

12178

No. _____

Supreme Court of Illinois

Shattuck

vs.

Ball Brothers

71641  7

United States of America
State of Illinois

Pleas before the Honorable Isaac
G. Wilson. Judge of the Nineteenth Judicial
Circuit in the State of Illinois at a Term of
the DeKalb County Circuit Court. begun and
held at the Court House in Dyersville in said
County, on Monday the sixteenth day of October
in the year of our Lord one thousand eight hund-
red and fifty four. and of the Independence
of the United States the Seventy Ninth.

Present the Hon. Isaac G. Wilson Judge
M. M. Bryce States Attorney
Joseph F. Meadum Sheriff
Attorn James H. Downing Clerk

Be it remembered that on the 16th day of
October A.D. 1854 it being one of the days of said
Term of Court aforesaid the following among
other proceedings were had, to wit

Loomis Shattuck

vs
John H. Ball & James L.
Ball. Partners in Business
under the name and style
of Ball Brothers.

Appraiser

This day came the

Plaintiff by his Attorney, and the Defendants being three times solemnly called came not nor any one for them, but herein made default which by order of Court is entered of Record:

And it appearing to the Court that this suit was instituted upon a certain instrument of writing for the payment of money only, it is ordered by the Court that the Clerk assess the damages and the Clerk having subsequently Reported as due from the Defendants the sum of one hundred and forty one dollars and thirty four cents: - It is therefore considered by the Court that the Plaintiff have and recover of the Defendants the aforesaid sum of one hundred and forty one dollars and thirty four cents his damages as aforesaid assessed and Reported, and his costs herein expended, and that he have execution therefor.

Loomis Shattuck
 vs
 J.L. & C. H. Ball
 Partum &c

Assumpsit
 Oct 8. 1854

P.L. App'ty 15. doc suit 10 3pi 15. Sum 40 811
 def 20 ord ap'dum 20. apt'dum 20 Est Jan 25 85
 doc paid 10 ord 20 24pi 40. doc 2x 10 85
 Ct 8 est 35. P.C. 30 dep 20. 18 est 25 114
 \$3.61
 Sheriff's claim for on sum 2.11
 \$5.71

(Copy of the Record)

Deputy Circuit Court

For Oct Term 1854

Loomis Shattuck
 vs
 John H. Ball & James L.
 Ball, Partum under name
 style of J. H. Ball Brothers

Assumpsit
 Damages \$200.00

The Clerk will please issue Summons
 as above suggested returnable to next Term
 of this Court Sep. 25. 1854

A.C. Fuller
 Plff's Atty.

Filed Sept 26. 1854.

J. H. Beveridge Clerk

(Copy of Narr. Note & ap.)

In the Circuit Court of DeKalb County
Of October Term in the year of our Lord
one thousand eight hundred and fifty
four

State of Illinois }
County of DeKalb } P.

Loomis Shattuck Plaintiff in
this suit by Tully his Attorney comes
and complains of John H. Ball, and James L.
Ball. Copartners heretofore doing business under
the name style & firm of "Ball Brothers" Defend-
ants who are summoned to of a Plea of
trespass on the case upon promises:

In that whereas, the said Defendants
under the name & style aforesaid, on the first
day of April in the year of our Lord one thous-
and eight hundred and fifty four, at Genoa
in said County, to wit at & between in the County
aforesaid made their Promissory Note, in
writing dated the day and year last afore-
said, and delivered the same to said Plain-
tiff and thereby then and there promised
to pay to the order of said Plaintiff, ten (10)
days after the date thereof at the Office of H. A.
Tucker & Co. Chicago, one hundred & fifty dollars
value received, which period hath now elapsed
by means whereof, and by force of the Statute in
such case made and provided, the said Def-
endants then and there became liable to pay
to the said Plaintiff the said sum of money
in the said promissory Note specified ac-
cording to the tenor and effect of said prom-

if any note, and being so liable, they the said
Defendants ^{in conspiracy} themselves afterwards to wit, on the day
and year last aforesaid at Genoa, to wit at the
chamber aforesaid undertook and then and there
faithfully promised the said Plaintiff to pay
him the said the said sum of money in said
promissory note specified according to the
tenor and effect thereof.

