

12261

No. _____

Supreme Court of Illinois

McDonnell.

vs.

Olwell, et al.

State of Illinois }
County of Cook } S. S.

Pleas before the Honorable John M. Wilson
Judge of the Cook County Court of Common Pleas within
and for the County of Cook and State of Illinois at a
Vacation Term of said Cook County Court of Common Pleas
begun and holden at the Court House in the City of Chicago
in said County and State on the first Monday being the
second day of April in the year of our Lord one thousand
eight hundred and fifty five and of the Independence of
the United States the seventy ninth.

Present the Hon. John M. Wilson - Judge
James Andrew - Sheriff

Attest

Walter Kimball, Clerk.

Be it Remembered that heretofore to wit on the
twenty eighth day of February A. D. Eighteen hundred and
fifty five James Olwell and Matthew Olwell by Harriet &
Soley their Attorneys filed in the Office of the Clerk of said
Court, their precept for summons against Charles Mc
Donnell defendant, which said precept is in words and
figures as follows, to wit,

" State of Illinois } Cook County Court of Common Pleas
Cook County S. S. } of the April Term A. D. 1855.

James Olwell and Matthew Olwell

Merchants trading under the name & firm of
J. & M. Olwell pliffs.

Alps \$1700.

Charles Mc. Donnell Def.

Assumpsit - for Goods & Merchandize sold - damages \$1400.

The Clerk will please issue a summons against the above named defendant, returnable at the April term of said Court damages pecuniary hundred dollars.

To Clerk of Cook County }
Court of Common Pleas }
Chicago. 28th Feby 1855.

Yours for
Harwin & Tuley
Plffs Atty's

And thereupon summons issued out of the Office of the Clerk of said Court in words and figures as follows to wit

State of Illinois }
County of Cook } S.S.

The People of the State of Illinois, to the
Sheriff of said County, Greeting.

We command you that you summon Charles Mc Donnell, if he shall be found in your County personally to be and appear before the Cook County Court of Common Pleas of said County, on the first day of the next Term thereof, to be holden at the Court House, in the City of Chicago, in said County on the first Monday of April next to answer unto James Olwell and Matthew Olwell in a plea of Trespass on the case on promises to the damage of the said Plaintiffs as they say in the sum of One thousand seven hundred dollars. And have you then and there this Writ, with an endorsement thereon in what manner you shall have executed the same.

Witness Walter Kimball, Clerk of our said Court and the seal thereof at the City of Chicago in said County this 28th day of February A.D. 1855.

Walter Kimball, Clerk.

Seal

State of Illinois Cook County Court of Common Pleas.
Cook County S.S. of the April Term A.D. 1855.
James Olwell & Matthew Olwell

vs
Charles Mc Donnell } Affumpsit?

James Olwell and Matthew Olwell
(partners doing business under the name and style of J. &
M. Olwell) Plaintiffs in this cause by Harvie & Tuley
their Attorneys complain of Charles Mc Donnell defendant in
this cause who has been summoned &c in a Plea of
Trespas on the case upon promises For that whereas the
said Defendant heretofore to wit on the twentieth day of
January A.D. Eighteen hundred and fifty four at the
City of New York i.e. at the County of Cook State of
Illinois aforesaid was indebted to the said Plaintiffs in
the sum of Eighteen hundred dollars for divers goods
wares and merchandize by the said Plaintiffs before
that time bargained and sold to the said defendant at
his special instance and request, and being so indebted
to the said defendant in consideration thereof afterwards
to wit on the day and year last aforesaid at the City
of New York i.e. at the County of Cook last aforesaid
undertook and faithfully promised the said Plaintiffs to
pay them the said sum of money when he the said
Defendant should be thereunto afterwards requested.

2 And whereas also the said Defendant afterwards
to wit on the day and year last aforesaid at the City of
New York i.e. at the County of Cook last aforesaid in
consideration that the said Plaintiffs at the like special
instance and request of the said Defendant had before
that time bargained sold and delivered unto the said
Defendant divers goods wares & merchandize, he the said
Defendant undertook and then & there faithfully promised
the said Plaintiffs to pay to them so much as the said

last mentioned goods wares and merchandize at the time of the said sale and delivery thereof were reasonably worth when he the said defendant should be thereunto afterwards requested. And the said Plaintiffs aver that the said last mentioned goods wares and merchandize at the time of said sale and delivery thereof were reasonably worth the further sum of eighteen hundred dollars to wit at the City of New York i.e. at the County of Cook aforesaid whereof the said defendant afterwards to wit on the day and year last aforesaid then had notice.

And whereas also the said defendant afterwards to wit on the day and year last aforesaid twenty fifth day of February A.D. eighteen hundred and fifty five at the City of New York i.e. at the County of Cook aforesaid was indebted to said Plaintiffs in the further sum of three hundred dollars for interest due upon the forbearance of moneys due from defendant to the Plaintiffs and by the latter forgiven to the defendant at his request, and being so indebted he the said Defendant in consideration thereof afterwards to wit on the day and year last aforesaid to wit at the City of New York i.e. at the County of Cook aforesaid undertook and then and there faithfully promised the said Plaintiffs to pay them the said last mentioned sum of money when he the said defendant should be thereunto afterwards requested.

