

No. 12576

Supreme Court of Illinois

Hildreth

vs.

Hough, et al

J. M. Hildreth

vs

72, 132

Rosell M Hough
& others

~~77858~~

~~12576~~

1858

X

Produced

Intd
United States of America
State of Illinois
County of Cook

Pleas before the Honorable George
McQuinn Judge of the Seventh Judicial
Circuit of the State of Illinois
and presiding Judge of the
Circuit Court of Cook
County in said State at a
Vacation Term thereof begun
and held at the Court House
in Chicago in said County on
the fourth Monday (being the twenty
fourth day) of March in the
year of Our Lord One thousand
Eight hundred and fifty six
and of the Independence of the
United States the Eighth

Present Honorable George McQuinn
Judge 7th Judicial Circuit

James S. Beach Corner
Sacting Sheriff of Cook County

Daniel McIlroy
State Attorney

Attest Lewis D. Board Clerk
Court opened by proclamation

Be it Reminded to wit that
On the 11th Day of October AD
1855 there was filed in the office
of the Clerk of the Circuit Court
of Cook County in the State
aforesaid A certain process
which is in the words and figures
following to wit:—

Cook County Circuit Court
October Term AD 1855

Russell M. Sough }
Oramel S. Sough }
Charles H. Searns }

vs
W. B. Dwyer } Atty

The Clerk
of said Court will issue
Summons in the above suit
in a plea of Trespass on the
Case upon promises Damages
\$500. Oct 11th 1855

C. B. Hosmer

Plffs Atty

And afterwards to wit On the
11th Day of October AD 1855 there
issued out of the Office of the Clerk

of the Circuit Court of Cook County
in the State aforesaid the Peoples
mit Commonly Called Jurymen
which said mit is in the words
and figures following to wit:

State of Illinois }
County of Cook }

The People of the State of Illinois
To the Sheriff of said County
Greeting

We command you that you
Summon J. M. Hildred if he
shall be found in your County,
personally to be and appear before
the Circuit Court of Cook 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 Fourth Monday
of October next, to answer unto
Gorella M. Hough Oramel S
Hough and Charles H. Serodens
in a plea of Trespass in the
Case on promises to the Damage
of said Plaintiffs as is said
in the Sum of Five Hundred
Dollars And have you then &

there this writ, with an
Endorsement thereon, in what
manner you shall have executed
the same

Dea. D. Board
Witness Louis D Board
Clerk of our said Court
and the Seal thereof at
the City of Chicago
Aforesaid this Eleventh
day of October AD
1855

L D Board
And on the back of the foregoing
writ appears an Endorsement
which is in the words and
figures following to wit

Served by reading to the within
named J M Childs the 11th
day of October 1855.

Fees	1 Service	50	Per Day Off day
	1 Mile	05	
	1 Return	10	cts.

James Anderson Sheriff
By J. S. Buckley Deputy

And Aftwards to wit On
the 3rd day of November AD

1855 there was filed in the office
of the Clerk of the Circuit Court
of Cook County aforesaid a
Certain declaration which is
in the words and figures
following to wit:—

State of Illinois

Cook County, ss.

Cook County Circuit Court of the
November Term A D 1855

Amos M. Stough Francis S
Stough and Charles H. Stevens
under the name & firm of A M &
O Stough & Company Plaintiffs
in this suit by Robert Sommer
their Attorneys Complain of J. M.
Hildreth Defendant in this
suit in a Plea of Trespass on the
Case in Premises, For that Whereas
heretofore, to wit: On the tenth
day of October A D 1855 at
Chicago in said County of Cook
the said Plaintiffs at the special
instance & request of the said
Defendant bargained with the said
defendant to buy of the said defendant
& the said defendant then and there

Sold to the said plaintiffs a
large number of fat cattle, to
wit, two hundred and thirty head
of Cattle at the rate and price
of Six Dollars & twenty five cents
per one hundred pounds for all the
said Cattle that should average
Six hundred pounds weight
with & the Sum of five dollars &
fifty Cents per one hundred pounds
for all of the said Cattle that
fell short of an average weight
of Six hundred pounds with, to be
delivered by the said defendant
to the said plaintiffs within a
reasonable time & to be paid for
by the said plaintiffs to the
said defendant on the delivery
of the said Cattle as aforesaid
in consideration thereof & that
the said plaintiffs at the
like special instance and
request of the said defendant
had then & there undertaken &
faithfully promised the said
defendant to accept a delivery
of the said Cattle & to pay the
said defendant for the same

at the rate in that behalf
aforesaid the said Defendant
on the day & year aforesaid at
Cook County aforesaid undertook
& then and there faithfully promised
the said plaintiffs that he the
said Defendant would within a
reasonable time then next following
deliver to the said plaintiffs
the said Cattle; and although a
reasonable time hath long since
elapsed & the said plaintiffs now
always during that time & until
the commencement of this action
ready and willing to have
accepted said cattle as
aforesaid & to have paid the said
Defendant for the same at the rate
in that behalf aforesaid to wit
at Cook County aforesaid whereof
the said Defendant then and then
had notice yet the said Defendant
not regarding his said promise &
undertaking but contriving so did
not nor move (although often requested
so to do) within such reasonable time
as aforesaid or at any time since
deliver to the said plaintiffs in

manner aforesaid or otherwise the
said cattle or any part thereof
but on the contrary thereof the
said defendant hath hitherto
wholly refused & still refuses so to
do