Yet the said Defendants although often re-
quested so to do hath not paid to the said
Plaintiff the said sum of money in the said
Promissory note specified, nor any part thereof
according to the tenor and effect thereof, but to
pay the same hath hitherto wholly refused and
still refuse.

And also, that whereas the said Defend-
ants on the first day of May in the year of our
Lord one thousand eight hundred and fifty
four in the County aforesaid were indebted
to the said Plaintiff in the sum of two
hundred dollars for the price and value of
goods then and there sold and delivered by
the Plaintiff to the Defendants at their request,

And in two hundred dollars for money then
and there lent by the Plaintiff to the Defend-
ants at their request,

And in two hundred
dollars for money then and there paid by the
Plaintiff for the use of Defendants at their
request.

And in two hundred dollars for mon-
ey then and there received by the De-
fendants for the use of Plaintiff.

And in two hundred dollars for interest
due from the said Defendants to the said Plain-
tiff, for and in respect of the said Plaintiff
having forbore and given day of payment of Mon-
ey due from said Defendants to said Plaintiff
at said Defendants request for a long time then
elapsed.

And in two hundred dollars for money
found to be due and owing from said Defend-
ants, to said Plaintiff on an account then
and there stated between them. And whereas
the Defendants afterwards, to wit. on the day
and year last aforesaid, at the place aforesaid
in consideration of the premises, respectively
undertook and promised the said Plaintiff
to pay the said several last mentioned moneys
respectively to the Plaintiff on request, yet
they, although often requested to pay the same
to wit on the day and year and at the place
last aforesaid, they have disregarded their prom-
ises and have not paid any of the said moneys
or any part thereof to the damage of the Plaintiff
two hundred dollars, and therefore he brings
suit &c.

Alm C. Fuller Plffs Atty

The Defendants in this suit will please take
notice, that this suit is brought to recover the
Amount due upon a note of which the following
is a copy to wit.

457.

Given April 1st 1854

Ten days after date we promise to pay

to the order of Loomis Shattuck at the office of
W. A. Tucker & Co. Chicago, one hundred fifty
dollars Value Received

Signed "Ball Brothers"

Also upon the following account

Ball Brothers

To Loomis Shattuck Dr.

April 1. 1852

To Cash lent \$200 —

" work & labor 200 —

" Money paid 200 —

Am't due upon Settlement 150

Sep 25. 1852

A. C. Fuller

Filed Sept 26. 1852

J. H. Jennings clerk

Pltffs Atty

(Copy of Note & Endorsements)

\$150 &

Given April 1st 1852

Ten days after date we promise to pay to
the order of Loomis Shattuck at the office of
W. A. Tucker & Co Chicago one hundred fifty
Dollars. Value Received.

(Signed) Ball Brothers

Due

10th May 23. Rec'd on the within ten dollars

Rec'd on the within Four Dollars

Filed Oct 16. 1852. J. H. Jennings clerk

(Copy of the Summons & Sheriff's Return)
enclosed thereon

(Copy of Clerk's Report)

DeKalb Circuit Court

Loomis Shattuck

Oct Term A.D. 1852

vs

John P. Ball & James

Appraiser

L. Ball Partners under

name style & firm of

A Judgment by default

Ball Brothers.

The undersigned Clerk of the Circuit Court having been appointed by the Court to appraise the damages which the said Plaintiff has sustained by reason of the premises in the said Declaration mentioned. Reports

that he has appraised the damages by computing the interest on the instrument in writing on which said Cause was instituted from April 1st 1852 to Oct 16, 1852 and finds due thereon \$141.34.

J. P. Beveridge Clerk

Filed Oct 16, 1852.

J. P. Beveridge Clerk

State of Illinois

DeKalb County Sp.

J. James J. P. Beveridge Clerk

of the Circuit Court in and for said County in the State aforesaid do hereby certify that the foregoing before is a true transcript, of the Record of Proceedings had in the above entitled Cause - Bill of Costs - Summons issued in said Cause & the Sheriff's endorsement thereon - and of all papers on file in this office pertaining to said Cause.

Witness J. P. Beveridge Clerk of our said Court and the Seal thereof at Decatur this 25th day of November A.D. 1852.

James J. P. Beveridge Clerk

STATE OF ILLINOIS, }
DeKalb COUNTY, } ss.

