No. 12669

Supreme Court of Illinois

Swits et al

vs.

Carver et al

71641 7

86 - 138

Charles H. Smith, Ptff

vs

Sra K. Carnerstal

86

12661

1858

117-8 Dec

In the Winnebago County Court.

1 Ira K. Carver
Bloomer Carver
v.
Charles H. Switz
William P. Dennis } Assumpsit

Be it remembered, that on the eighth day of December, in the December term of the Winnebago County Court in the State of Illinois, in the year of our Lord one thousand eight hundred and fifty seven, before the Honorable Anson S. Miller, Judge of said Court, this cause came in to be heard:

" Ira K. Carver &
Bloomer Carver
vs
Charles H. Switz
William P. Dennis } State of Illinois. Winnebago County Court. December Term A.D. 1857

The Clerk of said Court will please issue a summons in the cause returnable at the next term of said court in. Assumpsit.

Damages $300.00

L. F. Warner. Atty for Plff.

[12669-1]

2

Ira K. Carver & Bloomer Carver
vs
Charles N. Scoits & William P. Dennis
} In the Winnebago County Court, Dec Term A.D. 1857

I. L. F. Warner hereby enter myself security for costs in this Cause and acknowledge myself bound to pay or cause to be paid all cost that may accrue in this action, either to the opposite party, or to any the officers of this Court in pursuance of the laws of this State. Dated at Rockford November 18, 1857

L. F. Warner.

Ira K. Carver & Bloomer Carver
vs
Charles N. Scoits & William P. Dennis

State of Illinois Winnebago County Court December Term A.D. 1857

Ira K. Carver & Bloomer Carver the plaintiffs in the above entitled suit by L. F. Warner their attorney complains of Charles N. Scoits and William P. Dennis the defendants in the above cause who have been duly summoned herein to answer the said plaintiffs in a plea of assumpsit. For that whereas the said defendants heretofore to wit, on the

thirteenth day of March in the year of our Lord One Thousand Eight Hundred and Fifty Seven at Rockford to wit at Winnebago County Illinois Made their certain promissory Note in writing bearing date the day and year aforesaid and thereby then and there by the Name and Style of Charles N. Scott & W. P. Dennis promised jointly & Severally to pay to the said plaintiffs or order Two Hundred and Fifty Nine dollars and twenty three cents for value received with interest at ten percent per annum, eight Months after date, which period has long since elapsed, and the said defendants then and there delivered the said Note to the said plaintiffs by Means whereof the said defendants then and there became liable to pay to the said plaintiffs the said sum of Money in the said Note specified according to the tenor and effect of the said Note. And the said defendants then and there in consideration thereof undertook and faithfully promised the said plaintiffs to pay them the said sum of Money in the said Note specified according to the tenor and effect of the said Note. And the said plaintiffs aver that the said sum of Money in the said Note specified long since became due and payable according to the tenor and effect of said note yet the said defendants have never paid the same nor any part thereof.

And for that whereas also the said defendants ~~to wit~~ afterwards to wit on the sixteenth day of November A.D. 1857 at

4. Said Winnebago County were indebted to the said plaintiffs in the sum of Three Hundred Dollars for money then and there lent by the plaintiffs to the defendants at their request and in the sum of three Hundred dollars for money then and there received by the said defendants for the use of the said plaintiffs and in the sum of three hundred dollars for money then and there paid by the plaintiffs for the use of the defendants at their request and in the sum of three hundred dollars for money then and there found to be due from the defendants to the plaintiffs on an account then and there stated between them.

And whereas also the said defendants in consideration of the premises and of being indebted as aforesaid then and there at the place aforesaid undertook and faithfully promised the said plaintiffs to pay them the said several sums of money respectively on request yet the said defendants have disregarded their promises & undertakings and have not paid any or either of said monies or any part thereof though often requested and demanded so to do, which is to the damage of the plaintiffs of the sum of three hundred Dollars & therefore they bring suit

L. F. Warner
Atty for Plff

5. The defendants will take notice that the following is a copy of the note and account sued on

(Copy of note $259.23) Eight Months after date we or Either promise to pay Ira K. Carver & Bloomer Carver or Order. Two Hundred Fifty Nine 23/100 dollars value received with interest at ten per cent per annum.

Rockford Ill March 13. 1857

Chas N Swits
W. P. Dennis

Copy of Account.

