

No. 12904

Supreme Court of Illinois

Haven et al

vs.

Spaids

71641  7

The People of the State of Illinois, by the Grace of God, Free and Independent
To all to whom these presents shall come Greeting. Now ye that we having
caused to be inspected the Records and proceedings now remaining in the Office
of our Clerk of our Circuit Court, in and for the County of Will, do find
there certain Records, and proceedings of said Court in words and figures
following To wit:

State of Illinois

Will County Circuit Court

December Term A.D. 1854

United States of America
State of Illinois)
County of Will)

Now before the Honorable Sylvester W. Randall
Judge of the Eleventh Judicial Circuit of the State of Illinois at the December
Term of the Will County Circuit Court, began and held, at the Court House
in the City of Solist, in said Will County, on the third Monday of December
(the same being the eighteenth day of said Month of December) in the
year of our Lord one thousand eight hundred and fifty four and of the
year of the Independence of the said United States the eightieth.

Present Hon. Sylvester W. Randall Judge as aforesaid
Merrim W. Bowen State Attorney of 11th Judicial Circuit
Benj D. Scamitt, Sheriff of said Will County,
Royal C. Barber, Clerk of said Will Co. Cir Court. "

And therefore To wit on the 25th day of May in the year
aforesaid the following precept for summons was filed in the Office
of our said Clerk in the words and figures following To wit.

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Will County Circuit Court
September Term A.D. 1854

Orlando H. Heaven, Philo A.
Heaven and James M. Heaven

vs
Chauncey D. Spauld

Assumpsit. Damages \$1500⁰⁰

The Clerk of the Circuit Court of
Will County, will please issue summons in the above entitled cause, directed to the Sheriff of Will County to execute

Goodspeed & Heaven
Atty. for Pliffs "

And afterwards Court on the same day and year last aforesaid Summons was issued by said Clerk in the words and figures following Court.

"State of Illinois,
Will County, W. & C.

The People of the State of Illinois to the Sheriff of
Said County, Greeting:

We command you that you Summon
Chauncey D. Spauld if he be found in your County personally to be and
appear before our Circuit Court, of our Said Will County, on the
first day of the next Term thereof to be holden at the Court house in Will
in Said Will County, on the first ^{mon} day of September 1854. to answer
Orlando H. Heaven, Philo A. Heaven, & James M. Heaven of a plea
of Assumpsit to the damage of them the Said plaintiffs fifteen hundred
dollars as is said, and have you then show this writ.

Witness Royal E. Barber Clerk of our
Said Court, and the Seal thereof hereunto
affixed, at Office in Solist in Said Will
County this 25th day of May A.D. 1854
R. E. Barber. Clerk."

seal

And on the back of said Summons is endorsed the following Court:

"Executed the within Summons, by reading to Chauncy D. Spauld this 25th day of May, 1854,

Alonso Leach

Shff. of Will County,

By Ridley Depty. "

And afterwards Court on the 19th day of December in the year A D 1854 it being one of the regular days of said Term of said Circuit Court for the year last aforesaid, and the said Court being then in Session duly organized and open for the transaction of business certain proceedings were had and entered of Record by said Court in words and figures following Court:

"Orlando H. Haven Phil A.

"Haven & James M Haven

vs

Chauncy D. Spauld

Assumpsit

And now comes Mr J. Good-Speed, attorney for the said Plaintiffs, and suggest to the Court, the death of said Plaintiff, Orlando H. Haven, and enters his motion for leave to file Narr. herein in the name of the other party plaintiffs as surviving partners - and that this cause be continued. Whereupon it is ordered by the Court that such leave be, and it is granted - and that this cause be and is continued to next Term "

And afterwards Court on the 3^d day of March A D 1855, the following Narr was filed in the office of our said Clerk in the words and figures following

State of Illinois Will County fs

Will County Circuit

March Term A.D. 1855.

Suits.

Philo A. Haven &

James M. Haven surviving partners of Orlando H. Haven, deceased, plaintiffs in this suit by J. Goodspeed their Attorney, complain of Chauncey O. Spauld defendants, being duly summoned &c. of a plea of Trespass, on the case upon promises

For that Whereas the said defendant, in the life time of one Orlando H. Haven, who is now since deceased, heretofore to wit: on the 23^d day of September A.D. 1852, at Chicago Suit: in the County of Will & State of Illinois made his certain promissory note, in writing, bearing date a certain day year therein mentioned Suit, the day and year aforesaid whereby then & there for value received promised to pay to the order of one Carlton Jones six months after the date thereof the sum of three hundred and forty five dollars, at the Marine Bank - to wit at the City of Chicago State aforesaid for value received then & there delivered the said promissory note to the said Carlton Jones, - and the said Carlton Jones to whom or to whose order the payment of the said sum of money in the said promissory note, specified was to be made, after ^{the} making of the said promissory note, before the payment of the said sum of money therein specified to wit on the day year aforesaid Suit in the County of Will aforesaid endorsed the said promissory note, by which said endorsement he the said Carlton Jones, then & there ordered & appointed the said sum of money in the said promissory note specified to be paid to the said plaintiffs, & said Orlando H. Haven then in full life. Since deceased, then & there delivered the said promissory note so endorsed as aforesaid to the said plaintiffs, ^{& said} Orlando H. Haven in his life time by means whereof & by force of the Statute in such case made and provided, the said defendants, then & there became liable to pay ^{to the} said plaintiffs & the said Orlando H. Haven in his life time the said sum of money in the said promissory note specified - according to the tenor & effects of the said promissory note and being so liable he the said