And whereas also heretofore
to wit On the day & year
aforesaid ^{at Cook County aforesaid} in consideration that
the said plaintiffs at the instance
& request of the said defendant had
then & there bought of the said
defendant certain other cattle
to wit Two hundred and thirty head
of cattle at and for a certain
price then & there agreed upon
between them viz: the price of Six
dollars & twenty five cents for each
One hundred pounds of all the said
^{last mentioned} cattle whose average weight should
be Six hundred pounds nett & the
price of five dollars and fifty cents
for each one hundred pounds of
all the said last mentioned cattle
whose average weight should be
under Six hundred pounds nett
to be paid for by the said
plaintiffs to the said defendant on

the delivery thereof, he the said
defendant faithfully promised the
said plaintiffs well and truly to
deliver to them the said last
mentioned Cattle whenever he the
said defendant should be thereto
requested, and the said plaintiffs
in fact say that although the
said plaintiffs afterwards
to wit: - on the day and year
aforesaid at Cork County
aforesaid requested the said
defendant to deliver them the
said last mentioned Cattle &
were then & there ready & willing
to pay the said defendant for
the same according to the
terms of the said sale & were
then and there ready & willing
and offered to accept receive
the said last mentioned Cattle
& pay for the same as aforesaid
of & from the said defendant
yet the said defendant did
not when requested as
aforesaid or at any other
time before or since deliver to
the said plaintiffs the said

last mentioned Cattle or any
part thereof but wholly refused
to sell & refused to do
And whereas also heretofore
to wit on the day & year
aforesaid at Cook County ^{Illinois}
in consideration that the plaintiffs
at the instance & request of the
said defendant had then and
there bought of the said defendant
certain other cattle to wit three
hundred head of fat cattle at
for a certain price then & there
agreed upon between them & the
said defendant faithfully
promised the said plaintiffs
well and truly to deliver to them
the said last mentioned cattle
whenever he the said defendant
should be thereto requested
by the plaintiffs in good time
that although the plaintiffs
afterwards, viz: on the day &
year aforesaid at Cook County
aforesaid requested the said
defendant to deliver them the
said last mentioned cattle
& more then and there ready and

willing to pay the said defendant
for them according to the terms
of said Sale & more than and
there ready & willing to accept
& receive the said last mentioned
Cattle of & from the said defendant
yet the said defendant did
not when requested as
aforesaid or at any other
time before or since deliver to
the Plaintiffs the said last mentioned
Cattle or any part thereof
but wholly refused & still
refuses so to do and the said
Plaintiffs further aver that
before & at the time of making of
the said respective bargains &
Contracts with the said defendant
as aforesaid they were engaged
in the business of Slaughtering
& packing Beef at Chicago in
said Cook County to fulfil their
Contracts thereafter made for the
delivery of a large quantity of
Beef to wit, five hundred thousand
Barrells the present season & that
had then & there a large number
to wit two hundred even in their

Employ in and about their said
business of Slaughtering & packing
Beef as aforesaid & more than &
there depending upon the prompt
delivery of Cattle upon Contracts
previously made by them for
Employment for their workmen
Engaged in their said business
as aforesaid & that for want
of the said Cattle which the
said Defendant ought to have
delivered to the said plaintiffs
as aforesaid the said workmen of
the said plaintiffs Engaged in their
said business of Slaughtering &
packing Beef were greatly
delayed & hindered in their
said work & for want thereof
were forced & obliged to be idle
for a long time to wit for the
space of two days & the said
plaintiffs more than & there forced
& obliged to purchase other
Cattle to fulfill their aforesaid
Contracts for the delivery of Beef
as aforesaid & to carry on their
said business to wit, three
hundred head at much greater

price, to wit, at the price of
Seven Dollars per hundred pounds
to Supply the place of the Cattle
which the said defendant ought
to have delivered to the said
plaintiffs as aforesaid & thereby
the said plaintiffs have sustained
a great loss to wit a loss
amounting to the Sum of Five
Hundred Dollars, to wit at
Cook County aforesaid —

And whereas also, the said
defendant afterwards to wit on
the Eleventh day of October
in the year of Our Lord one thousand
Eight hundred and fifty five at
the place aforesaid was indebted
to the plaintiffs in the Sum of
Five hundred Dollars lawful
money of the United States of
America for money before that
time lent and advanced by the said
plaintiffs to the said defendant
and at the Special interest and
request of the said defendant
And for other money by the said
plaintiffs before that time paid
paid out and expended for the

said defendant and at the
like request of the said defendant
And for other money by the said
defendant before that time had &
received to and for the use of the
said plaintiffs And being so
indebted, the said defendant
in consideration thereof afterwards
to wit, on the same day and
year last aforesaid, and at the
place aforesaid, undertook, and
then and there faithfully
promised the said plaintiffs
well and truly to pay unto the
said plaintiffs the said sum of
money in this Count mentioned, when
the said defendant should be
thereunto afterwards requested
And whereas also the said
defendant afterwards, to wit,
On the same day and year last
aforesaid, and at the place
aforesaid, accounted together with
the said plaintiffs of and concerning
several sums of money before
that time due and owing from
the said defendant to the said
plaintiffs and ^{then} there being in answer

