

No. 12869

Supreme Court of Illinois

Parks

vs.

Homes

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SUPREME COURT, OF THE STATE OF ILLINOIS.

THIRD GRAND DIVISION.

ROLLIN G. PARKS. Appellant.

vs.

HIRAM HOLMES, (Appellee.)

APRIL TERM, A. D. 1859.

APPELLANT'S POINTS AND AUTHORITIES.

1st. The Court erred in sustaining the Demurrer to Defendant's third plea.

1. The plea itself was sufficiently certain in every respect.

2nd. The Demurrer being general to two pleas, one of which was held by the Court below to be good, the judgment should have been for the Defendant on the Demurrer. 12, Wendell, 169—2nd Mass., 541—1, John, 385.

When a plea contains distinct matters, divisible in their nature, if the Plaintiff demurs to the whole, though part is bad, Defendant will be entitled to judgment on the whole plea. 11 East., 565—2 Wm. Black, 910—1 Chit., 703.—11 Johns, 16.

CHUMASERO & ELDREDGE.

Attorney's for Appellant.

37
Parks
Holmes }
Pond

5th

Filed April 19, 1839
G. L. Leland
Clerk

SUPREME COURT OF THE STATE OF ILLINOIS

IN SENATE
JANUARY 1839
REPORT OF THE
COMMISSIONERS OF THE
LAND OFFICE
TO THE SENATE
IN RESPONSE TO A
RESOLUTION PASSED
MAY 1838
RELATIVE TO THE
LANDS BELONGING
TO THE STATE OF
ILLINOIS
BY
JAMES H. HARRIS
CLERK OF THE SENATE

SUPREME COURT, OF THE STATE OF ILLINOIS.

THIRD GRAND DIVISION.

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vs.

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CHUMASERO & ELDREDGE.

Attorney's for Appellant.

Part⁵¹
Holmes
Part

SUPREME COURT OF THE STATE OF ILLINOIS

UNITED STATES DISTRICT COURT

Office of Justice Administration

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Office of Justice Administration

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Filed April 19, 189
L. L. Edmund
Clerk

Supreme Court--State of Ill's.

ROLLIN G. PARKS, Appellant;
vs.
HIRAM HOLMES, Appellee:

} State of Illinois—Supreme Court.

Points and authorities relied upon by Appellee—

The Court properly sustained the demurrers to Appellant's 3d plea. Reasons:
FIRST.—That the consideration of the note is not set forth in said 3d plea with the certainty required by law. The mason work and contracts therein referred too, should have been particularly desirable, and set out. 15 Ill 183;

Discussed *all*
17 Ill. 285. 13 Ill. 85-

In the 2d error assigned, the position assumed is not tenable.

~~CHARLES BLANCHARD, Atty. for appellee.~~

1st—The Demurrer is several to each of said pleas, and assigns specific cause of Demurrer to each 13 Ill 329

2nd—If a simple Demurrer is filed to several pleas, naming them, and assigns the same cause of Demurrer to each of said pleas, is it not as well as to write out a formal, separate Demurrer to each plea?—It seems to us to come within the reason of the rule laid down in 13 Ill. 329—

Charles Blanchard
Atty for Appellee

Roein y. Pools
 Peff in
 vs.