The Defendants To Plaintiffs Dr

To	Money lent	300.
"	Money paid for use of Deft	300.
"	Money received by Defendants for use of Plff	300.
"	Money due on account Stated	300.

(Filed as follows)

Winnebago Court

Ira K Carver &
Bloomer Carver
vs
Charles N. Swits
William P. Dennis

Precp Sct & Narr

Filed Nov 23. 1857.

Wm Nulin
Clk.

L. F. Warner.

6

State of Illinois }
Winnebago County } ss

The people of the State of Illinois to the Sheriff of said County — Greeting.

We command you that you Summon Charles N. Swits & William P. Dennis if they shall be found in your County, personally to be and appear before the County Court of said County, on the first day of the next term thereof to be holden at the Court House in Rockford, in said County on the first Monday of December 1857 to answer unto Jon K. Carver & Bloomer Carver in a plea of Assumpsit to the damage of the said plaintiff as he says in the sum of three hundred Dollars.

And have you then and there this Writ with an Endorsement thereon in what manner you shall have executed the same.

Witness — William Nulin Clerk of our said Court and the Seal thereof at Rockford aforesaid this Twenty Third day of November A. D. 1857.

Seal

William Nulin Clerk.

(Endorsed thereon as follows)

Winnebago County Court
Carver & Carver
Ch. N. Swits
Wm. P. Dennis.

State of Illinois }
Winnebago County } I duly served the within by reading

7

the same to the within named Deft Charles N. Swits and William P. Dennis this 25 day of November 1857, as I am therein commanded.

Saml J Church Sheriff
By E. Ratcliff Deputy.

Filed Dec 3d 1857. Wm Nulin Clk

Fees Service 1.00
Mileage .10
Return .10
1.20

Warner. Attorney.

State of Illinois
Winnebago County } Winnebago County Court
Dec Term 1857

Charles Swits &
William P. Dennis
ads
Bloomer Carver et al } Assumpsit.

And now comes the said Defendant by O. Miller jr their attorney and defends the wrong and injury when &c, and say that they did not undertake and promise in manner and form as the said Plaintiffs hath above alleged &c, and of this they put themselves on the country for trial &c

O. Miller jr atty
for Defts

(Endorsed thereon) Win Co Court
C Swits et al
ads
B Carver et al } Plea
Filed Dec 7. 1857
Wm Nulin Clerk

(Copy of note)

$259.23 Eight months after date we or either promise to pay Ira K. Carver & Bloomer Carver or order Two Hundred fifty Nine 23/100 Dollars for value received with interest at ten per cent per annum

8

Rockford Ill March 13. 1857"

"Chas N. Swits"
"W P. Dennis"

(Endorsed) Suit Entered Decr. 8. 1857
Wm Nulin Clk

$278.34

State of Illinois }
County of Winnebago } SS.

In County Court December Term 1857

No. 117 In the Matter of Carver & Carver against Ch N. Swits & Wm P. Dennis

This action having been brought upon an instrument of Writing, to wit: a Promissory Note given by Chas N. Swits & Wm Dennis to Ira K. Carver & Bloomer for the payment of money only. and the damages of the Plaintiff resting in computation and the court having referred the same to the Clerk to assess and report said damages, and the clerk having computed and assessed the same in pursuance of the order of the court reports to said Court that the amount thereof is

($278.34) Two Hundred Seventy Eight Dollars and Thirty Four Cents.

Wm Nulin Clerk

(Endorsed thereon)

Winnebago County Court

Carver & Carver
vs
Smits & Dennis

9

$278.34

Computation & report by Clerk of Plaintiffs Damages

Filed and approved by the Court this 8. day of December A. D. 1857

Wm Nelin
Clerk

Tuesday, December 8th 1857.

Ira K Carver
Bloomer Carver
v.
Charles H. Smits
William P. Dennis

} Assumpsit

This day come the said Plaintiffs by Lyman G. Warner their Attorney, and the defendants being three times solemnly called come not nor either of them nor any one for them or either of them but make default herein. It is therefore ordered by the Court that the Plaintiffs have Judgment against the Defendants by

default for their damages herein.
And it appearing to the Court that
10 this suit is brought on an instrument
of writing for the payment of money
only, and that the damages rest
in computation, it is ordered that
the Clerk assess the same. And he
having assessed and reported to
280 the Court the sum of ($278-34)
Two hundred seventy eight dollars
and thirty four cents, which is
approved by the Court, it is ordered
and considered by the Court that
the said Plaintiffs have and recover
of the said Defendants the said sum
of ($278.34) Two hundred and
seventy eight dollars and thirty
four cents, their damages assessed
as aforesaid, as also their costs and
charges herein expended, and that
they have Execution therefor.