THE PEOPLE OF THE STATE OF ILLINOIS, TO THE SHERIFF OF SAID COUNTY—GREETING:

WE COMMAND You, That you SUMMON *John D. Ball & James L. Ball, co-
 partners under name style & firm of Ball & Brothers*

if *they* shall be found in your County, personally to be and appear before the Circuit Court of said County,
 on the *first* day of the next term thereof, to be holden at the Court House in
Lycamore in said County, on the *Sixteenth* day of
October next, to answer unto *Loomis Shattuck*

in a plea of *Assumpsit*

to the damage of the said plaintiff as he say, in the sum of *two hundred*

dollars.

And have you then and there this writ, with an endorsement thereon, in what manner you executed the same.

WITNESS, *James H. Derrings* Clerk of our said Court,
 and the seal thereof, at *Lycamore* this *twenty sixth*
 day of *September* A. D. 185 *4*

James H. Derrings Clerk.

(Copy of Sheriff's Return enclosed in Summons)

Sept 30th 1852. I return this Summons
it having been only served on the within named
I Am H. Ball & James S. Ball according to law
Fee. trav 1.00. Lev 1.00. Ret 1.00 \$2.00

(Signed) S. F. Glidden
Sheriff

Filed Oct. 2, 1852

J. H. Bernays Clerk

Supreme Court - of State of Illinois
To June Term 1855 -

John H. Ball &
James L. Ball }
vs } Error to De Kalb
Loomis Shattuck }

And now comes the said
John H. Ball and James L. Ball - by
Wm H. L. Wallace their attorney and
allege that there is manifest error in
the aforesaid judgment & proceedings
apparent upon said record - and
that by reason thereof said proceedings
& judgment ought to be reversed set
aside and for naught held -

And for particular assignment of errors
show to the Court the following -

- 1st The record does not show that
said Circuit ^{court} of De Kalb County - had
jurisdiction of the person of either
of said plaintiffs in Error -
- 2nd The return to the summons in said
case is not sufficient to authorize the
Circuit Court to render said judgment -
- 3^d The declaration in said Cause
was insufficient -
- 4th The Court erred in rendering judgment
by default against defendants in
that Court -

5th The proceeding in assessing said damages were irregular & the Court erred in rendering final judgment thereon —

6th The whole record taken together did not warrant the judgment & the Court erred in rendering the same in the manner the same was rendered —

7th The summons was insufficient —

W^m H. L. Wallace

for plffs in

Error —

The Hon John S. Catron - Chief Justice of said Court is requested to inspect said proceedings and record and to order a supersedeas — The attention of his Honor is particularly called to the return of the Sheriff upon the summons in the case —

W^m H. L. Wallace

State of Illinois

Supreme Court Let a supersedeas issue in the above Cause upon the plaintiffs in Error Executing & filing with the Clerk of the ^{Court} a bond in the usual form in the penal sum of three hundred dollars with George L. Wood as his surety

J. S. Catron
Ch of sup court Ill

State of Illinois -

I, John D. Caton, Chief Justice
of the Supreme Court of said State having
inspected the foregoing record - and
perceiving that there is probable error
in said proceedings and judgment
hereby order & direct that the writ of error
to be sued out be made a supersedeas
upon plaintiffs in error filing with the
Clerk of the Supreme Court at Ottawa
a bond in the penalty of four hundred
dollars - conditioned as required by
law - & executed by them or either of
them as principal or principals and
also by George L. Wood as his or their
security -

Dated at Ottawa this 16th day of May
1855 -

J. D. Caton

And now comes the said defendant in error
B. L. Cook his atty & says that in the record of pro-
ceedings aforesaid and in the rendition
of the judgment aforesaid there is no
error & this he prays may be reversed
& said judgment be affirmed.

B. L. Cook

for defendant

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Verma Chaturvedi

to

Recd. Prithvi

Manuscript

Filed May 22nd 1855
A. Beland Clerk

12178

1855

STATE OF ILLINOIS, }

Supreme Court, }

ss.

The People of the State of Illinois,

To the Clerk of the Circuit Court for the county of *De Kalh* - 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 *De Kalh* - county, before the Judge thereof, between *Loomis & Shattuck* _____

plaintiff, and

John H. Ball & James L. Ball

defendants it is said manifest error hath intervened, to the injury of the aforesaid _____

Defendants _____ as we are informed by *their* complaint, and we being willing that error, should be corrected if any there be in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly without delay, send to our Justices of the Supreme Court the record and proceedings of the plea, 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 *22^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. *Samuel H. Treat* ~~SAMUEL H. TREAT~~, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this *22^d* day of *May*

in the Year of Our Lord One Thousand Eight Hundred and Fifty-five.