Heiran Holmes
 ~~~~~

Apprais Brief &  
 Argument

Filed May 11, 1859  
 Leland  
 Clerk



State of Illinois---Supreme Court

ROLLIN G. PARKS, Appellant; }  
vs } APPEAL FROM LA SALLE COUNTY COURT.  
HIRAM HOMES, Appellee. }

ABSTRACT OF RECORD.

Record.

Page 2. This was an action of *assumpsit* brought upon a promissory note, brought by Holmes against Parks in the LaSalle County Court. The declaration was filed on the 19th of February, 1858, to the March term of the Court, and contained two counts.

The first count alleges that the defendant on, to-wit: the 28th day of October, 1857, made his note in writing, by the name of R. G. Parks, pr. M. Burns, and delivered the same to William Hochsheid and Joseph Schmahl, and then and there promised the said William Hochsheid and Joseph Schmahl, by the name of Hochsheid and Schmahl, the sum of \$200 for value received 90 days after date; and that said William Hochsheid and Joseph Schmahl, by the name of Hochsheid & Schmahl, endorsed the note to plaintiff.

2d. The common counts.

Page 3. At the March term of said Court, 1858, the defendant filed three pleas to this declaration :  
1st. The general issue to the whole declaration.

Page 4. 2d. Plea of total failure of consideration.

3d. A plea to the first count—that the consideration of the note in said first count has wholly failed in this, to-wit: That the sole and only consideration of said promissory note was the work and labor of said Hochsheid and Schmahl before that time, done and performed by them for said defendant, in and about certain masonry which said Hochsheid and Schmahl had contracted and agreed to do for the defendant, and that said work was done in so unskillful and unworkmanlike a manner that the same became and was wholly useless and of no value to the defendant; and he avers that the said note was assigned and transferred by said Hochsheid and Schmahl to the said plaintiff after the same became, by the terms thereof, due and payable, and concluded with a verification.

Page 5. At the same March term the plaintiff filed—

1st. A similiter to the general issue.

2d. A general demurrer to the 2d and 3d pleas of the defendant, assigning for cause, that the defendant, in pleading failure of consideration in said 2d and 3d pleas of the note declared on in plaintiff's declaration, has not set forth with the certainty required, the consideration for which said notes were given, and that said 2d and 3d pleas are vague and uncertain.

Page 5. The defendant joined in demurrer on the 5th of March. After argument the Court overruled the demurrer as to the 2d plea and sustained it to the 3d plea.

The defendant abided by the demurrer. On same day the plaintiff filed 2 replications to the 2d plea:

1st. That the note was not assigned after it became due.

2d. That the consideration had not failed in manner and form as defendant, &c., had alleged.

The cause was tried by the Court, and judgment rendered for plaintiff.

State of Illinois---Supreme Court---3d Grand Division.

ROLLIN G. PARKS, Appellant; }  
vs } ASSIGNMENT OF ERRORS.  
HIRAM HOLMES, Appellee. }

And now comes the said Appellant, by Chumasero & Eldredge, his counsel, and shows to the the Court that there is manifest error in the record of the proceedings and judgment in this, to-wit:

1st. The Court erred in sustaining the demurrer in defendant's 3d plea.

2d. That the demurrer being general to defendant's 2d and 3d pleas, it should have been overruled as one of the pleas was held to be good.

3d. The Court erred in overruling the defendant's motion for new trial.

4th. The Court erred in rendering the judgment in manner and form aforesaid.

Whereupon, for these errors, and others apparent on the face of the record, said appellant prays that said judgment may be reversed.

CHUMASERO & ELDREDGE,  
Counsel for Appellant



Back 51  
Holmes  
abstract

Filed April 27, 1838  
D. Leland  
Clerk

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500 FIFTH AVENUE  
NEW YORK 17, N. Y.



State of Illinois }  
La Salle County } sp

Pleas Proceedings and Judgments held  
and taken in and before the La Salle County Court in the  
State of Illinois at the Court House in Ottawa in said  
County of La Salle of March term thereof to wit on the first  
day of March A.D. 1858 and of the Independence of the United  
States of America the eighty second -

Be it remembered that heretofore to wit on the 19<sup>th</sup> day of  
February A.D. 1858 A Summons was issued out of the office  
of the clerk of said Court in the words and figures follow-  
ing to wit:

The People of the State of Illinois.

To our Sheriff of our County of La Salle greeting:  