Defendant in consideration thereof, afterwards ~~he~~ ^{in the life time} of the said Orlando H. Heaven, ^{four} on the day year aforesaid ^{in the County of Will & State of Ill.} ~~he~~ undertook & there then faithfully promised the said plaintiffs & the said Orlando H. Heaven to pay them the said sum of money in the said promissory note specified, according to the tenor & effect thereof.

And whereas also the said defendant, heretofore to wit: On the twenty third day of September A.D. 1852, at Chicago that is to say in the said County of Will & State of Illinois made his certain other promissory note, in writing, ^{in substance} ~~enforced~~ as follows, viz. "\$345. Chicago Sept 23 1852, six months after date I promise to pay to the order of Carlton Jones, Three hundred forty five dollars in value Received payable at Marine Bank"

"C. D. Spauld."

and then there delivered the said last mentioned promissory note, to the said Carlton Jones. and the said Carlton Jones to whom or to whose order the payment of the said sum of money in said last mentioned promissory note specified was to be made after the making of the said last mentioned promissory note before the payment of the said sum of money therein specified to wit on the day's year aforesaid at Chicago to wit in the County of Will aforesaid indorsed the said last mentioned promissory note, by which said indorsements, he the said Carlton Jones then there ordered & appointed the said sum of money in said last mentioned promissory note, specified to be paid to the said plaintiffs & said Orlando H. Heaven, then at full life but since deceased, & there then delivered the said last mentioned promissory note so indorsed as aforesaid to the said plaintiffs & said Orlando H. Heaven in his life time by means whereof & by force of the Statute in such case, made & provided the said defendant then there became liable to pay to the said plaintiff & the said Orlando H. Heaven, in his life time the said sum of money in the said last mentioned promissory note specified according to the tenor & effect of the said last mentioned promissory note and being so liable he the said defendant in consideration thereof afterwards in the life time of the said Orlando H. Heaven, to wit, on the day year aforesaid to wit in the County of Will aforesaid undertook

Then were faithfully promised the said plaintiffs said Orlando H. Heaven, in his life time to pay them the said sum of money in the said last mentioned promissory note specified, according to the true effect thereof.

And whereas also the said defendant, in the life time of said Orlando H. Heaven since deceased to wit on the first day of May, a. d. 1854 to wit in the County of Will & State of Illinois was indebted to the said plaintiffs & the said Orlando H. Heaven in the sum of fifteen hundred dollars, for the work labour, care, diligence & attention of the said plaintiffs & the said Orlando H. Heaven by the said plaintiffs said Orlando H. Heaven, before that time, done, performed, & bestowed for the said defendant at his special instance requests; and in the further sum of fifteen hundred dollars, for goods ware, chattles & cordwood before that time sold & delivered by the said plaintiffs & said Orlando H. Heaven in his life time to the said defendant, at his request, - and in the further sum of fifteen hundred dollars for so much money then sent by the said plaintiffs & said Orlando H. Heaven in his life time, to the said defendant, at his request, and in the further sum of fifteen hundred dollars for so much money therein laid out & expended by the said plaintiffs & said Orlando H. Heaven in his life time, for the use of the said defendant, at his request, in the further sum of fifteen hundred dollars, for so much money then received by the said defendant, for the use of the said plaintiffs & said Orlando H. Heaven, in his life time - and in the further sum of fifteen hundred dollars for so much money before that time then due and payable from said defendant to said plaintiffs & said Orlando H. Heaven, in his life time upon settlement & on an account then stated between them - the said plaintiffs & said Orlando H. Heaven in his life time & said defendant, - and being so indebted, he the said defendant in consideration thereof afterwards in the life time of said Orlando H. Heaven, to wit on the day & year aforesaid to wit in the County of Will aforesaid undertook & there & then faithfully promised the said plaintiffs & the said Orlando H. Heaven to pay them the -

Several Sums of money aforesaid when he should be thereunto afterwards requested. And the Said plaintiffs ~~was~~ that at the Several times mentioned in the Several foregoing counts to wit on the 23^d. day of September A.D. 1832, & on the first day of May A.D. 1854, & during the whole time between Said dates, they the Said plaintiffs & said Orlando H. Heaven who was then living, were carry on & doing business under the name style & firm of "Heaven & Co" tenant at Solist in the Said County of Will & State of Illinois

Nevertheless the Said defendants notwithstanding the Said promises & undertakings aforesaid intending to deceive and defraud the Said plaintiffs & said Orlando H. Heaven, in the life time of said Orlando H. Heaven, and the Said plaintiffs since the death of the Said Orlando H. Heaven in this behalf, hath not as yet paid the Several Sums of money, or any, or either of them, or any part thereof to the Said plaintiffs & said Orlando H. Heaven or either of them, in the life time of the Said Orlando H. Heaven, or to the Said plaintiffs since the death of the Said Orlando H. Heaven - although often requested so to do, - but he to do this hath hitherto wholly refused, & still doth refuse - to the damage of the Said plaintiffs of fifteen hundred dollars therefore they Bring their Suit &c.