L. Lilance

Clerk of the Supreme Court.

John H. Ball et al.

Louis Shattuck

Writ of error

Filed May 22^d 1868.
Leland Ch.

This writ of error is
made a supersedeas &
as much is to be obeyed
by all concerned -

L. Leland Ch.

STATE OF ILLINOIS,

Supreme Court,

ss.

The People of the State of Illinois,

To the Sheriff of the County of *De Kalb* — Greeting:

BECAUSE in the record and proceedings, and also in the rendition of the judgment of a plea which was in the circuit court of *De Kalb* — county, before the Judge thereof, between *Loomis Shattuck, plaintiff and*

John H. Ball & James L. Ball —

defendants, it is said that manifest error hath intervened, to the injury of the said *Defendants*

as we are informed by *their* complaint, the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the state of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said

Loomis Shattuck —

that *he* be and appear before the Justices of our said Supreme Court, at the next term of said court, to be holden at Ottawa, in said state, on the *22^d* Monday in *June* — next, to hear the records and proceedings aforesaid, and the errors assigned, if *he* shall see fit; and further to do and receive what said court shall order in this behalf; and have you then there the names of those by whom you shall give the said *Shattuck* —

notice, together with this writ.

John D. Caton
WITNESS, the Hon. *Samuel H. Treat*, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this *22^d* day of *May* in the Year of Our Lord One Thousand Eight Hundred and Fifty-five!

L. Seland

Clerk of the Supreme Court.

I Return this writ Executed by ~~me~~ leaving a true
 Copy of the same with the wife of the mother named
 Loomis Shattuck at his residence in the County of Boone
 in the State of Illinois this 2^d day of June A.D. 1855
 for 70 miles \$3.50 Copy 25 return 10 \$3.85
 of Court
 William Phelps Sheriff
 of Boone County

John H. Ball et al.
 vs
 Loomis Shattuck
 Sci. Fa. to June
 Term 1855

Filed June 17. 1855
 L. Selous Clk.

12178
 Corts
 taxed

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BEFORE me the County Clerk of Boone County, Illinois, on the 17th day of June, 1855, appeared the within named parties, to-wit: John H. Ball et al. and Loomis Shattuck, and they acknowledged to me the foregoing writ of Subpoena, and the return thereon, and the execution thereof, and the payment of the costs thereon, and they agreed to the same, and they signed the same in the presence of me, the County Clerk of Boone County, Illinois.

Know all men that we, John H. Ball
and James L. Ball as principals and George
L. Wood as security, (all of De Kalb County
in the State of Illinois) are held and firmly
bound unto Loomis Shattuck in the
penal sum of four hundred dollars
well & truly to be paid to the said Shattuck
his heirs executors ~~and~~ administrators
~~and~~ ^{and} by us and each of us our heirs executors
and administrators - for which we bind
ourselves jointly & severally by these
Presents this 17th day of May A D
1855 -

The condition of this bond is such
that whereas at the last October Term
of the Circuit Court of De Kalb County
by the consideration of said Court
the said Loomis Shattuck did recover
a judgment against the said John
H. Ball and James L. Ball for
the sum of one hundred and forty
one dollars and thirty four cents damages
and his costs in that behalf - in a certain
action of Assumpsit - to reverse which judg-
ment - said John H. Ball & James L. Ball
are about to sue out a writ of error from
the office of the Clerk of the Supreme Court
of Illinois - at Ottawa - and to have the
same made a supersedeas - Now if the

the said John H. Ball and James S
Ball shall prosecute said suit in said
Supreme Court with effect - and pay ~~the~~
said Judgment of the Circuit Court of
DeKalb County if the same shall be affirmed
and left unversed upon the trial or dismissal
of said writ of error - and shall pay
whatever judgment shall be rendered against
them by said Supreme Court - then this
bond to be void otherwise of force
James S Ball Seal

John H. Ball Seal

G. L. Wood Seal

Supreme Court -
Ball & Ball

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Shattuck

Bond for Superintendence

Filed May 22 1855.
L. V. and Otho.