State of Illinois,
County of Winnebago } ss:

I, William Aulin, Clerk of

11

the County Court for said County, do certify, that the foregoing is a full and complete transcript of the above entitled cause, and a correct and complete copy of all papers and records of said Court relating to said cause, as appears by a careful comparison by me made with said papers and records, in my office remaining.

Given under my hand and the Seal of said Court at my office in Rockford, this First day of February, A. D. 1858.

William Hulin Clerk.

Let Supersedeas issue Bond $400. with O. P. Ogden Surety

J. D. Caton

186

Charles H. Wells
& another
vs
Geo K. Carver et al

63

Transcript

Filed Feb. 27. 1878
L. Leland
Clerk
by J. B. Rice Deputy

United States of America
State of Illinois Macoupin County —

Be it remembered that heretofore to wit on the Eighteenth day of March AD 1858 it being one of the days of March term of the Macoupin County Court, begun & held in & for said County of Macoupin the following entitled cause tried at the December Term of said Court 1857, viz

Jos R Turner &
Bloomer Ayres
vs
Charles Smith &
William P Dennis

was ordered to be re docketed as of said April Term for the purpose of hearing motions to be made in said cause which was accordingly done

Ira K. Carver
Bloomer Carver
vs
Charles Suits.
William P. Dennis

State of Illinois
Winnebago County Court
March Term AD 1858

In The above cause tried at the December Term of Said Winnebago County Court AD 1857

Now at this day it being the second Monday of the March Term of Said Court 1858 Comes the Said Plaintiffs by L. F. Warner their attorney and asks leave of the Court to file in Said court in Said above cause tried at the Said December Term of Said Court 1857 a Motion to Strike from the files of Said cause the plea purporting to be filed in Said cause

3

And the said Plaintiffs appearing by L. F. Warner their attorney, and the said defendants, Suits & Lennis, by O. Muller, Jr, their attorney, It is ordered by the court that the motion be filed in said cause,

which motion is in the following words and figures, to wit:

Ira K. Carver Bloomer Carver vs Charles Suits William S Lennis	State of Illinois Winnebago County Court In cause bind at the December Term 1857 of said Court

The plaintiffs by L. F. Warner their attorney moves the court that the

[12119-6]

Plea of the defendants in said cause, purporting to be filed in said cause at a day previous to the judgment on the said suit, be struck from the files of said cause, for reason that at the time of judgment in said cause the same was not on file with any of the papers of said cause, and that no appearance of the defendant in said cause had been made previous to the judgment in said cause upon the docket or otherwise and that no ~~motion~~ notice of the filing of the said plea was given and to file affidavits in said cause

L. F. Warner
Atty for Pltffs

The Plaintiffs Counsel then moved the Court for leave to file affidavits of William Heilin & L. F. Warner in said cause,

(which by the Court was allowed to be done)

Which affidavits are in words & figures following, to wit,

5

Ira K. Carver
Bloomer Carver
vs
Charles Suits
William P. Dennis

State of Illinois
Winnebago County
Court.

In cause tried at December Term 1857, of said Court

William Hulin, being by me first duly sworn, deposes & says, that he is now & was at the last December term of said Court Clerk of said Winnebago County Court, and that there was no appearance entered in the above cause at the last term of this Court by the defendants upon the Record of said Court, or upon either of the Dockets of said Court in ~~above~~ cause, that after the said last Term of said Court closed to the best of his recollection he found among the loose papers belonging to various cases, a paper purporting to be a plea in the above cause, that he has no recollection of ever seeing the said plea until after the said term of Court finally adjourned, that said plea bears his signature as clerk of said Court as having been filed by him and that is all the recollection he has concerning it, that he never saw the same among the papers of said cause ~~until~~ in its appropriate package, that he can

remember, until after the said last term of this court, when from his best recollection he found the same as aforesaid & put the same with the papers of the cause in its proper envelope

Subscribed & sworn to before me this 8th day of March 1858

J. G. Munlove J.P.

William Houlin

Ira K. Carver
Bloomer Carver
vs
Charles Surts
William P. Dennis

State of Illinois
Winnebago County Court
Tried at the December Term 1857 of said Court