and, unpaid and upon such
accounting the said defendant then
and there was found to be in
arrear and indebted to the
said plaintiffs in the further
sum of five hundred dollars
of like lawful money as
aforesaid. And being so found
in arrear and indebted to the
said plaintiffs the said
defendant in consideration
thereof, afterwards, to wit,
On the same day and year
last aforesaid, and at the
place aforesaid, undertook,
and then and there faithfully
promised the said plaintiffs
now and truly to pay unto the
said plaintiffs the said sum
of money last mentioned when
the said defendant should be
thereunto. Afterwards requested
Nevertheless the said defendant
(although often requested &c to
wit, at the place aforesaid) had
not yet paid the said several
sums of money above mentioned
or any or either of them, or any

part thereof, to the said plaintiffs,
but to pay the same or any part
thereof to the said plaintiffs, the
said Defendant hath hitherto
altogether refused and still doth
refuse to the damage of the said
plaintiffs of five hundred dollars,
and therefore the said plaintiffs
bring suit &c

Rock & Co. Counselors

Plaintiffs Attorneys

Ctys of Cook alive declared on

Wm Childs

To Rm & Co. Bought & Co. Do
For breach of contract in indelible &c.
For money had & received \$500
For money paid, laid out & expended \$500
For balance due on Settlement \$500

And afterwards, to wit, On the 31st
day of March A.D. 1856, it being one
of the days of the March Term of the Circuit
Court of Cook County in the State of Illinois
the following, among other proceedings,
were had, and entered of record in
said Court. to wit:

March 3rd At Aigle M^{rs} Cough Oramel S
Cough & Charles de Serres

310

J^r M^r Childroth apt

This day Come
the said plaintiffs by C B Berner Esq
their Attorney and it appearing to
the Court that said defendant has
been duly served with process at least
ten days before the first day of
the present term hereof, and being three times
Solemnly Called Comes not per any one
for him but herein fails & makes default
wherefore the said plaintiffs ought to have
Judgement of their Damages Whereupon on
motion of said plaintiffs Attorneys
the Court after hearing the proofs and
allegations herein touching said plaintiffs
Damages awards the same at the sum
of Five hundred Dollars

\$500.00 Therefore it is Considered that said
plaintiffs do have and recover of the
said defendant their Damages of Five
hundred Dollars assessed as aforesaid
together with their proper costs by them
about their Suit herein Expended
and have Execution therefor, —

and afterwards, to wit, On the thirtieth
day of April A D 1806 there issued out
of the Office of the Clerk of the Circuit
Court of Cook County in the State
aforesaid a certain writ of ^{aff} Se. Sa. for ^{the} Rans
commonly called Execution directed
to the Sheriff of De Witt County—
which is in the words and figures
following to wit:—

State of Illinois }
County of Cook }

The People of the State of Illinois
to the Sheriff of De Witt County
Greeting:—

We Command you, that of the Lands
and Tenements, Goods and Chattels
of J^m Hildreth Defendant
in your County & you cause to be
made the Sum of Five hundred
Dollars which Roselle M^{ch}ugh
Oramel S^{ch}ugh and Charles
B. Seaverns Plaintiffs lately
in the Cork County Circuit Court
of said County, at a term thereof
begun and held at Chicago, in said
County on the fourth Monday of
March last past recovered against

the said Defendant and which by
the said Court was adjudged to the
said Plaintiffs for their Damages
and also for the further Sum of
Four Dollars and Fifty Five Cents
which were adjudged to the said
Plaintiffs for their Costs and Charges
in that behalf Expended, whereof
the said Defendant is convicted,
as appears to us of Record
and have you these moneys ready
to render to the said Plaintiffs
for their Damages and Costs
aforesaid, and make Return of
this writ with an Endorsement
thereon in what manner you
shall have Executed the Same
in ninety days from the Date
hereof



Witness, Louis D. Howard
Clerk of our said Court, and
The Seal thereof, at Chicago,
in said County, this thirtieth
day of April A.D. 1856

L. D. Howard

Clerk

and on the back of said last mentioned
mit are endorsements which are
in the words & figures following
to wit:—

"Come to hand May 3 1856 at 8
O'clock A.M.

Wm Fuller

Shff D.C.

"Execution returned in Property
found to make this debt and cost
neither can there be any man be
found by the name of J M S Edwards
this July 3 1856

Shff ju 63 Wm Fuller

Shff De Witt County Ills

By H S Co. Meniman Deputy "

"Filed July 3 1856

L D Board

Clerk

And afterwards, to wit; on the
8th day of July A D 1856 there
issued out of the Office of the Clerk of
The Circuit Court of Cook County
aforesaid a certain other Peoples writ
of Ji Fa for Plffs Damages commonly
called Execution, directed to the
numbered 6434

Sheriff of De Witt County which said
Execution was returned by the said
Sheriff of De Witt County aforesaid
on the 31st day of December A.D.
1856. Endorsed on the back ^{by said Sheriff} to
property found -

And Afterwards to wit, On the
31st day of December A.D. 1856
there issued out of the Office of the
Clerk of the Circuit Court of Cook
County aforesaid a certain process
Pluries writ of Fi. Fa. for Plaintiff
damages commonly called Execution
directed to the Sheriff of Logan
County which said writ is in the
words & figures following to wit:-