J. Goodspeed

For Plaintiffs.

Copy of note & acct. declared on
"f 345f"

"Chicago Sept. 23. 1852"

"Six months after date I promise to pay to the order of Carlton Jones Three hundred forty five Dollars ~~no~~ value received payable"
"at Marine Bank" "C. D. Spauld"

Copy of indorsement

"Pay to Heaven & Co."

"Carlton Jones"

C. D. Spaid

To Heaven &c.

May 1854.	To. 1200 boards wood	\$ 1500.
"	leash pd. to your use	1500.
"	money lent	1500.
"	Money had received by you ^{your} business	1500.
"	amount found due on Settlement	1500 "

And afterwards to wit on the 12th day of March, in the year last aforesaid, it being one of the regular days of said March Term ^{of said Court} for the year ^{last} aforesaid and the said Court being then in Session duly organized, and open for the transaction of business, certain proceedings were had and entered of Record by said Court in the words and figures following to wit:

"In the matter"

of } "Filing"
"Pleadings". }

"It is ordered by the Court that all Pleas in all cases now pending upon the Common Law and Chancery Dockets, and not heretofore filed be respectively filed by next Wednesday morning, at nine o'clock."

And afterwards to wit on the 13th day of March in the year last aforesaid it being also one of the regular days of said ^{same Court} Term for the year last aforesaid and the said Court being then in Session duly organized and open for the transaction of business the following plea in abatement was filed in said Court in the words and figures following to wit:

"State of Illinois
County of Cook ss."

Will County Circuit Court.

March A. D. 1855.

Chauncey D. Spaid

ad.

Phil A. Haven James M. Haven
Surviving partners of Orlando H. Haven

App.

And now the said defendant,
in his own proper person comes and defends the wrong injury when &c.
and prays judgment if the Summons and declaration in this cause, and that the
same may be granted, because he says that prior to the Commencement of this
suit, to wit on the, fifteenth day of September, in the year of our Lord one
thousand eight hundred and fifty two, the said plaintiffs, and ^{by} the said
defendants, made their certain contract, in writing wherein the said
plaintiffs, agreed to deliver to him the said defendants, on the Bank of
the Calumet feeder, on Section twenty two, Town thirty seven, Range twenty
East, fifteen hundred cords of good merchantable top and Burr oak
wood before the close of the Navigation of the Illinois and Michigan
Canal, of the year last above mentioned, and that he the said defendants
on his part, in said writing obligatory agreed to pay the said plaintiffs
the sum of One dollar per cord for said ^{wood} when delivered, on the Bank
of said feeder as follows, ^{to wit} Two hundred dollars in lumber at his yard
in Chicago, and executing Bankable notes payable to the Marine Bank of
Chicago, due in three, six, and nine months respectively, and that the said
promissory note mentioned in said plaintiffs declaration was made
and executed in pursuance of said agreement, and not otherwise, and that
he the said defendants avers that the said plaintiffs did not deliver the
said wood, mentioned in said contract, and that they wholly failed to
perform the conditions, and agreements of said contract by them to be kept
performed and fulfilled. And the said defendants further avers that he was
always willing, and ready to receive said wood, and to pay for the same
according to the tenor and effect of said contract. And the said defendants
further avers ^{after the} time had elapsed for the delivery of said wood, according to
the tenor and effect of said contract. And after the close of the Navigation of the
Illinois and Michigan Canal, and before the time of the commencement
of this suit, the said defendants commenced an action against the said

Plaintiffs in the Cook County ^{Circuit} Court of this State for the damages sustained by him by reason of the nonperformance of the said, Covenants and agreements, by the said plaintiffs in the said premises mentioned, out of which said Covenants, and agreements arose and accrued, the said promissory note, and the said several causes of action promised and undertakings in said plaintiffs declaration mentioned which said action commenced and now pending in the Cook County Circuit Court ^{as aforesaid} embraces & contains the same identical causes of actions in said plaintiffs declaration mentioned, and each and every thereof, and of this said defendant is ready to verify wherefore he prays Judgment, if the said writ and declaration and that the same may be quashed,

Chauncy D Spauld

State of Illinois,
Will County ss

I Charles S. Cameron being first duly sworn, doth depose & say that he has read the foregoing plea and knows the contents thereof and that the same are true in substance and in fact.

Charles S. Cameron

Subscribed & sworn to before me

this 13th day of Mch 1855.

R. C. Barber, clk. "

And afterwards Court on the 20th day of March in the year last aforesaid it being also one of the regular days of said March Term ^{of said Court} for the year last aforesaid the following Replikation was filed in said Court, and the Court being then in Session duly organized and opened, for the transaction of business in the words and figures following Court:

" State of Illinois Will County ss.

Will County Circuit Court March Term 1855.