State of Illinois Winnebago County ss

L. F. Warner being first duly sworn deposes & says that he was Attorney of Record for the plaintiffs in the above entitled cause at the term of said Court when judgment was rendered in said cause That there was no appearance entered for either of said defendants in said cause upon the Docket of said court or upon the Clerks docket of said Term or upon the Bar Docket and that there was no plea of the defendants or either of them on file in

7

said cause among the papers of said cause at the time of the default of the defendants by said court. And this affiant had not heard any notice that any plea in said cause had been filed at the time of judgement in said cause, or any time during the said term of said court — and that no appearance for the defendants or either of them was entered upon the records of said court

Subscribed & Sworn
March 8th 1858
before me
Wm Hendrin
Clerk of Co. Court

L. F. Warner

The motion in said cause then coming on to be heard, the Plaintiffs appearing by L. F. Warner their attorney and the defendants by O. Miller Jr their attorney,

The court after hearing the argument of counsell overrules the said motion in part (Strichen from the filed papers) To the overruling of which motion (so ord.) the Plaintiffs except which

exception is allowed by the Court

The Plaintiffs Counsel then moved the Court that the motion in this Cause and all proceedings under it and the affidavits of William Hulin & L. F. Warner in this cause be made a part of the record of the said cause tried at the December term of said Court 1857,

Which is allowed by the Court and Ordered to be done

The foregoing contains a statement of what took place at the March term of said Court 1858 in said cause which the said Court hereby signs & seals and orders to be filed & made part of the records in said cause

Anson S Miller
Judge (Seal)

State of Illinois }
County of Winnebago } ss

I William Hulin Clerk of the County Court for said County do hereby certify that since the certificate of the record by me

given in the forgoing cause of the record ~~to~~ proceedings ~~given~~ had in said cause, it being the only certificate of the Record & proceedings had in said cause to this date given by my assistant clerk. That the above and forgoing proceeding have been made & had in said cause and contain a true & complete record of the proceedings ~~of the~~ had in said cause at the March term of said Court A.D. 1858, and that the Record hereto certified by me, and the record hereunto certified contains ~~contains~~ together a full and complete record of the papers & proceedings had in said cause in said court,

Witness under my hand and the seal of said Court at my Office in Mt Ayr, Ringgold ~~this~~ seventeenth day of April A.D. 1858

William Nulin,
Clerk

56

Franklin Church
vs
Geo. W. Lewis

in

Filed April 24 1855
W. Leland
Clk

State of Illinois In the Supreme Court for the 3d ~~Second~~ division of the State of Illinois

Charles H Spoils & William P Dennis Plaintiffs in Error vs Ira H Carver & Bloomer Carver Defendants in Error

Error to Winnebago County State of Illinois

The Plaintiffs in error assign for the following Cause for Error in this Court

The Court erred in rendering judgement by default against the Plaintiffs in Error (defendants in the Court below) and assessing damages against them after a plea of the general issue was filed & undisposed of,

2 The Court erred in rendering a judgement by default against the Plffs in Error before the plea of the general issue was disposed of,

~~Nicholas Lewis~~
Jeremy Carver
Charles H Scott &
William P Demmes
Edward Lewis
vs
Jno K Cazier &
Bloom Carver
Spencer & Lewis

86

Filed Feb. 27, 1858
S. Leland
Clerk

3

The Court here in this cause
of the Plaintiff's Counsel
Discovered to defendants
by answer to Complaint
Edward Lewis
Chas H Scott
William P Demmes

STATE OF ILLINOIS, } ss. The People of the State of Illinois,
SUPREME COURT,

TO THE SHERIFF OF THE COUNTY OF Winnebago 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 Winnebago county, before the Judge thereof, between Ira K. Carver and Bloomer Carver plaintiffs and Charles H. Swift and William R. Dennis

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 Ira K. Carver and Bloomer Carver

that they 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 first Tuesday after the third Monday in April next, to hear the records and proceedings aforesaid, and the errors assigned, if they 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 Ira K. Carver and Bloomer Carver notice, together with this writ. John D Caton

WITNESS, The Hon. ~~WALTER B. SCATES~~, Chief Justice of our said Court, and the Seal thereof at Ottawa, this 27th day of February in the Year of Our Lord One Thousand Eight Hundred and Fifty-eight

C. LeClaire
Clerk of the Supreme Court.
by J. B. Rice Deputy

[12227-13]