We command you that you summon Rollin H. Parks if  
he shall be found in your County, personally to be and appear  
in our La Salle County Court, before our Judge thereof, on the  
first day of the next term of said Court, to be held at the Court  
House in Ottawa, on the first Monday in March next, at ten  
o'clock in the forenoon, then and there to answer unto Hiram  
Holmes in a plea of assumpsit to his damage of Three  
hundred dollars, And have you then there this writ, and  
the manner in which you shall have executed the same.

In Witness Whereof, We have cause the seal of our said  
Court to be hereto affixed and attested by Philo Sindley our  
clerk thereof, at Ottawa 19<sup>th</sup> day of January February 1858

Seal

Philo Sindley clerk  
C. S. Herrick Deputy

Which Summons was returned on the 27<sup>th</sup> day of February  
1858 with the following endorsements thereon to wit

Served by reading the within Sum. to Rollin H. Parks  
this 19<sup>th</sup> day of Feb 1858. Fees Ser Ret .60

16 Miles .80

\$ 1.40

C. S. Waterman Sheriff  
A. C. Brown Deputy



And on the said 19<sup>th</sup> day of February A.D. 1858 A declaration was filed in the office of said Court in the words and figures following to wit:

State of Illinois } County Court thereof March Term  
La Salle County } sp A.D. 1858

Hiram Holmes plaintiff in this suit  
by Charles Blanchard his Attorney complains of Rollin  
H. Parks defendant in this suit in a plea of Assumpsit:

For that whereas the said defendant on to wit: the  
twenty eighth day of October in the year one thousand  
eight hundred and fifty seven at La Salle to wit: the  
County of La Salle aforesaid made his certain promissory note  
in writing by the name of R. H. Parks for M. Burns and

delivered the same to William Koehsheid and Joseph  
Schmahl and thereby then and there promised the said  
William Koehsheid and Joseph Schmahl to pay them, or  
order, by the name of "Koehsheid & Schmahl" the sum of  
Two hundred dollars for value received, ninety days after the  
date thereof which period has now elapsed; and the said  
William Koehsheid and Joseph Schmahl by the name of  
"Schmahl & Koehsheid" then and there endorsed the said  
note to the plaintiff of which endorsement the defendant  
then and there had notice and then and there in consideration  
of the premises promised the plaintiff to pay him the amount  
of the said note according to the tenor and effect of the said  
note, and the said endorsement:

And whereas also the defendant on, to wit: the  
fifteenth day of February in the year eighteen hundred  
and fifty eight at, to wit: the County of La Salle aforesaid  
was indebted to the plaintiff in the sum of Three hundred  
dollars for the price and value of goods and chattles before  
that time bargained, sold and delivered by the plaintiff  
to the defendant at his request. And in the like sum  
for labor then and there demanded material for the  
same provided by the plaintiff for the defendant at  
his request.



And the defendant afterwards on the day and year last  
aforesaid at the county aforesaid in consideration of the  
premises respectively promised the plaintiff to pay him  
the several moneys herein above mentioned on request  
yet the defendant hath disregarded his said last mentioned  
premises and hath not paid any of the said moneys or  
any part thereof though often requested so to do - To the  
damage of the plaintiff Three hundred Dollars and  
thereupon he brings suit.

By Charles Blanchard  
Plaintiffs Atty

\$900<sup>00</sup> La Salle Oct 28<sup>th</sup> 1857

Ninety days after date I promise to pay to Koch-  
shrid & Schmahl or order. Two Hundred dollars for value  
received

(Signed)

R. G. Parkes  
for M Bonus

Pay to the order of William Hohues  
Schmahl & Kochshrid

R. G. Parkes

To William Hohues Dr

To goods & chattles \$ 300.

To work & materials \$ 300.

Afterwards to wit on the 2nd day of March Pleas were filed  
in the words and figures following to wit:

La Salle county court. March Term 1858

Rollin G Parkes

vs

William Hohues

} And now comes the defendant by Lehman-  
sers & Eldridge his Attorneys and says that  
he did not undertake and promise in manner & form  
as the plaintiff hath above declared against him and of this  
he puts himself upon the country &c