And whereas also the said Defendant afterwards to wit on the day and year last aforesaid i.e. at the City of New York i.e. at the County of Cook aforesaid accounted with the said Plaintiffs of and concerning divers other sums of money from the said defendant to the said Plaintiffs before that time due and owing and then in arrear and unpaid and upon such accounting the said defendant was then and there found to be in arrear and indebted to the said Plaintiffs in the further

sum of Eighteen hundred dollars and being so found in
arrear and indebted for the said defendant undertook and
then and there faithfully promised the said Plaintiffs to pay
them the said last mentioned sum of money when he the
said Defendant should thereunto afterwards be requested.
Nevertheless the said Defendant not regarding his said
several promises & undertakings but contriving fraudulently
intending craftily and subtly to deceive and defraud the
said Plaintiffs in this behalf hath not as yet paid the said
several sums of money or any or either of them or any
part thereof to the said Plaintiffs altho' often requested
so to do but the said defendant to pay them the same
hath hitherto wholly neglected and refused and still
doth neglect and refuse To the damage of the said
Plaintiffs of Five thousand dollars and therefore they bring
suit &c

Harriet & Tuley
Pliffs Attys.

And thereafter to wit on the thirtieth day of March
A. D. Eighteen hundred and fifty five the said defendant
by Daniel McIlroy his Attorney filed in the office of the
Clerk of said Court his Plea & Affidavit of Merits in said
Cause in words and figures as follows to wit.

Charles Mc. Donnell
att

April 3. 1855 Book C

Apr. Court Common Pleas.

James Olwell & Matthew Olwell

And the said defendant by
Daniel McIlroy his Attorney comes and defends &c and
says that he did not undertake and promise to pay the
said several sums of money in the said several counts of
the said declaration mentioned in manner and form as the
said Plaintiff have above thereof complained And of this

the said Defendant puts himself upon the Country of
D. Mc. Shroy
Atty for Deft.

State of Illinois)

Cook County } S.S.

Charles Mc. Donnell being sworn says
that he is the Defendant in the above entitled cause and
that he has a defence therein on the merits.

Subscribed and sworn to this

30th March 1855, before me

Walter Kimbale, Clerk

C. Mc Donnell,

And afterwards to wit on the twelfth day of April being
one of the days of the April Vacation Term of said Court
A.D. Eighteen hundred and fifty five the following
proceedings were had in said cause, and entered of Record
in said Court, to wit.

James Russell & Matthew Russell

Charles Mc. Donnell

Apr 6

And now comes the said
Plaintiffs by Harner & Tuley their Attorneys and the said
defendant by P. Ballingale his Attorney also comes and on
motion of said Plaintiffs Attorneys It is Ordered that the
Defendant's Plea and Affidavit be stricken from the files
for the reason of the insufficiency of his Affidavit to his
defence on the merits, and said defendant thereupon enters
his exceptions to the opinion of the Court in striking
his said Plea and affidavit from the files of this Court

And thereupon the said defendant being three times
solemnly called in open Court comes not, nor does any person
for him but herein makes default, which is on Motion

of said Plaintiffs Ordered to be taken and entered of Record
Wherefore the said Plaintiffs ought to have and recover of
the said Defendant their damages herein sustained by
occasion of the Premises, and the Court after hearing
the testimony adduced by said Plaintiffs and being now
fully advised in the Premises aforesaid said Plaintiffs
damages to the sum of one thousand six hundred and
sixty two dollars and fifty three cents.

Therefore it is considered that the said Plaintiffs
do have and recover of the said defendant their damages
of one thousand six hundred and sixty two dollars and
fifty three cents in form aforesaid by the Court here
aforesaid and also their costs and charges by them about
their suit in this behalf expended and have execution
therefor.

State of Illinois
County of Cook J.S.S.

I Walter Kimball Clerk of the Cook County Court
of Common Pleas within and for said County and State
Do hereby that the foregoing is a true and correct copy
of the Precept, Summons, Declaration, Plea & Affidavit
of Merits, and also of the Order entered of Record in
said Court, now on file in my Office in the case of
James Olwell and Matthew Olwell vs Charles Mc Donnell

In testimony whereof I have hereunto
subscribed my name and affixed the
seal of said Court at Chicago this
third day of July A.D. 1855.

Walter Kimball Clerk

And now comes Charles W. Donnell, the Defendant in the within Record, by Blackwell Ballingale and Wendenwood his attorneys and says that there is manifest error to his prejudice in the proceedings and judgment in the said Record and that the said judgment ought to be reversed and set aside And for causes of error shows to the Court

1st The Court erred in striking from the files of the Court the said defendant's Plea; The said Plea ^{& affidavit} is legally a compliance with the Statute

2^d The Court erred in rendering judgment against the defendant

3^d The Court erred in rendering judgment against Defendant in the manner in which the same is rendered

4th The Plea was a perfect and complete defense to the third Count of Plaintiff's declaration and also to the second Count; and extends to the first and fourth Counts as appears from the judgment itself; the plea therefore ^{is} ~~is~~ ^{true} ~~and~~ ^{affidavit} ~~was~~ ^{is} true.