Charles H. Switz &
William P. Dennis
vs. 86

Lee K Carver and
Bloomer Carver

Sci. fac

Filed March 1st 1858
E. Leland
Clerk

Served the within writ
by Reading the same to
Lyman H Warner this
2 day of March 1858
L J Church
Sheriff
Winnebago Co

Serve $50
Mile 5
Ret $\frac{10}{55}$

Know all Men by These Presents, That Charles H. Switz William P. Dennis ~~C. J. Sypher~~

as principal, and C. J. Sypher

as security, are held and firmly bound unto Ira K. Carver and Bloomer Carver in the penal sum of four hundred dollars good and lawful money of the United States, for the payment of which, well and truly to be made, the said Charles H. Switz, William P. Dennis C. J. Sypher

bind themselves & their heirs, executors, and administrators, jointly, severally, and firmly by these Presents.

Witness, Our hands & seals

this 17 day of February A. D. 1858

The Condition of the above Obligation is such, That, whereas, the above named Ira K. Carver and Bloomer Carver did, at the December Term of the County Court, held in and for the County of Winnebago in the State of Illinois, A. D. 1857 recover a judgment against the above bounden Charles H. Switz & William P. Dennis

for the sum of two hundred and seventy eight dollars & ninty four cents to reverse which said judgment, the said Charles H. Switz & William P. Dennis have sued out a Writ of Error from the Supreme Court, within and for the Third Grand Division of said State. Now if the said Charles H. Switz & William P. Dennis shall duly prosecute said Writ of Error, and pay, or cause to be paid, all judgments, costs, interest and damages which the said Supreme Court shall adjudge against them and abide the order and judgment of said Supreme Court in this behalf, then this obligation is to be void, otherwise to remain in full force and effect.

Charles H. Switz [SEAL.]

W. P. Dennis [SEAL.]

C. J. Sypher [SEAL.]

[SEAL.]

[2229-10]

State of Illinois
Winnebago County } Personally appeared before
me the undersigned a Justice
of the peace Winnebago County Illinois
Thirty seven days that he resides in
Real & personal property one and
above all indebtedness, one thousand
dollars

Sworn to before me
this 17 day of Feby 1858

Benjamin Mott,
Justice of the peace.

C. J. Dyer

Dr. Ehat
vs
Lawrence Ehat
Suppd Bond
Filed Feb 27 1858
W. Williams
Clerk

State of Illinois } April Term
Supreme Court. } A.D. 1888.

Wm. P. Dennis et al.
Plff in Error
vs.
Geo. K. Carver et al.
Deft in Error

Error from Winnebago

It is hereby stipulated by & between said parties that the argument of said cause shall not be brought on by either party before the first week in May.

Dated April 15. 1888.

Jason Marsh
Atty for Plff. in Error.

L. F. Warner
Atty for Defts in Error

[illegible]

86-

Supr. Court

Wm. P. Dennistal
vs
Ira K. Carverals

Stipulation
No. 86

Filed April 20. 1858
S. Leland
Clk.

Ira K Carver
Bloomer Carver
ads
Charles H Smith
Wm P Dennis

State of Illinois Supreme Court April Term 1858

It is stipulated between the attorneys for the respective parties that the above cause is to be submitted to the Court upon the second call of the Docket in its order, upon the written argument of the defendants, in Error and upon either oral or written argument of the plaintiff in error at his option

J. Marsh for Plffs in Error

L. A. Warner
Atty for Defts in Error

86

Jas K Carver
Bloome Carver
vs
Charles W Scott
Wm O Dennis

Stipulation for hearing

Filed May 18. 1858.
L. Velard Clk.

Charles Scott
William P Dennis
vs
Ira L Carver
Bloomer Carver

In Supreme Court
State of Illinois
April Term 1858

The defendants in error in the above cause by Lyft Warner their attorney would represent and show your Honorable Court that the above cause was tried at the December term of the Menard County Court, 1857, and a judgment rendered in favor of the defendants in error by default. That a writ of Error has been sued out of the Supreme Court of the State of Illinois in favor of the said plaintiff in Error, and that the record of the proceeding had in said cause in the Menard County Court now remaining in the records of the Supreme Court of the State of Illinois is grossly incomplete and as not containing a full record of said cause.