And for a further plea in this behalf the said defendant says Actio non because he says that the said promissory note in said first count mentioned and which said note defendant avers is the sole and only cause of action in this suit was given by said defendant to the said Hoehsheid & Schmahl for certain mason work before that time done & performed by said Hoehsheid & Schmahl for said defendant in and about a certain flouring mill of said defendant at La Salle aforesaid & for no other consideration. And the defendant avers that the said work so done by said Hoehsheid & Schmahl was so unskillfully done & performed by them as to be utterly & entirely useless & valueless to the said defendant. and so the defendant says that the consideration of said note has wholly failed. And the defendant avers that the said note so given by this defendant as aforesaid was and remained the property of the said Hoehsheid & Schmahl until after the same became by the terms thereof due and payable and that the said note was not assigned to said plaintiff until long after it became so due and payable, and this the defendant is ready to verify wherefore he prays judgment &c

Schumacher & Eldridge

Defts Attys

And for a further plea in this behalf as to the first count of said plaintiffs declaration said defendant says Actio non because he says that the consideration of the note in said first count mentioned has wholly failed - in this count. That the sole and only consideration of said promissory note was the work and labor of said Hoehsheid & Schmahl before that time done and performed by them for said defendant in and about a certain masonry which said Hoehsheid & Schmahl had contracted and agreed to do for the defendant, and that said work was done in so unworkmanlike & unskillful a manner



as that the same became and was wholly useless and of no value to the defendant and he avers that the said note was assigned and transferred by said Hochscheid & Schmah to said plaintiff after the same became by the terms thereof due and payable and this he is ready to verify whereupon he prays judgment &c

Leumasro & Eldridge

Defts Attys

Afterwards to wit: on the 3<sup>d</sup> day of March a replication and a demurrer was filed with the clerk of said court in the words and figures following to wit:

State of Illinois LaSalle County, County Court thereof  
March Term 1858

Hiram Holmes

vs

Rollin H. Parkes

And the said Plaintiffs as to the first plea of the said defendant by them above pleaded and whereof he hath put himself upon the country doth the like.

Charles Blanchard

for Plaintiff

And the said Plaintiff as to the second and third pleas of the said defendant by him above pleaded says that the same and the matters and things therein alleged and set forth are insufficient in law to bar the said Plaintiff from having and maintaining his aforesaid action thereof against him and this he is ready to verify wherefore he prays judgment &c

And for cause of Demurrer plaintiff

Shows

1<sup>st</sup> That said defendant in pleading a failure of consideration in said 2<sup>d</sup> & 3<sup>d</sup> pleas of the note declared on in Plaintiff's declaration, has not set forth with the certainty required, the consideration for which said notes were given, and that second & third pleas are vague and uncertain in every respect.

Charles Blanchard for Plff



finder

Lehmason & Eldridge

Afterwards to wit on the fifth day of March the same being one of the days of the March Term of said Court for the year 1858 The following proceedings were had and entered of Record to wit:

Heran Holmes }  
vs } Assumpsit  
Rollin M. Parkes }

This day comes the plaintiff by C Blanchard his attorney and files his demurrer to the second and third pleas of defendant and filed herein whereupon comes the defendant by Lehmason & Eldridge his attorneys and after hearing the argument of counsel the said demurrer is overruled as to the second plea and sustained as to the third plea, and to the sustaining of said demurrer to said third plea the defendant effects - abides

Afterwards on the same day replications were filed with the clerk in the words & figures following -

State of Illinois LaSalle County, County Court thereof  
March Term 1858

Heran Holmes }  
vs }  
Rollin M. Parkes }

And the said Plaintiff as to the second plea of the said defendant by him above pleaded by leave of the Court, says precludia non because he says, that said note in said plea mentioned was not assigned to plaintiff after it became due and payable in manner and form as in said plea alleged, and this Plaintiff prays may be inquired of by the County.

Charles Blanchard  
Plff atty -

And for a further replication to said second plea, by leave



of the court &c. Said Plaintiff says precludia non because  
he says that the consideration of said note has not failed  
in manner and form as in said plea alleged. and this  
said Plaintiff prays may be inquired of by the court.

Charles Blanchard

Plff Atty