5th The third section of an Act entitled An Act to regulate the practice in the Circuit Court of Cook County and the Cook County Court of Common Pleas approved 12 Feb, 1853 is unconstitutional

6th Said Act by its terms precludes a defense as to a part of a demand

7 There are divers other errors and irregularities; for all which Plff in error prays that said judgment be set aside & reversed

Blackwell Ballingale & Wendenwood
att for Plff in error

~~42~~ 43
Error to Cork County
Court of Common Pleas.

Charles Mc Donnell
Plff in error

James Olivell and
Matthew Olivell
Def in error

~~44~~
Copy of Records

Filed July 26, 1855.
S. Leland Clk.

No Supersedeas

[Sealed]

Know all men by these presents, That we Charles McDonnell, and Daniel McHoy, of the City of Chicago, in the State of Illinois, are held and firmly bound to James Russell and Mathew Russell - in the penal sum of Three thousand three hundred and twenty five Dollars, and six cents; which sum well and truly to be paid to the said James Russell and Mathew Russell - we bind ourselves our heirs, executors, and administrators, jointly and severally, Witness our hands and seals this twenty eighth day of July in the year of our Lord one thousand eight hundred and fifty five;

The condition of the above obligation is such, that whereas, the said James Russell and Mathew Russell, at the April term ^{AD 1855} of the Cook County Court of Common Pleas, in said State, recovered a judgment against the said McDonnell for the sum of sixteen hundred and sixty two dollars & sixpence besides costs; from which said judgment, the said McDonnell has prosecuted his writ of error to the Supreme Court of said State Now if the said McDonnell shall duly prosecute his said writ of error; and, in case the said judgment shall be affirmed, shall pay the said judgment, costs, interest, and damages then the above obligation to be void

Signed sealed & delivered
in presence of

C. M. McDonnell *(Seal)*

D. M. McHoy *(Seal)*

William B. McGeorge

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Charles McDonnell
& Daniel McKoy

to

James & Matthew
Olwell

Bond on Trail of Error

Filed July 30. 1855.
L. Leland Clk.

STATE OF ILLINOIS,

Supreme Court,

Cook County

ss.

The People of the State of Illinois,

To the Clerk of the Circuit Court, for the county of Cook - Greeting:

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which was in the said court of *Common Pleas* ~~county~~, before the Judge thereof, between *James Olwell & Matthew Olwell*

plaintiffs, and

*Charles McDannell*defendant - it is said manifest error hath intervened, to the injury of the aforesaid *defendant*

as we are informed

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 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 *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;

Walter B. Seatis
WITNESS, the Hon. **SAMUEL H. TREAT**, Chief Justice

of our said Court, and the Seal thereof, at Ottawa, this *30th* day of *July*
 in the Year of Our Lord One Thousand Eight Hundred and Fifty-*six*.

L. Seland

Clerk of the Supreme Court.

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Charles McDonald
v
James Caldwell et al,
Writ of error

Filed July 30, 1855,
Stelland Ck.

This writ of error is
made a supersedeas
as such should be stayed
by all concerned —

L. Stelland Ck.

[Handwritten signatures]

State of Illinois }
Lesell County }

F. S. Buckley upon oath
says that he is acquainted ^{by reputation} with the pe-
cuniary circumstances of Daniel
McElroy, and that he verily believes
the said McElroy to be worth at least
in real and personal property from
Twenty thousand to thirty thousand
dollars, free from all debts.

Subscribed and sworn
to before me
July 26, 1855.
Shelton Ck.

F. S. Buckley

43
McDonnell

Shwell that

affidavit putting
Sureties

Filed July 26. 1855.
L. Keland Clk.

1662.53
2
3325.06

CATON LINE.

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Dispatches must be pre-paid to insure prompt delivery.

Office over the Post Office, Ottawa.

Ottawa, _____ 1855

The following Dispatch has just been received dated

Chicago Aug 6 1855
To *Leland*

*Send surperside as by
afternoon train. Sale
tomorrow at ten o'clock*

P. H. Cullen

Chicago 4th August
1855

Mr Selana

Dear Sir

The supersedeas has never reached me in the matter of McDonnell & Shull et al; so therefore please send me one immediately on receiving this.

Direct it to me individually and not to the firm as Mr Blackwell has charge of the firm Box & he is not at home just now

Yours

T. Ballingall.

Supreme Court

Oliver & Oliver
depts in error
all

Chas M. Scoville
plff in error

Filed June 12 1888
L. Leland
Clerk

Heinrich & Luby
Attys for depts

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Chas. McJannet
by
Jas. Olwell et al.

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