State of Illinois }
County of Cook } p

The People of the State of Illinois
to the Sheriff of Logan County
Greeting :-

We command you as before that of the
Lands and Tenements, Goods and
Chattels of J. M. Childs
defendant in your County, you
cause to be made the sum of

Five hundred Dollars which
Russell M Bough, Daniel S.
Bough & Charles B Searns
Plaintiffs lately in the Circuit
Court of Cook County, at a term
thereof begun and held at Chicago
in said County on the fourth
Monday of March last past
recovered against the said
Defendant and which by the
said Court, were adjudged to
the said Plaintiffs for their
damages

And also the further Sum of
Seven Dollars and Sixty Cents
which were adjudged by the
said Plaintiffs for their costs
and charges in that behalf
expended, whereof the said
Defendant is convicted, as
appears to us of Record: And
have you these moneys ready to
render to the said Plaintiffs
for their damages and costs
aforesaid, and make return of this
writ with due endorsement thereon
in what manner you shall

have Executed the Same in ninety
days from the date hereof.

Witness William L. Church
Clerk of Our said Court
and the Seal thereof
at Chicago, in said County
this 31st day of December
A.D. 1856
Wm L Church
Clerk

And on the back of said last
mentioned writ appears endorsement
which are in the words and figures
following to wit:—

The Sheriff will collect interest
from March 31st 1856
Wm L Church Clerk

This Execution came to hand January
10 1857, 5 O'clock P.M.
J. J. Larimer Deft Shff
J. C.

I have been unable through illness
& other causes to make the amount
of this Execution out of the property

of the defendant April 9th 1854
Gunnick Shff L Co by S J Larison
Debt

Filed April 13th 1854

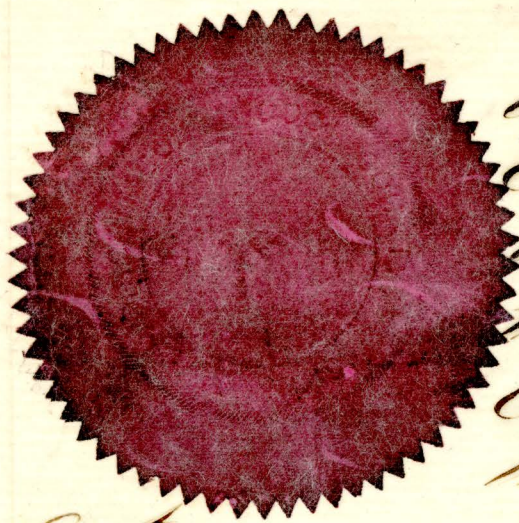
Wm L Church

Clerk

And afterwards to wit On the 13th
day of April A D 1854 there issued
out of the Office of the Clerk of the
Circuit Court of Cook County aforesaid
a certain Peoples Alias Pluries
writ of Ji. Ha. for Plaintiffs
damages commonly called Executions
directed to the Sheriff of Logan
County ^{Mo} and numbered Seven thousand
four hundred and twenty five
(7425) which said last mentioned
writ has not as yet, to wit, on
the 25th day of June A D 1854,
been returned by the said Sheriff to
the said Clerk of the Circuit Court
of Cook County aforesaid —

State of Illinois
Cook County

I William L Church Clerk of
the Circuit Court of Cook



County in the State
aforesaid do hereby
Certify that the
above and foregoing
transcript is a true
Copy of the files as
well as of the Orders
Entered of Record in the said
Circuit Court of Cook County in
a case lately pending in said
Court wherein Roselle M. Slough
et al were Plaintiffs and J. M.
Hildreth was defendant

In witness whereof I have
hereunto set my hand and affixed
the Seal of Our said Court this
25th day of June A.D. 1887

J. L. Church

Clerk

Let a supersedeas issue upon the filing of
this record and the plaintiff in Error filing a bond
as required by law with Thompson J. Flint
his surety in the penal sum of one thousand
dollars.

J. D. Eaton

Assignment of Evers
Deft Hildeth. says there is manifest
error in the preceding Record in this

1. That more than ~~as~~ term, to wit
one year intervened between the
test & return day of the Summons
issued in said cause.

2 That said proceedings are otherwise
unconscionable & irregular
by Spammun & Fuller
Atty for Pff in Evers

1857

C. C. C. C.

11. 11. 11

12

M. L. L. L.

Complete. 1857

Filed June 26. 1857
S. Leland
Clerk

For 6. 1857 Paid

11. 11. 11

Supreme Court
April Term AD 1858 -
Hough et al vs Defts in Error }
at } Error to Circuit
Hildreth vs Defts in Error } Court of Cook County.