Afterwards to wit on the 8<sup>th</sup> day of March 1858 the same  
being one of the days of the March term of said court for  
1858 the following proceedings were had and entered of  
Record to wit:

Heiram Holmes }

vs

Assumpsit

Rollin G. Parks }

This day comes the plaintiff  
by C. Blanchard his attorney and the  
defendant by Lehnman & Eldridge his attorneys and by  
agreement of parties a jury is waived and this cause sub-  
mitted to the court for trial and after hearing the evidence  
and argument of counsel and due deliberation had, the court  
finds the issues herein for the plaintiff and assesses his  
damages at Two hundred and one dollars and twenty cents  
whereupon the defendant enters his motion for a new trial  
which motion after hearing the argument of counsel is over-  
ruled by the court.

It is therefore considered by the court that said  
plaintiff have and recover of said defendant said sum  
of Two hundred and one dollars and twenty cents for his  
damages and also his costs and charges by him herein expen-  
ded and that he have execution therefor.

Thereupon came the defendant and prays an appeal  
herein to the Supreme court which is allowed on his enter-  
ing into an appeal bond in the penal sum of Three hundred  
dollars with Wm. C. Pearsons as security. said bond to be filed  
within twenty days from the last day of this court term of  
this court.

Afterwards to wit on the 1<sup>st</sup> day of April  
1858 An appeal bond was filed with the clerk of said  
court in the words and figures following to wit:



Know all men by these presents that we Rollin. H. Parks  
and Levi Pearsons are held and firmly bound unto Hiram  
Holmes in the penal sum of Three hundred dollars for  
which payment well and truly to be made we bind  
ourselves our heirs executors and administrators jointly and  
severally by these presents sealed with our seals & dated  
April 1<sup>st</sup> 1858.

The condition of the above obligation is such  
that whereas the said Hiram Holmes did at the March  
Term 1858. of the LaSalle County Court recover a judg-  
ment against the above bounden Rollin. H. Parks for  
the sum of Two hundred & one dollars and Twenty cents  
besides costs from which judgment the said Rollin  
H. Parks has taken an appeal to the Supreme Court  
of the State of Illinois. now if the said Rollin. H.  
Parks shall prosecute his appeal with effect and  
shall pay whatever judgment may be ordered by  
the Court upon dismissal or trial of said appeal  
then the above obligation to be void otherwise to remain  
in force

Rollin. H. Parks

Levi. E. Pearsons

Seal  
Seal



State of Illinois  
LaSalle County, Ill.

I, Philo Lindley clerk of  
the County Court of said county, hereby  
certify the foregoing to be a full  
true and complete copy of all orders  
entire of record, and of all pleadings  
in case wherein Herman Holman is  
plaintiff and Rollin G. Barker is de-  
fendant as appears from the  
records and files in my office.  
Witness my hand and the  
seal of said Court this 25  
day of April 1858

Philo Lindley, CM  
Clerk of said Court.

For \$2.<sup>50</sup> paid of Mr. Chumason



State of Illinois

Supreme Court 3<sup>d</sup> Grand Division

Rollin G. Parks appellant April Term 1858.

Miram Holmes appellee } Appeal from LaSalle  
County Court

And now comes the said appellant by  
Chumaseo & Eldredg his <sup>counsel</sup> attorneys  
and shows to the Court that there is  
manifest error in the record of the pro-  
ceedings and judgment aforesaid in  
this Court.

1<sup>st</sup> The Court erred in sustaining the  
demurreur to defendants 3<sup>d</sup> plea.

2<sup>d</sup> That the demurreur being <sup>general</sup> ~~single~~  
to ~~both~~ <sup>2<sup>d</sup> & 3<sup>d</sup></sup> pleas - it should have been  
overruled as one of the pleas was  
held to be good

3<sup>d</sup> The Court erred in overruling the  
defendants motion for new trial

4 The Court erred in rendering  
the judgment in manner & form  
aforesaid

Whereupon for these errors &  
others apparent on the <sup>face of the</sup> said  
appellant prays that judgment  
may be reversed

Chumaseo & Eldredg  
Attorneys for appellant.

Rollin G. Parks Appellant } Supreme Court  
vs } State of Illinois

Miram Holmes Appellee } Appeal from LaSalle

Now comes the appellee by C. Blanchard  
his attorney and says that in the  
proceedings & judgment of said Court  
remaining of Record, there is no such  
error as said Appellant has  
alleged wherefore he

C. Blanchard  
attorney for appellee



~~233~~ 51

Rollin G. Parks

vs

Miriam Holmes

Record

Rollin G. Parks

vs

Miriam Holmes

Joint - in Error

Filed April 22 1858  
L. Deland  
Clk.