

14500

No. _____

Supreme Court of Illinois

Hopkins

vs.

Stevens

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division

No. 21

Hopkins
1863

1450

Supreme Court, April Term, 1860.

Reufus Hopkins	}	Error to DeKalb.
vs.		
Phineas Stevens.		

Abstract of the Record.

3. Stevens declared in assumpsit against Hopkins, "For that whereas the said defendant, on the tenth day of July, in the year of our Lord one thousand eight hundred and fifty-eight, at DeKalb, in the county of DeKalb aforesaid, by the name of R. Hopkins, made his certain promissory note in writing, bearing date the day and year last aforesaid, and then and there delivered the same to the plaintiff, and thereby promised to pay to the order of the plaintiff, on the first day of October next ensuing the date thereof, one hundred twenty-four $\frac{1}{100}$ dollars, in good notes, for value received, &c." Declaration filed, July 15, 1859.

6. Aug. 4, 1859, defendant pleaded non
7-8. assumpsit and three special pleas.

9-11. At February Term, 1860, a demurrer was sustained to the special pleas, and de-

pendant, by leave &c., pleaded three amended pleas:

12. ~~12~~.

1st. "That on the first day of October, A.D. 1858, he offered and tendered to the said plaintiff good notes to the amount and value of one hundred and twenty-four $\frac{10}{100}$ dollars in full payment of the said sum in said declaration mentioned, and that said notes have at all times since said 1st day of October, A.D. 1858, and are now, ready to be delivered to said plaintiff;" verification.

2nd. "That before said note in said declaration mentioned became due and payable, he the said defendant tendered and offered to pay to the said plaintiff good notes to the amount and value of one hundred and twenty-four $\frac{10}{100}$ dollars (\$124.10), in full satisfaction and payment of said note, which said plaintiff then and there neglected and declined to receive, and did then and there contract and agree with the said defendant to call upon him at some future day for said notes; and the defendant avers that said plaintiff has

never called upon this defendant for said notes, and that said notes have at all times since said note in said declaration mentioned become due, and are now, ready to be delivered to the plaintiff;" verification.

13. ~~12~~ 4th. "That said promissory note in said declaration mentioned is not the property of the said plaintiff, nor was not at the time of the commencement of this suit, but on the contrary thereof the same then and now belonging to and is owned by the administrator of the estate of Hiram Mower, decd.;" verification.

14. ~~13~~ Plaintiff, at the same term, demurred specially to the ~~1st~~ 2nd, 3rd and 4th ^{amended} pleas, the plea of non assumpsit still remaining unanswered and undisposed of. The
16. court sustained the demurrer, and the record proceeds: "And the said defendant answering no further, it is further considered that the plaintiff have judgment by default for want of a plea, and that he recover of the defendant his damages sustained, which are assessed by the court at the sum of one hundred and
17. ~~16~~

thirty-four dollars and thirty-six cents, being the amount of the note and interest as aforesaid assessed, together with his costs herein expended, and that he have execution therefor."

Points made for plaintiff in error

II

The declaration shows no cause of action - At Common law - a promissory note must be for the payment of money only - Our Statute has made a promise to pay a given sum - in personal property - but does not embrace - such an assumpsit as that described in the declaration - It is a mere simple Common law - naked promise - and shows no cause of action - without an averment in the declaration of a consideration

III

The second & third amended special

Hopkins
vs.
Stevens.
ct of Record.

pleas - each show a full defence -

It is like a contract to deliver wheat
or any other valuable Thing - not money
an ability - readiness and offer to per-
form & a continuing readiness & ability
to perform - is equivalent to performance
- at least it shows that as yet defendant
has been guilty of no breach of his
promise

III

The plaintiff by demurring to the
special pleas without joining the
issue tendered by the plea of non-
assumpsit - discontinued his whole
action -

IV

It was irregular and erroneous
to render judgment by default - with-
out first disposing of the plea of
non assumpsit W. B. Scates
T. Lyle Dickey
for plff in error

⁴¹³
Rufus Hopkins
vs

Phineas Stevens

Envr to De Kalb

Abstract - &
pett's points

Filed May 26-1860

L. Leland

Clerk

STATE OF ILLINOIS, } ss.

Clerk's Office of the Supreme Court.

I Hereby Certify, That a Writ of Error hath issued from this Office for the Reversal of a Judgment — obtained by Phineas Stevens —

against Rufus Hopkins —

in the Circuit — Court of De Kalb — County, at the February — Term, in the year of our Lord one thousand eight hundred and sixty — in a certain action of Assumpsit —

— which Writ of Error is made a Supersedeas, and is to operate as a suspension of the execution of the judgment, and as such is to be obeyed by all concerned.

Given under my hand, and the Seal of the said Supreme Court, at Ottawa, this 7th day of June — in the year of our Lord one thousand eight hundred and Sixty.

L. Leland

Clerk of the Supreme Court.

J. B. Rice Deputy

I hereby certify that I served the within
 certificate on James H. Beveridge clerk of the
 Circuit Court of DeKalb County Illinois and
 Henry Safford Sheriff of said county on
 the 14th day of June 1860
 Subscribed & sworn to before me
 on the 15th day of June 1860
 Charles O'Boyle Notary P.