Phil A. Heaven. James McKeown
Survivors of Orlando Heaven deceased

vs

Chauncy D Spauld.

} Attest

And the said Plaintiffs

Say that their Said Summons and declaration by reason of anything by the Said Defendant in his Said Plea above alleged, ought not to be quashed, because they Say that they the Said Plaintiffs did not make the Said Supposed writing obligatory or contract, in writing with the Said Defendant, at the time when & in manner & form as the Said Defendant in his Said Plea, hath thereof alleged, - and this they the Said Plaintiffs pray may be enquired of by the Country &c.

I Goodspeed,

atty for Plffs.

And the Plaintiff doth the like

Cameron

his atty.

2

And the Said plaintiffs Say that their Said Summons, and declaration by reason of any thing by the Said Defendant, in his Said Plea above alleged, ought not to be quashed because they Say that they, the Said plaintiffs, did not agree to deliver to the Said Defendant the Said fifteen hundred cords of wood, of the quality & at the time when in manner & form as is in the Said Plea of the Said Defendant above alleged, and this they pray may be enquired of by the Country &c.

I Goodspeed

atty. for Plff

And the Said Plaintiff, doth the like

Cameron

his atty.

3

And the Said plaintiffs Say that their Said Summons & declaration by reason of any thing by the Said Defendant in his Said Plea above alleged, ought not to be quashed, because they Say that the Said promissory note in Said Plaintiffs declaration mentioned, was not made or executed in pursuance of said supposed agreement, in manner & form as the Said Defendant, hath thereof in his Said Plea above alleged - and

This
they pray may be inquired of by the Country, &c.
G. Goodspeed
Atty for Plffs

And the Plaintiff doth the like
Cameron
his atty

4 And the Said plaintiffs say
that their Said Summons and declaration by reason of any thing by
the Said defendant, in his Said plea above alledged ought not to be
quashed because they say that they Said plaintiffs did deliver the
whole of the Said Wood at the time in the manner mentioned in Said
contract and that they fully performed all the conditions and agree-
ments of the Said Contract by them to be kept-performed and
fulfilled, and this they pray may be inquired of by the Country &c.
G. Goodspeed
Atty for Plffs

And the Plaintiff doth the like
Cameron.

5 And the Said plaintiffs say that
their Said Summons & declaration by reason of any thing by the
Said defendant in his Said plea above alledged ought not to be
quashed, because they say that the Said defendant would not
receive Said Wood - or pay for the same according to the tenor &
effect of Said contract as he the Said defendant hath in his Said
plea in that behalf above alledged - and this they pray may be
inquired of by the Country, &c.
G. Goodspeed
Atty for Plffs

And the Plaintiff doth the like
Cameron atty.

6 And the Said plaintiffs say that
their Said Summons and declaration by reason of any thing by the
Said defendant in his Said plea above alledged ought not to be quashed
because they say that the Said defendant did not commence an action in
the Said Cook County Circuit Court in this State, against these plaintiffs

At the time when in manner aforesaid as he thereof in his Said Plea
above alleged, and this they pray may be inquired of by the Country &c.
J. Goodspeed
Atty for Plffs

And the Plaintiff doth the like
Cameron his atty

7 And the Said Plaintiff Say,
that their said Summons and declaration by reason of any thing by the
Said defendants in his Said plea above alleged, ought not to be quashed
because they say that Said supposed action in Said Cook County
Circuit Court, does not embrace include or contain the Said Several
causes of action in said plaintiffs declaration mentioned or either
of them in manner aforesaid as the Said defendant hath above in his
Said plea alleged and this they pray may be inquired of by the
Country &c.

J. Goodspeed

And the Plaintiff doth the like
Cameron for Plffs. "

Atty for Plffs.

And afterwards Court on the 20th day of March in the year
last aforesaid its being also one of the regular days of Said March
Term of Said Circuit Court for the year last aforesaid, and the Said
Court being then in Session, duly organized and open for the transaction
of business certain proceedings were had and instead of ~~before~~ the following
affidavit was filed in Said Court in the words and figures following to wit:

State of Illinois
Will County ss

Will Co. Ct Court March Term A.D. 1855.

Chauncey D. Spaid
att

M. H. Evans, et al.

Charles J. Cameron ^{being duly sworn} deposes & says that

That he is the only Attorney employed on the part of the defence in this case & that the whole management of the same as such was entrusted to him, that during last week he attended this Court, for the purpose of attending to this Suit and that the same was agreed, between Counsel on both sides, not to be taken up until Monday of this week - that on Sunday last this deponent was taken sick & in consequence of such sickness he was unable to get heretofore this Morning & is now very unwell this is the only reason why he was not here, on yesterday before opening of this Court, that he is acquainted with all the leading facts of this case & that he verily believes that he has a good lawful defence, on the merits of this case, that the note on which this Suit is brought was given in connection with a contract, herewith presented - which contract being the consideration of said note, which said contract was broken before said note became due, by said Plaintiff the consideration of said note entirely failed, and a suit was commenced by this defendant, against the Plaintiff for breach of said contract in the Cook County Circuit Court, before this Suit was commenced, in this Court, which said Suit commenced in Cook County as aforesaid is still pending, and undetermined involves the whole subject matter of this Suit, in this Court.

