.

This was all the Evidence in the Case

The Court then gave the following Instructions at the request of the Plaintiff

If the jury believe from the evidence that at the time when the note given by Zanoni to Underhill fell due Michael Zanoni was notoriously insolvent and has so continued up to the time of the commencement of this suit, so that the prosecution of a suit against him would have been unavailing to obtain the amount due on the note or any part thereof, then they will find for the Plaintiff

Although the present plaintiff might have had the note given in evidence in this suit in his possession as assignee of Underhill, yet if he passed it without endorsement to the present defendant and he endorsed it to Brady, and Brady to plaintiff this would not prevent the Plaintiff from recovering in this suit.

The possession of property by Zanoni Claiming to hold it as the property of his mother or any other person is not evidence of ownership in Zanoni.

The Plaintiff was not bound to levy his execution upon property covered by liens, mortgages or incumbrances, by which he would have to pay of liens or incumbrances or involve himself in the expense of trial of the right of property by an adverse claimant

Given
The Return by the Constable of an execution unsatisfied or property not found is proper evidence to be considered by the jury that Gannoni had no personal property subject to such execution at the time of such return. And Execution returned unsatisfied or no property found by the Sheriff of the County is proper evidence to be considered by the jury that said Gannoni had no personal or real property at the time of such return. But the fact that such suit against Gannoni would have been unavailing may be proven by any other legal testimony as well as by the return of execution against him unsatisfied. It is only necessary for the jury to believe from the testimony adduced before them that such suit would have been unavailing to entitle the Plaintiff to recover.

to the giving of which said Instructions the Defendant then and there objected and excepted

The Defendant then asked the Court to instruct the jury as follows.

Refused
Should the jury even believe, from the Evidence, that at the time the Note fell due ~~the Defendant was insolvent~~ Gannoni was insolvent. Still if the jury should believe, ~~from the Evidence~~ that had the Plaintiff used due diligence in the collection of the Note, he could have collected the same then the jury will find for the Defendant.

Refused
If the jury believe from the Evidence that the Plaintiff purchased the Note, offered in Evidence after the same became due the jury will find for the Defendant.

Refused

If the jury believe from the Evidence that during the Summer of 1856 Ganoni had personal property not exempt from Execution sufficient to have paid the debt, such State of facts raises a prima facie case that the Note could then have been collected of him

Refused

If the jury believe from the evidence that Ganoni was in the possession of and had under his control personal property during the Summer of 1856. Such possession is presumptive Evidence that Ganoni owned said property and unless the Plaintiff has proved that some one else owned the property, the presumption would be that it really belonged to Ganoni

Refused

Although the jury should believe from the Evidence that Executions in other cases ^{against Ganoni} was returned "No property found" such return would not so far as this case is concerned prove that Ganoni was at the time insolvent or that proceeding by due diligence in this case would have been unavailing

But the Court refused to give said Instructions to which ruling of the Court in refusing to give said Instructions the Defendant then & there objected & excepted

The jury found the following Verdict
Waskile Plaintiff

vs.
Roberts Defendant
And assess the damages \$232.80
The jury find for the Plaintiff
E. Clarkson Foreman

The Defendant then moved the Court for a new Trial
and also in arrest of judgment both which Motions
the Court overruled And entered judgment upon the finding
of the jury to which rulings of the Court in overruling
said motions for a new trial And in arrest of judgment
And in entering judgment on the finding of the jury. The
Defendant then excepted and prays that the
Bill of Exceptions may be signed & sealed which
is done.

Wellington Smiths.
County Judge Seal

We agree that the Bill of Exceptions may be
signed now as of the February Term of this Court
Manning & Hopkins
for Plaintiff
Pratt for Defd.

January Term A.D. 1858.
Proceedings of the County Court of Poria County State of
Illinois began and held at the Court House in the City of
Poria in said County, on Monday January 4th 1858. for judi-
cial and other business. Present Hon^{ble} Wellington Loucks Judge
Charles Little Clerk and Francis W. Smith Sheriff

Wednesday January 6th 1858.
William H. Cassell

vs: Assumpsit
Portus B. Roberts.

This day came the said Plaintiff by
H.B. Hopkins his attorney and on his motion the said cause
was ordered to be continued the Plaintiff having leave to
amend his declaration filed in this cause.

Monday February 1st 1858.
William H. Cassell

vs: assumpsit
Portus B. Roberts.

This day came the said Plaintiff by
H.B. Hopkins his attorney and the said Defendant by Purple
and Ball his ally and the said defendant pleads the general issue
with leave to give in Evidence Special Matters under it.

Proceedings of Feb. 3^d Inserted below.
Thursday February 4th 1858.
William H. Cassell

vs: Assumpsit
Portus B. Roberts.