The only error which appears for reversing the judgment of the Court below is the clerical blunder of the Clerk below in not striking out the word "next" in the Summons & inserting instead "instant". -

I certainly should not consider such an objection valid or entitled to much consideration, had not this Court a long time since, in the 2^d Lammun 223 sustained a similar objection & reversed the Judgment below, but upon what grounds, the Court did not then see fit to enlighten us. I must say, it appears to me, that that decision was made without due examination of the Authorities, and without much reflection. -

If the Court will note, they will see by the Revised Statutes, "Amendments & Repairs" Sects 1st & 3^d that the Legislature intended to guard against all such technicalities & provided as they hoped a remedy for all such technical defects or misprisions of a Clerk, by allowing amendments, & I think the Courts ought to unite with the Legislature in endeavoring by their decisions to clear away with unce-

technicalities, let their decisions be based upon
the real merits & justice of the case. -
Now in this case, if the Court will examine
the Summons, I am satisfied they can
come to ~~any~~ but ^{one} conclusion, & that is that
the Deft below, was summoned to be & appear
before the Circuit Court on the fourth Monday
of October then next following the 11th day
of October, & not as supposed by the Supreme
Court in the case in the 2^d Term, in Oct 1856.
In the 1st place, that is not the meaning of the
word "next" used as it is in that connection
in the Summons, as the Court will see by
referring to any English Lexicographer.
Again, I venture to affirm that you cannot
find a person of ordinary intelligence, who
in reading that Summons over, would understand
that it referred to the October of the succeeding
year, I know the Deft in this case did not
from his own declarations. -

I would call the attention of the Court to a
precisely parallel case with this, in South Carolina viz
Perry vs Franklin Branch 2^d McMillan 338, when
the Writ was tested on the 4th day of March 1842
returnable to the 3^d Monday in March next, & the
Court say that the word "next" might well indi-
cate the 3^d Monday after the 4th day of March. -
The same construction is also given to the word in
precisely parallel cases in Alabama viz: Hindley vs

Ritchie 8 Port, 452, Alw Lorr vs McRae 12 Ala, 444, - Gibson vs ~~Langdon~~ Minor 183.

From the above authorities, as well as the definition given to the word "next" by Lexicographers, there can be no question, that the word "next" as used in that Summons is susceptible of the construction I give it, even if it admits of the construction put upon it by the Supreme Court in 2^d Sean, If so, then the well settled rule of construction that when a word is used susceptible of two senses, one agreeable to, the other against Law, the former sense shall prevail. Chitty Bents 66-7 Also by the French civil Code Book 3 tit, 365 Art 1157 "when a clause is susceptible of two meanings, it must rather be understood in that according to which it may have some effect, than in that whereby it cannot produce any".

Beside the Court will note that if ^{it} ~~for~~ the meaning I put upon the word "next" in that construction, it makes the Writ consistent, & legal, whereas the other construction so far as specifying term is concerned is illegal, because the Statute inhibits the return of a Writ to a Term of Court where

other Terms intervene. Hence the reason for the Court applying in this case, the above well settled rule of construction. - For doing so, it appears to me it has not only the weight of Authorities but the better reason -

I know it will be objected that the Court has already decided the question & therefore stand decisis, but I say the Court has decided the contrary doctrine to that in the 2^d Term, viz in the 4th Term 334, which in my judgment is the correct doctrine & therefore the former decision should be overruled. - The Court decided in the 4th Term, 334 above referred to, that it is sufficient to Summon the Deft; to appear on the first day of the next Term, without specifying the term. That this is so, is apparent from the fact that the Terms of Court are fixed by Law, & therefore suitors are bound to take notice of those Terms. Now suppose a Summons regularly issues commanding the Deft to be & appear before the Court on the first day of the next Term & then goes on & specifies an impossible day, say 32^d day of October. Would not the Court reject that part specifying a particular day as surplusage? Can there be any doubt that such a clause would be surplusage? -

I call the attention of the Court to the well settled rule, as to what is or is not surplusage, - Lord Mansfield says, "that the distinction is between that which may be rejected as surplusage which might be struck out on motion and what cannot." 1st Chitty

Pless 228-30 as to what is surplusage & that it never vitiates. Also Huntly vs the People

2^d Scam 7, do 4 Scam, 96, 14th Ill. R 278.

3^d Wilk, 537. Stephens Pless 424, 2^d Map 283.

8 Green 36, 8th Serg & Rawls 124, -

Now according to the decision of this Court in the 4th Scam, the whole of that clause specifying the time might be stricken out & still the Summons according to that decision would be sufficient. Then, I respectfully submit whether that part of the Summons upon which error is predicated in this case, is not clearly mere surplusage within the rule laid down by the above authorities. - It appears to me therefore clear, that the Court has in its present decision to choose between the decisions heretofore made in the 2^d Scam & 4th Scam, If it decides that the blunder of the Clerk in specifying the time is material & therefore a fatal defect, it the Court overrules its decision in the 4th Scam, that it is not necessary to specify the time, & therefore it is simply a question which of these decisions shall stand, and upon this

question there can be no doubt, viewed either
upon legal or equitable principles. -

C. B. Hosmer

Atty for Deft in Error

no 72
Supreme Court
April 1st 1858
R. M. Wright
et al
vs
J. M. Welch
Argument was
for Deft in Error

Filed May 2, 1858
J. Deland
Clerk

C. B. Hosmer
Atty for Deft

ERROR TO COOK COUNTY CIRCUIT COURT.

J. M. HILDRETH,
Plaintiff in Error,

vs

ROSELL M. HOUGH,
ORAMEL S. HOUGH,
CHARLES H. SEAVERNES.
Defendants in Error.

ABSTRACT OF RECORD.

This action was commenced by issuing a writ of summons against the defendant October 11th, 1855, returnable to the Fourth Monday of October thereafter, which summons is in the words and figures following:

SUMMONS—CIRCUIT COURT OF COOK COUNTY.

STATE OF ILLINOIS, }
COOK COUNTY, } ss.