A. S. Cameron

Subscribed & sworn to before me

March 20th 1855

R. C. Barber, Clerk. "

And ^{previous to filing said affidavit last aforesaid} ~~afterwards~~ ^{on this day 8 year} last aforesaid it being also one of the regular days of said March ^{of said year} ~~year~~ last aforesaid, and the said Court being then in session duly organized, and open for the transaction of business, certain proceedings were had and entered of Record by said Court in words and figures following to-wit:

Philo A. Heaven & James M. Heaven, Surviving
partners of Orlando H. Heaven deceased } Assumpsit

vs
Chauncey D. Spauld

And now this cause is

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Called in its ~~proper~~ order for trial, and Said Plaintiffs by Mr Goodspeed their Attorney, now come and enter their motion, for leave to file several replications to Said Pleas of Said Defendant herein instanten. whereupon it is ordered that such leave be, and it is granted. And thereupon Said Replications being filed, Said Plaintiffs enter their motion, for a rule on Said Defendant to file similiten thereto instanten. And it is ordered by the Court that Said Defendant do file similiten to Said Replications instanten. And Said Plaintiffs enter their motion that Said Defendant be now called.

Whereupon it is ordered that Said Defendant, be now called. And Said Defendant was thereupon three times solemnly called but came not nor any one for him - nor has he filed his similiten to Said Replications as by Said rule he was required to do. but herein makes default, which is entered of Record. Whereupon Said Plaintiff enter motion for Judgment, against said Defendant, and that this cause now proceed to trial, and that a Jury now come. Whereupon it is ordered by the Court that Said Plaintiffs do have Judgment against Said Defendant, by reason of his Said default, for their damages in their said declaration mentioned. And it is further ordered that the trial of this cause do now proceed, and that a Jury now come to enquire of Said Damages. Whereupon come the Jurors of a Jury of Good and lawful men Sworn.

JAMES H. SMILEY. General Davis. Henry Carpenter. Francis Marsh
Frederick Collins. H. A. Angel. Daniel Somers, L. G. Colegrove
Hearby Sugersoll. David F. Ward. Daniel Stewart Hugh Rowen
Who being duly empaneled and sworn well and truly to enquire of assess & Report ^{the} Said Plaintiffs damages herein after hearing the evidence adduced, the arguments of Counsel, and receiving the instructions of the Court, retired in Charge of an Officer of the Court to consider of their verdict. And Said Jury returning into Court, for Verdict say We of the Jury find and assess the Said Plaintiffs damages herein to the sum of One thousand and forty one dollars and six cents,

And now come Said Defendant by Mr Cameron his Attorney, ^{and files his said affidavit} and enters his motion to Set a Side Said default of Said Defendant, and all subsequent proceedings thereto herein. And the

Court being fully advised in the premises - after hearing arguments of counsel thereon, it is ordered that the said defaults of said defendants herein be and it is set aside, on condition that said defendants do go immediately unto trial of this cause, And thereupon said parties by agreement, enter their motion that the trial of this cause do now proceed and that a Jury now come. Whereupon it is ordered that the trial of this cause do now proceed, and that a Jury now come, and thereupon come the Jurors of a Jury of Good and Lawful men & women.

Nathaniel Marshall, Caleb Chapman, Saml. Adams, William Blasdell
B. D. Miller, Saml. S. Bragaw, ~~Wm. D. D.~~ Wm. Emmett Jacob, S. Palmer
A. S. Gorton, Henry M. Mellon John Mills, Myron Tinson.

Who were duly

empaneled and sworn well and truly to try the issue joined between the said parties in this cause and a true verdict give according to evidence. And the said Plaintiffs enter their motion for leave to withdraw their first Second and third fourth and fifth Replications filed herein. Whereupon it is ordered that leave be, and the same is granted to said plaintiffs to withdraw their Replications last aforesaid, and said Jury after hearing the evidence adduced, and the arguments of counsel, and receiving the instructions of the Court, retire in charge of an Officer of the Court to consider of their verdict. Thereupon said parties enter motion for leave to said Jury to Sign and Seal up their verdict herein when found, and then disperse to meet the Court on tomorrow morning at nine o'clock. And it is ordered by the Court that said leave be, and it is granted to said Jury by agreement of said parties."

And ^{on the same day} ~~Afterwards~~ Court on the 20th day of March in the Year last aforesaid, it being also one of the regular days of said March Term for the Year last aforesaid, and the said Court being then in Session duly organized and open for the transaction of business, the following affidavit was filed in said Court in the words and figures following To-wit:

"State of Illinois
Milb County ss

Heaven et al
vs
C D Spaid

Will Circuit Court
March 3. 1855.