This day came again the parties to this suit
and also the jury empaneled yesterday in this cause and they
having heard the evidence in the case and the arguments of counsel
returned into the Court the following verdict "We the jury find for
the Pl^{ff} and do assess his damages at the sum of (\$ 232.80) Two
Hundred and Thirty Two Dollars and eighty cents" Then upon the
said defendant entered into Motion for a new trial of this cause and
arrest of judgment The Court being fully advised in the prem-
ises doth overrule the said Motions. Therefore it is considered

by the Court that the said William H. Haskell do have and receive of and from the said Petrus B. Roberts the aforesaid Sum of Two Hundred and Thirty Two Dollars and eighty cents. \$ 232.80 his damages aforesaid in form aforesaid assessed and also his costs and charges by him about this Suit in his behalf. Expended And that he have Execution therefor against the said Debt.

Thereupon the said Defendant prayed an appeal of this cause to the Supreme Court of this State: Which was ordered to be allowed on his entering into Bonds in the full Sum of Two Hundred Dollars conditional according to law to be filed within 30 days. the same to be approved by the Court

** Proceedings of Feb'y 3^d. omitted in its proper place or here inserted.*

Wednesday February 3^d 1838.

William H. Haskell

vs:

assumpsit.

Petrus B. Roberts.

This day came the said Pl. by H. B. Hopkins and Julius Maynard his Attys and the said Debt. by Purple Pratt his atty. And the issues being joined it is ordered by the Court. that a jury be empaneled to try said issues. Whereupon came a jury of twelve good and lawful men. To wit. James Odano. John Conleton, Edmund Matthews, E. Smith. E. Clarkson, John Warner, Seth Duffin, David Wheeler, Matthew Tiggart. Cutton Hutchison. Geo. C. Babcock and Gideon Cutler, who were duly chosen, tried and sworn to well and truly to try the said cause and a true verdict render according to the Evidence.

And afterwards, To Wt. on the 11th day of February A.D. 1858. there was filed in the Office of the Clerk of the County Court of Poria County, an appeal Bond - In the words and figures following

To Wit:

Know all Men by these presents that W. Porteus B Roberts
And William J. Moss are held and firmly bound unto William
H. Washell in the penal sum of four hundred sixty five
And 00/100 dollars for which payment well and truly to be made
And done we bind ourselves our heirs executors and admin-
istrators jointly and severally by these presents.
Witness our hands and seals at Poria
thirtieth day of February A.D. 1858

Appeal Bond

The condition of the above Bond is this
Whereas on the fourth day of February A.D. 1858. in the County
Court of Poria County the above named Plaintiff recovered
A judgment against the above named Defendant for the
Sum of two hundred and thirty two and 00/100 dollars
from which said judgment the said Porteus B Roberts
has prayed an appeal to the Supreme Court and which
appeal has been allowed by said County Court.

Now if the said Defendant shall duly prosecute his
said appeal and pay the judgment Costs Interest and dam-
ages in case the said judgment of said County Court shall
be affirmed by the Supreme Court. then the Bond
be void, otherwise in force.

Porteus B Roberts. Seal
Wm J. Moss. Seal

State of Illinois }
Poua County } p. I Charles Kettelle Clerk
of the County Court of said Poua
County.. do hereby Certify.. That the foregoing is
a True Transcript of the Proceedings and
the papers on file in above entitled Cause, as
appears of Record in my office
Witness my hand and the
Seal of the said Court this 9th day
of April 1857. Charles Kettelle
Clerk

Portland B. Roberts Appellant } Appellate
vs } from the
William H. Haskell Appellee } County

Court of Pavia Co.
And now comes the Appellant and says
that in the Record & proceedings and
condition of the Judgment aforesaid
there is error in this to wit
Said Court Error

1. In admitting Note and indorsement as
Evidence without proof of their Execution
2. In admitting Evidence of the Reputed
insolvency of Janoni
3. In admitting Evidence of Other Judgments
& Executions against Janoni
4. In admitting the Certified Copy of Mortgage
from Janoni to Mary Rosa Janoni no founda-
tion having been laid for the introduction
of the Evidence.
5. In ~~admitting~~ Excluding the testimony of
Isaac Millerhill offered by Appellant
6. In Excluding the Entire Record in Appellate
Books offered by the Appellee
7. In giving instructions asked by Appellant
8. In giving instructions asked by Appellant
9. Quashing Appellants Motion for a
new trial

10. The Enticing Judgment against Appellant
upon the Verdict.

11.

For these & other Errors he prays
that said Judgment may be reversed
set aside & annulled.

J. M. Phipps
Att'y for Appellant

The Appellee comes and says there
is no such error in the said
judgment and proceeding as
aforecalled and that said
judgment ought to be sustained
Manning & Minner
for Appellee

134

Haskell

v.

Roberts.

Transcript to
Superior Court

Filed April 19, 1858
Leland
Clk.

[134]