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

We command you that you summon J. M. Hildreth, if he shall be found in your county, personally to be and appear before the Circuit Court of Cook 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 fourth Monday of October next, to answer unto Rosell M. Hough, Oramel J. Hough and Charles H. Seavernes, in a Plea of Trespass, on the case upon promises to the damage of the plaintiff, as is said, in the sum of Five Hundred Dollars.

{ SEAL }

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

WITNESS, Louis D. Hoard, clerk of our said Court, and the seal thereof, at the city of Chicago, aforesaid, this eleventh day of October, A. D., 1855.

L. D. HOARD, Clerk.

And afterwards, on the 3d day of November, A. D., 1855, the plaintiffs filed their declaration in assumpsit for cattle sold and delivered, and common counts. Damages \$500.

And upon the 21st day of November, A. D., 1855, no plea having been filed, the default of the said defendant was then and there entered, and an order for a writ of enquiry. And upon the 31st day of March, 1856, damages were assessed by the court, \$500.

The Plaintiff in Error assigns for error, the rendering of the judgment in said case, in that the summons issued in said case, and upon which the action is founded was dated October 11th, 1855, and therein made returnable to the fourth Monday of October next, in which case the summons was, by its own provisions, made returnable to the fourth Monday of October, 1856, and thereby, more than one year would intervene between the teste and return of the writ.

SCAMMON & FULLER,

For Plaintiff in Error.

STATE OF ILLINOIS, }
SUPREME COURT, } 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 Circuit Court of *Cook* County, before the Judge thereof, between *Rosell M. Hough, Oramel S. Hough & Charles H. Seavernus* under the name & firm of *R. M. & C. S. Hough & Company*

plaintiffs, and

J. M. Hildreth

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

J. M. Hildreth as we are informed 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 *first Tuesday after the first 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, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this *26th* day of *June* in the Year of Our Lord One Thousand Eight Hundred and Fifty-*Seven*.

S. Leland

Clerk of the Supreme Court.

by J. B. Rice

Writ of Error
Clerk of the Superior Court

of Our Lord One Thousand Eight Hundred and Fifty-
four this 26th day of June in the Year
Justice of our said Court and the Seal thereof at Ot-
tawa

J. M. Hildreth
Rosell. M. Hough
& others

Writ of Error

This writ of Error
is to operate as a
Superseas and as
such is to be obeyed
by all concerned
L. Leland Clerk
by J. B. Rice Deputy

Filed June 26. 1857
L. Leland
Clerk



Writ of Error
Clerk of the Superior Court

of Our Lord One Thousand Eight Hundred and Fifty-
four this 26th day of June in the Year
Justice of our said Court and the Seal thereof at Ot-
tawa

This writ of Error
is to operate as a
Superseas and as
such is to be obeyed
by all concerned
L. Leland Clerk
by J. B. Rice Deputy

Filed June 26. 1857
L. Leland
Clerk

Cook County Circuit Court
October Term AD 1855

Roselle M. Hough
Oramel S. Hough
& Charles H. Havers
vs
J. M. Hildreth

Apt.

The Clerk of said
Court will issue Summons in the above
suit in a Plea of Trespass on the Case
on promises, Damages \$500.

Oct. 11th 1855

C. B. Hosmer

Defts atty

State of Illinois }
Cook County ss } I Wm L. Church Clerk
of the Circuit Court of said
County do hereby certify, that the foregoing
instrument of writing is a true & correct copy
of the original paper on file in my
Court in the above entitled suit. In Testimony
Whereof I have hereunto set my hand & seal of the
said Court this 16th day of April AD 1858-

Wm L. Church
Clerk

Suprem Court
Apr. 7, 1858

R. M. Hoyle
tels
als

J. M. Aldrich

Copy of Original
Receipt

ERROR TO COOK COUNTY CIRCUIT COURT.

J. M. HILDRETH,
Plaintiff in Error,

VS

ROSELL M. HOUGH,
ORAMEL S. HOUGH,
CHARLES H. SEAVERNES.
Defendants in Error.

ABSTRACT OF RECORD.

This action was commenced by issuing a writ of summons against the defendant October 11th, 1855, returnable to the Fourth Monday of October thereafter, which summons is in the words and figures following:

SUMMONS—CIRCUIT COURT OF COOK COUNTY.

STATE OF ILLINOIS, } ss.
COOK COUNTY, }

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

We command you that you summon J. M. Hildreth, if he shall be found in you, county, personally to be and appear before the Circuit Court of Cook 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 fourth Monday of October next, to answer unto Rosell M. Hough, Oramel J. Hough and Charles H. Seavernes, in a Plea of Trespass, on the case upon promises to the damage of the plaintiff, as is said, in the sum of Five Hundred Dollars.

{ SEAL }

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

WITNESS, Louis D. Hoard, clerk of our said Court, and the seal thereof, at the city of Chicago, aforesaid, this eleventh day of October, A. D., 1855.

L. D. HOARD, Clerk.

And afterwards, on the 3d day of November, A. D., 1855, the plaintiffs filed their declaration in assumpsit for cattle sold and delivered, and common counts. Damages \$500.

And upon the 21st day of November, A. D., 1855, no plea having been filed, the default of the said defendant was then and there entered, and an order for a writ of enquiry. And upon the 31st day of March, 1856, damages were assessed by the court, \$500.