I C Heaven of Chicago Cook County state aforesaid being duly sworn says that he is the atty. of Record for the State in the cause now pending in the Cook Circuit Court wherein Chauncey D Spades is Plff & Orlando H. Heaven, Philo A. Haven & James M. Heaven are defendants and there as such atty. for said defendants plead to said plaintiffs declaration that he is acquainted with the cause & causes of action embraced in said suit that said Plffs action is an action of Covenants for unliquidated damages for a supposed breach of contract, and not otherwise or for any other cause of action

And this affiant further saith that the said defendants, by their said pleas by their atty pleaded in said cause have not put in issue, as this affiant verily believes the causes of action embraced in the suit now pending in the Will Circuit Court, wherein the said Philo A. Haven & James M. Heaven surviving partners of C. H. Heaven are Plffs, and the said C. D. Spades is defendants

And this affiant further saith that he is fully conversant with the subject matter and causes of action of each of said suits aforesaid & verily believes that said C. D. Spades has no defence on the merits to the action now pending in the Will Circuit Court & further saith not

Subscribed and sworn to before me
this 20. day of March 1855.

Robert Barber. Clerk

And thereupon Court, on the day and year last aforesaid it being one of the regular days of said term of said Court for the year last aforesaid and the said Court being then in session duly organized and open for the transaction of business the following

Affidavit was filed in said court in the words and figures following to wit

"State of Illinois Will County ss.

Heaven Etal. Survivors vs.

Chauncey D Spaulds

Will Circuit Court.

March Term 1855.

Francis Goodspeed of said County being duly sworn Says that he is attorney for the Plaintiff, in this cause, that he is acquainted with the circumstances of this case, that he has examined a copy of the full Records of the Cause mentioned in said defendants plea in this cause duly certified by the Clerk of the Cook County Circuit Court, under the Seal thereof that he is fully satisfied that said cause in the Cook Circuit Court, does not embrace the cause of action in this cause or any of them that he is fully satisfied that said plea in abatement in this cause is wholly vexatious merely put in for the purpose of delay Ando this affiant firmly believes that said Spaulds has no just defence to this cause whatever.

F. Goodspeed.

Subscribed & sworn to before me this 20.
day of March 1855.

R. E. Barber Clk.

Ando afterwards to wit on the 21st day of March in the year last aforesaid it being also one of the regular days of said Term of said Court for the year last aforesaid. Said Court being then in Session duly organized and open for the transaction of business the following instructions which were given to said jury last aforesaid upon their retirement. Affidavit was filed in said Court in the words and figures following to wit

"Heaven and others

vs.

Chauncey Spaulds

The Plaintiff, ask the Court to instruct the

Jury as follows

That the only issues for the Jury to find are first - Whether the Defs. Spades commenced an action in the Cook County Circuit Court, against the Plffs. in this suit at the time and in the manner as alleged in the Defs. Plea of abatement.

And second whether the causes of action embraced in the said suit by the said Spades in the Cook County Court, if the Jury shall believe from the evidence that said Spades commenced said suit as aforesaid, are identically the same causes of action embraced in this suit.

That the burden of proving the issues as aforesaid rests upon the Defs. in this action, and unless the defendants has introduced records evidence of the commencement of said suit and of the causes of action embraced in said suit they should find both of said issues for the plaintiffs in this suit.

That the written contract offered in evidence by the Defs. is only admissible to fix the price of wood and for no other purpose.

That if the Jury find both of the issues aforesaid for the Plffs. in this suit, then the Jury should assess, the damages for the Plffs upon the note offered in evidence, and for the wood delivered, as they the Jury shall find from the evidence.

That the matters and things alleged in the said Defs. Plea other than those embraced in the two issues aforesaid are not evidence for the Jury in finding the truth of said issues.

And on the trial of said cause the following instructions were presented, which were refused by said Court in the words and figures following to wit.

The Court is requested to charge the Jury 1st That if the Jury find that the wood was delivered under the contract ^{read} in evidence & it being admitted that the note read in evidence was

Given in pursuance of said contract, and also that the Plffs failed to perform said contract on their part, the Plffs. are not entitled to recover in this action.

2 That the delivery of the wood by Plffs and the delivery of the note in question by deft. being contemporaneous acts the allegations in despite plea of the failure to perform said contract, on the part of Plffs. and which are admitted by Plffs constitute a bar to this action.

3 That by the facts admitted in this case, there is a failure of consideration to said note

And afterwards Torts on the 31. day of March in the year last aforesaid, it being also one of the regular days of said Term of said Court, for the year last aforesaid, said Court being duly organized and open for the transaction of business the following Verdict. of the Jury last impaneled in said cause was filed in said Court in the words and figures following To wit.

" Dated March 30th 1855

Wear Jurors find for the Plaintiff Twelve hundred & one dollar & Seventy Two Cents.

Robert Chapman

Wm. Blazdell

Jacob S. Palmer

Myron Pierson

Samuel Adams

S. J. Bragaw

A. H. Gorham

Henry W. Millin

L. W. Smith Emmett

J. D. Miller

John Mills

Nathl Marshall "

And thereupon Torts on the day and year last aforesaid

It being one of the regular days of Said Term of said Court for the Year last aforesaid, Said Court being duly organized and open for the transaction of business the following proceedings were had and entered of Record by Said Court in the words and figures following To-wit:

"Philo A. Heaven & James M^o
Heaven, Surviving partners of Orlando H^o
Heaven, deceased

vs
Chauncy D. Spaid

Assumpsit.