That at the March term of the said Menard County Court, 1858 various proceedings were had in said cause the said defendants appearing

[12669-17]

and various motions made & heard thereon, and among other things it was ordered by the Court that various affidavits made in said cause be made, together with all proceedings had in said cause at the said March Term 1858, be made a part of the record in said cause, which is done. And that the affidavits so ordered to be made a part of the record, contained in substance that the paper filed purporting to be a bond in said cause, was not with the papers of the cause at the time of default & judgment, and that no appearance of the defendant or either of them was known to the Court Clerk of said Court or the attorneys for the plaintiffs, at said December term that no appearance of these or either of them was entered on the Docket of said Court or any of the Dockets of said Court, during said Term. That the said knowledge that the Clerk of said Court has of the existence of such paper was after the final adjournment of said Court, when he formed the

same among ~~the~~ loose papers not connected with said cause.

Subscribed & sworn before me this 20th day of April A.D. 1858

L. F. Warner

L. Leland Clk
by J. D. Rice Deputy

Jno K Culver
Bloomer Culver
vs
Charles Starks &
William P Dennis

Supreme Court State of Illinois April Term 1858

The Defendants in Error in said cause move the Court to file in said cause a supplemental certified record of the proceedings had in said cause at the March term of the Winnebago Co Court.

L. F. Warner
Att for Defts in Error

[21109-10]

86

Supreme Court

Ira R. Gaspar
Plaintiff in Error

vs

Charles Smith
William P. Dennis

Affidavit

Filed April 20. 1858
S. Leland
Clk

Frank Carver &
Bloomer Carver
ads
Charles H Swift &
William P Dennis

State of Illinois April
Term Supreme Court.
1858.

By writ of Error to Winnebago County.

The Errors assigned in the above cause is ~~the~~ the rendering Judgment by default while a plea was on file,

And 1st There are two Records in this cause an original and a supplemental Record
The Abstract of Plaintiff in Error only shews the original Record.
The supplemental Record shews that at ~~the~~ March term of the Win Co Court a motion was made to strike from the files ~~the~~ paper ~~in~~ said cause purporting to be a plea of the defendants therein and to file affidavits to be made a part of the record Page 3 & 4

That Defendants in court below appear on the motion Page 3, 7, and resisted

the Motion,

The Court orders that the affidavits made be made a part of the Records of the said case tried at December term of said Court, Record Page 8,

The affidavits show that in said cause at the December Term 1857, there was no appearance by either of the defendants known to the Court, or the Clerk of said Court, or the atty for the plaintiffs.

That no appearance was made of the defendants or either of them upon the Docket of said Court, or upon Clerks Docket or upon the Bar Docket

And that no plea was on file with the papers of said cause at the time of the rendition of said Judgment by default,

And that said supposed plea was not known ~~by the clerk~~ to have existed ~~until~~ by the clerk of said Court until after the final adjournment of said Court, when he found the said supposed plea among ~~the~~ papers in no way connected with said Cause,

And the Defendants in Error insist

That the said supposed plea is not any part of the Record in said cause, although purporting to be filed before Judgment,

That the same was to appearance of Defendants was made in the cause

That no notice of the filing of said supposed plea was given

That the same was not left on the files of the court in said cause

The said supposed plea should be regarded as a nullity,

Per Statute Page 822 Sec 9. Dockets to be Kept pl. & Atty name to be entered

Same page Sec 13, as to appearance

That the said plea is not properly entitled

The defendant in Error would respectfully suggest to your Honorable Court by way of Argument, 1st That the said plea is not entitled of said Cause

That the record does not show it made & filed in the cause

That no appearance was made in said Cause as the Law contemplates an appearance to be.

That the filing a plea is not an appearance in a cause unless notice is given of such filing

That a plea secretly filed and not left with the files of the cause is no plea in the cause & cannot be regarded by the court. As the court can have no means of knowledge of its existence, until the party himself seeks to find it by writ of error,

That if the practice, as it has been shown by the original & supplemental record. is to be recognized as the Correct practice, That a party without any known appearance upon the Record can secretly file a plea and either put that plea in his pocket or leave it in some place where it is likely it would not be found until after the term of court may adjourn. That then ~~the~~ ~~job~~ a party plaintiff is in a critical situation, he must ~~must~~ not take a Judgment

by default, even if there is no appearance of defendant on the docket, & no plea on file, ~~[illegible]~~ with the papers of the cause. But he must make search & inquiry to find a plea & if he finds none, must not take default, because at some future time after Court, Defendant or his attorney may find one after the adjournment of Court, and take ~~the~~ ~~[illegible]~~ the cause by writ of Error to Supreme Court, & thereby get convenient time to pay his bulletes

But that the plaintiff must not do ~~because of the consequences~~.