The Plaintiff in Error assigns for error, the rendering of the judgment in said case, in that the summons issued in said case, and upon which the action is founded was dated October 11th, 1855, and therein made returnable to the fourth Monday of October next, in which case the summons was, by its own provisions, made returnable to the fourth Monday of October, 1856, and thereby, more than one year would intervene between the teste and return of the writ.

SCAMMON & FULLER,

For Plaintiff in Error.

[illegible]

Yves de la Rochelle, 1801, p. 106.

Diameter 2200*

J^r M^r Keildult
R^r M^r Conquest

Abstract of Record

Filed April 22, 1883

St. Julien
for Jeff. & Geo.

:gubnor, ymuno hmo lo mura o d'arred ho sava of uobos, & all

COOK CARRIAGE
BY
SLAVE OF THOMPSON

2. The amount of money that is given to the poor is

October 1902, 1903, 1904, 1905, 1906, 1907, 1908, 1909, 1910, 1911, 1912, 1913, 1914, 1915, 1916, 1917, 1918, 1919, 1920, 1921, 1922, 1923, 1924, 1925, 1926, 1927, 1928, 1929, 1930, 1931, 1932, 1933, 1934, 1935, 1936, 1937, 1938, 1939, 1940, 1941, 1942, 1943, 1944, 1945, 1946, 1947, 1948, 1949, 1950, 1951, 1952, 1953, 1954, 1955, 1956, 1957, 1958, 1959, 1960, 1961, 1962, 1963, 1964, 1965, 1966, 1967, 1968, 1969, 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583,

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CHAMBERLAIN, HENRY
CHAMBERLAIN, HENRY
CHAMBERLAIN, HENRY

100

J. W. HILDEBRAND

UNION LA OOK COMAL CIVIL COURT

Supreme Court at Ottawa
April Term AD 1858

Though it also drifts in Error }
at }
Hildreth's Pleff in Error }

First, Motion of Defts. to amend the Writ
below for the misprision of the Clerk by striking
out the Word "next" in the original Summons &
inserting instead "instant". -

That the Court has the right to so amend
as a matter of discretion, there can be no
doubt, *vid.* Sects. 1st & 3^d Revised Statute, under
the title "Amendments & Joinders". Also Process
133 & Note a. -

The only question, whether this amendment
should be allowed by the Court or not
should be determined, by the consideration
whether right & justice between the parties
require that the Writ be amended.

It appeals to the sound discretion of the Court
under all the circumstances of the case. -

And we call the attention of the Court to
the Writ & the subsequent facts, in order that
the Court may judge whether the Pleff. was
taken by surprise, or in any way misled by
the clerical blunder of the Clerk below, if there
was in fact such a blunder. - The Court

will note that the Writ commanded on the 11th day of Oct 1855 the Plff to be Vappur before the Court below on the 1st day of the next Term thereof. Now the Plff was bound to know & did in fact know when that day was & therefore he was ⁱⁿ no way deceived or misled. I cannot so far as the fact or justice of this case is concerned whether the Callam of the Writ as to holding the Court was or was not correct. - I will show the Court that the weight of authorities are that the word "next" in that writ, well indicates next after the 11th day of Oct, but waiving that question here, was the Plff likely to be deceived as to the time of holding the Court? - I undertake to say without fear of contradiction that no man of common sense, could possibly be deceived. Beside he was presumed to know the Statutes, ~~that~~ ^{that} informed him that said Writ could not be returned at the Oct T, 1856. Further the Court will note that the Judgment below was entered at the Oct T 55, Execution after Execution issued thereon, & no complaint of the Deft below as to said Judgment for nearly 2 years when the opposite Counsel happened to observe this technical quibble & brought this Writ of Error, & the question is whether this Blunder of the Clerk below shall be corrected, or whether on this more technicality, the Plffs below shall lose their Judgment? - Again we call the attention

of the Court to its decision in the 4th Term, 334, in which is clearly laid down the doctrine, that a Writ commanding the Deft to be & appear before the Court on the first day of the next Term is sufficient without specifying the particular term. If this is so, then as the Writ in question summoned the Deft to be & appear before the Circuit Court of Cook County on the first day of the next Term thereof, the ballance of it specifying the term was mere surplusage & may be rejected.

And whoever heard that ^{mere} surplusage ever vitiated a Process? It would be absurd to say that because a party inserted mere in his Writ than was necessary, provided he inserted in it all the Law requires, that thereby he would avoid his Writ.

Such a view, works no injustice to the Deft, for although the Deft is bound to know the time of holding Courts of Record, yet if in any case the Deft should be deceived by the term specified which is mere surplusage, I have no doubt any Court would let him in to make defence upon his showing by Affdt that he had been so deceived.

Again, this Court can amend where there is any thing in the Record, so as to authorize this Court to interpose, 3^d Term 190. There is in this Court ^{copy of} the original Process to amend Ag; &c

2072
Supreme Court
Apr 1, 1858

R. M. Hough
et al
ats

J. M. Alden

Argument on
Motion to amend

Filed April 22, 1858
Leland
C. H.