And now again come Said parties to this suit by their respective attorneys, as on Yesterday, and the said Jury last aforesaid empannelled in this cause, also again come and present their sealed verdict to the Court, which was ordered to be entered on form Court. We of the Jury find the issues joined between Said parties herein, viz. the Said plaintiffs and assess plaintiffs damages herein to Twelve hundred and one dollars and seventy two cents. And thereupon Said defendant enters his motion for a new trial of this cause.

And the Court being fully advised in the premises it is ordered that Said motion be and it is overruled. Whereupon Said Defendant enters his motion for Judgment herein non obstante, and after deliberation the Court being fully advised in the premises it is ordered that said motion last aforesaid be and it is overruled. Thereupon Said plaintiffs enter their motion for Judgment against Said Defendant, upon the Said verdict. And it is ordered by the Court, that Said Plaintiff do have Judgment against Said defendant, upon Said verdict for their Said damages herein to the sum of Twelve hundred and one dollars and seventy two cents.

It is thereupon considered by the Court, that the Said Plaintiff do recover of the Said Defendant their damages aforesaid to the sum of Twelve hundred and one dollars, and seventy two cents, together

With their costs and charges by them about their suits in this behalf expended
and that they have execution therefor.

And afterwards Court on the 6th. day of April, in the year last afore-
said the following precept for execution was filed in the Office of our
Said Clerk in the words and figures following To wit

"State of Illinois Will County"

Will County Circuit Court. -

Phil A. Heaven & James M. Heaven
Survivors of Orlando H. Heaven, deceased

^{vs}
Chauncy D. Spaid

Art.

The Clerk will please issue
Execution on the Judge's in this cause against the above named de-
fendants, directed to the Sheriff of Cook County to execute.
and

Oblige Yours
J. Goodspeed
for Plffs."

Whereupon Execution was issued in usual form as per
Command of said Precept

State of Illinois
Will County

I Royal E Barber Clerk of said
Will County Circuit Court do certify the
preceding to be a true correct and complete abstract and
transcript of the said entitled cases as appears of Records
and files of said Court this day examined and compared
by me

In attestation whereof I have hereto
subscribed my name and affixed
the seal of said Court at office in
Joliet in said County this 10th day
of July A.D. 1855

R. E. Barber
Clerk

Let a Supersedeas issue in the above cases
upon the plea in error filing a bond in the
sum of three hundred dollars with Tarleton Jones as his security

J. D. Catron

P. A. Haven: Clk. ad.

Chancery Cl. Sparks

Record of Cases

57 fol \$8.75

Cost & Seal 35

Mails 9.50

15 \$9.25

Filed Sept. 6. 1855.

J. C. and Ch.

24 47 76
8

STATE OF ILLINOIS,

Supreme Court,

ss.

The People of the State of Illinois,

To the Clerk of the Circuit Court for the county of Will - 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 *Will* county, before the Judge there-
 of, between *Philo C. Haven & James M. Haven*
Survivors &c.

Plaintiffs, and *Chauncey D. Spades*

Defendant - it is said manifest error hath intervened, to the injury of the aforesaid *Spades*

as we are inform-
 ed by *his* 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 there-
 of 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 *2^d Monday in June* - 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. *Walter D. Seates* **SAMUEL H. TREAT**, Chief Justice

of our said Court, and the Seal thereof, at Ottawa, this *6th* day of *September*
 in the Year of Our Lord One Thousand Eight Hundred and Fifty-*five*.

Seeland

Clerk of the Supreme Court.

C. J. Spaldes

P. A. Haven et al.

Writ of Error

This Writ of error is made
a Supersedeas & as such
should be obeyed by all
concerned - Leland & Co.

Filed Sept. 6, 1855.
L. Leland Clerk.

Havens Et al vs On application for writ of
Error & Injunctive
Spaid vs Brief

On the 10th of the last or 10th of the
12th Assignments of Errors the said Spaid would respectfully
refer to the following Authorities

On the Case of Carter vs. Summery
10th Mas. Ec. The Court say "That the Court may
work an issue into form - but where a Special Plea is
manuwend, and a general verdict It is Error
Again Where Pleas are filed upon which no issue

is taken nor any disposition made or notice taken
of them - but the parties proceeded to trial upon other
issues & pleas It is Error Nye vs Wright 2
Scam. 222, Bradshaw vs Hobbs 4th Scam 58. Stebbins
vs Watson Eccl 5 Gilman. 249. Morris vs Little
Et al 11. Ill. 549 - & 15. Ill. 135

The verdict of the jury should answer to all
the questions submitted by the issues and when an
issue is left unmanuwend no judgment should be
rendered - Opinion of Judge Sam in Hanley vs
M. Levin 5th O.R. 238 -

G. B. H. C.
For Spaid

~~24~~ 49 7617

Chauncey D. Spaides Plaintiff in Error

vs
Phil A. Warren & James

W. Warren Surviving
partners of Orland W.
Warren deceased

Defendants in Error

And the said Chauncey
D. Spaides now Comes and Says that in the Record and
proceedings aforesaid there is Manifest Error in this To Wit