1863
~~1867~~

Plent

FILED
 June 1860

SUPERSEDEAS.

No. 31
 James Stevens

James H. Beveridge



Pleas before the Hon. Isaac G.
Wilson, ^{Circuit} Judge of the 13th Judicial
District of the State of Illinois & Pre-
siding Judge of the Circuit Court
of De Kalb County at a term of
said Circuit Court begun & holden
at the Court House in Sycamore
in said County on the sixth
day of February, A. D. - 1860

Present:

Hon Isaac G. Wilson Judge

E. S. Joslyn States Atty

~~J. H. Beveridge~~ Clerk

Sheriff

Attest
J. H. Beveridge
Clerk

Be it remembered that on the
15th day of July - A. D. - 1854 - Phineas
Stevens - by Mayo - Kellum & Chase filed
with the clerk of said Court in his office
a declaration in the words & figures
following viz -

" STATE OF ILLINOIS, }
COUNTY OF DEKALB. } SS.

In Vacation after the February Term
of the DeKalb County Circuit Court, A. D. 18559

" Phineas Stevens plaintiff by Mays
" Hellum & Webster his Attorneys Complainers of Refus
" Hopkins defendant in a plea of Assumpsit

" For that whereas the said Defendant.. on the.. tenth.. day of July
" in the year of our Lord one thousand eight hundred and fifty Eight.. at DeKalb in the
" County of DeKalb aforesaid by the name of R
" Hopkins

" made his.. certain promissory note in writing, bearing date the day and year last aforesaid, and then and there delivered
" the same to the plaintiff

" .. and thereby promised to pay to the order
" of the plaintiff on the first day of October next
" ensuing the date thereof one hundred twenty
" four 100 dollars in good notes for value received

" and the said defendant
" ~~then and there endorsed the same to~~

" ~~the Plaintiff, whereof the said Defendant, then and there had notice, and then and there in consideration of the premises, promised~~
" to pay the amount of the said note to the said Plaintiff.. according to the tenor and effect thereof.

" Yet the said Defendant.. has disregarded his.. said promise, and he has not paid the said moneys, or any part thereof,
" to the damage of the Plaintiff.. of two hundred & fifty
" Dollars, and therefore he brings suit, &c.

Mays Hellum & Webster

Plaintiff's Attorney.

STATE OF ILLINOIS, }
DEKALB COUNTY, } SS.

I, JAMES H. BEVERIDGE, Clerk of the Circuit Court, in and for said County, do
hereby certify that the within and foregoing is a true copy of the Declaration filed in my office,
..... day of A. D. 185..... in the above
entitled cause.

Witness my hand, and Seal of said Court, at Sycamore, in said County, this
day of A. D. 185.....

Clerk.

COPY OF NOTE DECLARED ON

\$124.10

Recd all July 10th 1858

On the first day of October after date

I promise to pay to the Order of Phineas Stevens

One hundred and twenty four 10/100 dollars

in good notes, Value received.

(Signed) B. Hopkins.

1793686

DEKALB COUNTY CIRCUIT COURT,

In Vacation, after *Full Term*

A. D. 1859

Phineas Stevens.....

vs.

B. Hopkins.....

Narr.

July 15..... A. D. 1859
J. H. Beveridge Clerk.

J. H. Kellum & Webster
Attorney for Plaintiff.

And that afterwards viz on the 4th
day of August A.D. 1859 - Rufus Hopkins
the defendant in said declaration named
by Simons & Chure his attorneys filed in
the the office of said Clerk of said Court
his affidavit & his pleas - which affidavit
& pleas are in the words & figures
following viz

"State of Illinois } ~~De Kalb Co. Cir. Ct.~~ In Vacation
De Kalb County } ~~of the De Kalb County Circuit Court~~
after the February term, A.D. 1859

"Phineas Stevens } Rufus Hopkins being first
vs } duly sworn deposes and says
Rufus Hopkins } that he is the defendant in
" the above entitled suit and
" that he verily believes he has a good
" defense to said suit upon the merits. That
" this affiant's defense consists in this to wit:
" that the note on this suit which this suit
" is brought is payable in good notes. That
" this affiant before and at the time of the
" maturity of said note, tendered and offered
" to pay the amount thereof to said Stevens in
" good notes according to the tenor and effect of
" said note. And also that said note is not
" the property of said Phineas Stevens, although
" the same is payable to him, as this affiant is
" informed and verily believes.

"Subscribed and sworn
"to before me this third
"day of August 1859.
" O M Chase P.M. } Rufus Hopkins.

"Filed Aug 14th 1859 Jas H Berridge"
CLK-

" Rufus Hopkins } HeKalle Co. Cir. Ct. In Vacation
 " at after the February Term A.D.
 " Phineas Stearns } 1859.