C. B. Hosmer
Depts etc

that we can do nothing to prevent this Court
from granting the amendment thereby obvi-
ating dispute between the parties
C. B. Hosmer
Depts etc

State of Illinois } Supreme Court
April Term AD 1838

Hough et als Defts in Error }
als, } Error to Circuit
Hildreth Plff in Error } Court of Cook County

Charles B. Hoerner being duly sworn
deposes & saith that he was & is
the attorney of said Defts, both in the
Court below & in this Court, that the
Summons hereto attached, marked "A" is
a correct copy of the original Summons
filed in this suit in the Court below both
in the printed & written part thereof. -

That the word "next" was printed in the
original Summons & was a mere clerical
blunder of the Clerk below in not erasing
it & inserting instead the word "instant".

That the only defect in said Summons
is the mispissure of the said Clerk & he
states, that such mispissure of the Clerk
did not deceive or mislead the Plaintiff
in any manner as this defendant is informed
& truly believes, Wherefore this defendant
in behalf of said Defendants moves the
Court that said writ be amended by
striking out the word "next" in said
Summons & inserting instead "instant,"

C. B. Hoerner

Subscribed & sworn to
before me this 16th day
of April A.D. 1858
H. L. Church
Clerk

Leopoldine Grant
April 16, 1858

Wm. H. Hays et al
als

J. W. Hildner
Agent Western

30
A
SUMMONS--CIRCUIT COURT OF COOK COUNTY.

STATE OF ILLINOIS, }
COUNTY OF COOK. } SS.

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

We command you that you summon

J. M. Hildreth

if he shall be found in your county, personally to be and appear before the Circuit Court of Cook County, on the first day of the next term thereof, to be holden at the Court House, in Chicago, in said county, on the *fourth* Monday of *October* next, to answer unto *Rosella M. Hough, Grand*

S. Hough & Albert H. Leavens

in a plea of *Insufficiency in the case on premises*
to the damage of the said Plaintiff, as is said, in the sum of *five hundred* Dollars.

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

WITNESS, *Louis D. Howard*
WILLIAM L. CHURCH, Clerk of our said Court, and the seal thereof, at Chicago aforesaid, this *Eleventh* day of *October*

A. D. 1855

L. D. Howard

Clerk.

Copy of
Original

CIRCUIT COURT OF COOK COUNTY,

Co. 1 Term, 1855

R. M. Hough et al

VS.

J. M. Hildreth

SUMMONS.

FILED,

Clerk.

Served by reading to the within named

J. M. Hildreth

the 11th day of October 1855

Fees:

Service,

Mile,

Return,

\$

Sheriff.

James C. Andrew

By J. S. Hildreth

Deputy

Attorney.

State of Illinois }
Cook County } I, Wm. L. Church, Clerk of the Circuit
Court of said County, do hereby certify that
the within is a true & correct copy of the original summons
on file in said Court in the suit of R. M. Hough, C. S. Hough
& C. H. Leavens vs J. M. Hildreth, in Testimony whereof I
have hereunto set my hand & affixed the seal of said Court this
16th day of April A.D. 1855
Wm L Church
Clerk

State of Illinois,
In the 3^d Grand Division
of the Supreme Court of said State. at
the April Term AD 1858.

Know all men by these presents, that I
McCarty Kildeth of Logan County in said
State, and J. Thompson, J. S. Thirt of Cook
County, in said State, are held and firmly
bound unto, Roselle M. Hough, Samuel J.
Hough & Charles H. Seaverns of said Cook
County, in the sum of one thousand
dollars, for the payment whereof, we do
heavily bind ourselves and our heirs
firmly by these presents.

Witness our hands & Seals
this June AD 1857

The condition
of the above obligation, is such, that
whereas the said Houghs & Seaverns, at the
March Term AD 1856 of the Circuit Court
of the County of Cook, State aforesaid recov-
ered a judgment against said McCartney
Kildeth by the name of J. M. Kildeth, for
the sum of Five Hundred Dollars debt
or damage, & Costs of suit, from which
judgment, said Kildeth has sued out
a writ of Error from said Supreme
Court, returnable 15th the next Term
thereof, to be holden at Ottawa in the
month of April next, & which writ of
error has been ordered to operate as a
supersedeas, by the direction of the App

to leave one of the Justices of said Supreme Court upon said Widdeth the filing bond as is by law in such cases required, nor if the said Widdeth shall duly prosecute his said writ of error and shall pay said judgment, with interest, costs & Damages in case the same shall be affirmed then this obligation shall be void, & otherwise be and remain in full force.

Signed & Sealed in McCarty Widdeth Seal
my presence. Thompson J. S. Hunt Seal
Saml W Fuller

I hereby authorize and request the Clerk of the Supreme Court to file the bonds in the preceding bond, and to alter the same if necessary to conform to the requirements of the judges order.

Attest
Saml W Fuller

Thompson J. S. Hunt

I Saml W Fuller on oath say, that I am well acquainted with the preceding circumstances of J. J. S. Hunt the person whose signature appears to the foregoing obligation: that he signed & sealed the same in my presence, & that I believe him worth more than one hundred thousand dollars besides his debts & further I say not

Saml W Fuller

State of Illinois,
Cook County. I Personally appeared before
Sam W Fuller & he personally
known to be the identical person who signed
the foregoing affidavit, and made oath
that the matters therein set forth, are true
to the best of his knowledge, information & belief.

Sam W Fuller

Witness my hand & Notarial Seal
this 25th day of June A.D. 1857.

John Derry the
Notary Public

Hildreth
Hough & also

Appeal Bond

Filed June 26. 1857
S. Leland
Clerk

Samuel Fuller
Atty for Hildreth