The Court after the withdrawal of the first, second, third
and fourth ^{fifth} Replications by plaintiff, Erred in Charging
the Jury "that the first issue they must find was whether
Spaides had commenced in Cook County Circuit Court
as alleged in said Spaides Plea, when in fact one
material averment of the plea, to wit, the entire non
performance of the Contract by defts in Error, was wholly
unanswered by Replication

The Court Erred in Charging the Jury that the
written Contract offered in Evidence by the deft in the
Court below was only admissible to fix the price of
Wood and for No other purpose -

The Court Erred in Charging the Jury that if
they found the issues as to the dependency of another Suit
(which was the only issue made by defts in Error) for said
plaintiff below, then they should assess the damages

5th for the plaintiffs below upon the Note offered in Evidence
and for the Word delivered

6th The Court erred in Charging the Jury that
the unanvowed Matter, in said plea, other than those
Embraced in the two issues were not Evidence for
the Jury in finding the truth of said issues - Such
Charge tending to Misdirect and Mislead the Jury

7th The Court Erred in refusing to Charge the Jury
as requested by Defendant below in instructions No 1-

8th The Court Erred in refusing to Charge the Jury
as requested by defendant below in instructions No 2

9th The Court Erred in refusing to Charge the
Jury as requested by defendant below in instructions No 3 -

10th The Verdict of the Jury is Manifestly Erroneous
and against the pleadings and Evidence in the Case

~~The said Verdict was given in favor of the said
plaintiffs below whereas by the laws of the land it ought
to have been given for said Defendant. Wherefore the said
Chancery D. Spaiders prays that a writ of Error & Superedeas
May issue and that the said judgment May be reversed an-
nulled and held for nothing and that he may be restored to all things
he has lost by reason thereof By Gilbert Spaiders & Gilbert
His attorneys~~

Because the Special Plea of Defendant avers
four or five several and distinct Matters Mater-
-ial in the trial of the Cause - which by the
withdrawal of the 1st, 2^d, 3^d, 4th, & 5th Replications
of Plaintiff left the said Plea as to said
averments unanswered

11th

The Plea of defendant avers that plaintiff & defendant
made a contract in writing for the delivery by
plaintiff for defendant a certain quantity of wood
by a specific time - that the promissory note upon
which plaintiff declared was executed in pursuance
of said Contract - that plaintiff failed to comply
with the terms of such Contract, and entirely failed
to deliver said wood &c - all of which
facts & averments are entirely unanswered

12th

The verdict of the jury was given in favor
of the plaintiff when by the laws of the land
it should have been given for defendant

Whereupon said Chancery & D. Spradley prays
that a writ of Error & Supercedendo may
issue and that the said judgment may be reversed
annulled and set aside and hold for naught
and that he may be restored to all things
he has lost thereby

Gilliat Cameron & Gilbert

Attys for Spradley

76 47 17

C. D. Spinde, Ref in Error

vs Assignment of
Errors

J. A. Hamm et al, deft in Error

~~~~~ " ~~~~~

Filed Sept. 6. 1855  
L. Leland Clk.

Gilbert Cannon & Son  
for Spindes



Know all men by these presents That Mr. Chauncey  
D Spaides and Charles Jones

are held and firmly bound unto Philo W. Haven &  
James M Haven Survivors of Orlando W Haven deceased  
in the penal sum of Three Thousand Dollars  
to the payment of which well and truly to be made  
we do by these presents jointly and severally bind  
ourselves our heirs Executors administrators and assigns  
Sealed with our seals and dated this 18<sup>th</sup> day of  
August AD 1855.

The Condition of the above obligation is such  
that Whereas the said Chauncey D Spaides has obtained  
an allowance of a writ of Error upon a certain judgment  
rendered in the Hill County Circuit Court of the State of Illinois  
at the March Term thereof AD 1853 in favor of  
Philo W. & James M. Haven Survivors ~~and~~ against said Chauncey  
D Spaides for the sum of Twelve Hundred and One  
Dollars together with the Costs of suit

Now if the said Chauncey D Spaides  
shall pay the judgment Costs interest and damages  
in case the said judgment of the said Philo W Haven  
& James M Haven Survivors <sup>of Orlando W Haven deceased</sup> shall be affirmed by the Supreme  
of the State of Illinois in whole or in part then the above  
obligation shall be void; otherwise in full force

C. D. Spaides  
Charles Jones



The State of Illinois

County of La Salle ss

Before me One of the Judges  
of the Supreme Court of the  
State of Illinois personally appeared  
Thomas S. Gilbert who being duly sworn according  
to law declares on oath that he is from informa-  
tion acquainted with Tarkenton Jones the party  
upon the petition, <sup>bond</sup> and that said Jones is  
perfectly responsible and fully able to  
respond to any amount that may be adjudged  
against him upon the same

Subscribed to and Sworn

before me this 31<sup>st</sup> day of August

AD 1855 J S Carow

Thomas S. Gilbert



~~47~~ 17

C. D. Spaid, Refr. Engr.

Wm Bond

J. H. Harris, Engr., Refr. Engr.

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Filed Sept. 6. 1855.  
A. Keland Clk.