But he must take a rule on the defendant to plead, & when the rule expires? What then? Take a judgment for want of plea? Do not that? If there is no appearance nor nor any plea on the file, he must stop & make search and if none is found he must continue to stand, until such time as the party may show himself in the ~~[illegible]~~ court, with his plea.

But I am aware that perhaps is a difficult matter for your honors

[12649-23]

court to reach in its decision, in this case the full merits of this case,
but hope that your Honorable court will consider the original & supplemental record and for the interest of Plaintiff Litigant in court, give it such consideration as it deserves
The matter being now important as rule of practice than to me in this present case, It is no fault of the Deft in Error that this case is here & he ought not to be subject to costs

D. F. Warner
Atty for Appellee
Deft in Error

STATE OF ILLINOIS, } ss. The People of the State of Illinois,
SUPREME COURT,

TO THE CLERK OF THE CIRCUIT COURT FOR THE COUNTY OF Winnebago 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 Winnebago — County, before the Judge thereof, between Lea K. Carver and Bloomer Carver:

plaintiffs and Charles H. Swits & William P. Dennis

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 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 first Tuesday after the third Monday in April 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 B. SCATES~~ John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 27th day of February in the Year of Our Lord One Thousand Eight Hundred and Fifty-Eight

E. Leland

Clerk of the Supreme Court.

by J. B. Rice Deputy

Charles H. Smith &
William P. Dennis
vs
Ira R. Carver and
Blowner Carver

Writ of Error

This writ of Error is made a supedeas and as such is to be obeyed by all concerned.

L. Leland Clk
by J. B. Nier Deputy

Filed Feb. 27. 1858
L. Leland
Clerk

8 6

Ira R Carver
Bloomer Carver
adls
Charles H Sarts &
William P Dennis

Abstract
Defendant
Brief & Argument

Filed May 18. 1858.
L. Leland Clk.

L. F. Parker

Supreme Court of the State of Illinois
April Term 1858

Ira K Carver &
Bloomer Carver
als
Charles Swirls &
William F Dennis

In Error from
Winnebago County

And Now Comes the Defendant in Error, And for Joinder in Error say there is no Error in the Record as assigned by the plaintiff in Error except And except as in the supplemental record that the court refused to strike from the files the ~~Sub~~ second plea

L. J. Warner
Atty for
Defts in Error

[12669-24]

876

Wm. K. Curran
Florrian Curran
vs
Charles Smith
William P. Dennis

Joinder in Error

Filed April 28, 1858,
S. Leland
Clk

State of Illinois
Menard County } Aron Miller
being duly sworn says that
he has not accepted with
the Sheriff. William D. Dennis
since for his bridge of chance this
offices belong thereto in Morris
in Jackson City thousand dollars

Subscribed
sworn to
before me
this 1st day of July 1836

A Milburn

Benjamin Hart, Justice of Peace.

Davis et al
vs
Conner et al

Filed Feb 27 1888.
L. Leland
Clerk

STATE OF ILLINOIS, SUPREME COURT.

CHARLES H. SWITS and WILLIAM P. DENNIS, Plaintiffs in Error, *vs.* IRA K. CARVER and BLOOMER CARVER, Defendants in Error.

Error to Winnebago County Court.

Record

ABSTRACT OF THE RECORD.

THIS was an action of assumpsit brought by the Defendants in Error, against the Plaintiffs in Error, on a promissory note, at the December term, A. D. 1857. The summons
2 was duly served, and the declaration filed November 23, 1857.

3. 4 The declaration was in the usual form in assumpsit on a promissory note.

December 7, 1857, the second day of the term, a plea of the general issue was filed
7 by O. Miller, jr., attorney for defendants.

9 December 8, 1857, the defendants' default was entered, and judgment rendered
10 against them for $273 34-100, the amount of the note.

11 February 27, 1858, the Plaintiffs in Error sued out their writ of error and supersedeas, and assigns for error that the court below erred—

1st. In entering defendants' default while there was a plea on file.

2d. In rendering judgment against the defendant by default, without noticing the plea on file.

JASON MARSH, *Attorney for Plaintiffs in Error.*

86

Davis et al

vs

Carver et al

Filed May 14, 1858

S. Leland

Clerk