" And the said defendant by Si-
 " monus Heluse his Attorney Comes and defends
 " the wrong and injury ^{where} &c. and says that he did
 " not undertake or promise in manner and form
 " as the said plaintiff has above thereof complained
 " against him. And of this he puts himself upon
 " the Country &c.

Simons Heluse
 Hefts Attorney

" And for a further plea in this behalf the
 " said defendant says actio non, because he
 " says that the instrument declared upon in
 " the said plaintiffs said declaration is a promissory
 " note given on the tenth day of July 1859 by the
 " said defendant to the said plaintiff for the
 " sum of one hundred and twenty four and
 " 10/100 dollars, and payable to the order of said
 " defendant in good notes, on the first day of
 " October after date thereof, and the said defendant
 " avers that he did on the said first day of Octob
 " A.D 1858 tender and offer to pay to the said plaintiff
 " good notes of the value of one hundred and
 " twenty four and 10/100 dollars in payment of

" of said note of said note mentioned in said
" plaintiffs said declaration according to the
" tenor and effect thereof.

" And for a further plea in this behalf
" the said defendant says acts now because
" he says that the instrument declared in
" the said plaintiffs said declaration is a
" promissory note bearing date on the 10th day of
" July AD 1858 given by the defendant to the
" plaintiff for \$124.10 payable on the first day
" of October after the date thereof in good notes.
" And the said defendant avers that he did
" at and before the maturity of said note tender
" and offer to pay to the plaintiff good notes
" of the value of \$124.10 in full satisfaction
" and payment of said note, which said
" plaintiff then and there declined to receive
" from the defendant, but promised to call
" upon the defendant at some (then) future
" time and receive said notes and surrender
" the note sued upon to be cancelled. And
" the said defendant avers that said plaintiff
" has never called for said notes as he
" promised to do. And the said defendant
" also avers that he has repeatedly since
" the plaintiff promised to call for said
" notes, tendered and offered to deliver the same
" to him the said plaintiff but he the

" plaintiff declined to receive them. And
 " the defendant further avers that has ever
 " been ready and willing and now is ready
 " and willing to pay and deliver to the plaintiff
 " good notes of an amount sufficient to fully
 " pay and discharge the note declared upon
 " in this suit according to the tenor and effect
 " of said note.

" And for a further plea in this behalf
 " the said defendant says actio non because
 " he says that the instrument declared ^{on} is not
 " the property of the plaintiff. That the plain-
 " tiff is not the owner of the moneys or notes
 " therein and thereby secured to be paid, and
 " has no legal interest therein or title thereto,
 " but that the same belongs to and is the property
 " of the estate of Hiram Chace deceased, and
 " has been duly mentioned as such by the
 " plaintiff as administrator of said estate.

Hiram Chace
 kept Atty.

" Filed Aug 4th 1859 James H Berridge
 Clerk

And that afterwards on the 16th day of February A.D. 1860 - it being one of the days of the said February Term of said Court - the said plaintiff Phineas Stevens filed in said Cause in the office of the Clerk of said Court his demurrer in the words & figures following viz

" Phineas Stevens } DeChall County Circuit
 " vs } Court February Term
 " Rufus Hopkins } AD 1860

" And the said Plaintiff as to
 " the Pleas of the said Defendant by him.
 " Secondly, Thirdly & Fourthly above Pleaded
 " saith that the same and the matters therein
 " contained the manner and form as the same
 " are above Pleaded and set forth, are not
 " sufficient in law to bar or preclude him the
 " said Plaintiff from having or maintaining
 " his aforesaid action there against the
 " said Defendant and that he the said
 " Defendant Plaintiff is not bound by law to
 " answer the same and that he the said defendant
 " is ready to verify, wherefore by reason of the
 " insufficiency of the said Pleas in this
 " behalf, the said Plaintiff prays judgment
 " and his damages, by reason of the not performing
 " of the said several ^{and} undertakings in the said
 " Declaration mentioned to be adjudged
 " to him &c

" And the said Plaintiff here
 " shows and sets forth the causes of
 " Demurrer 1st The said Defendants
 " said second Plea. does aver that the
 " said Defendant is still ready and

"Willing to pay the Notes or that the
 "Same is now in Court

"Ist The Defendants Third Plea
 "does not state any time when the
 "tender spoken of was made

"3 Neither of said Defendants Pleas
 "by him Secondly Thirdly and fourthly
 "above Pleaded conclude either to
 "the country or with a verification
 "The said Pleas defective and
 "insufficient in other respects

"Filed Feb 16, 1860"

"Jas. H. Beveridge"

"Clerk"

And that afterwards upon the said 16th
day of February - ~~the following proceed-~~
ings were had in said Cause in said
Court - viz

Phineas Stevens } DeKalb County, Georgia
 vs } Court February Term A.D. 1860
 Rufus Hopkins }
 Plaintiff }
 Defendant }

"February 16th A.D. 1860 this day came the Plaintiff by Messrs
 "Nellum & Webster his Attorneys & the Defendant
 by Simons & Chase his Attorneys also comes and
 "demurs to the Defendants Special Pleas in which
 "the Defendant joins. After Arguments of Counsel
 "the Court being now fully Advised orders that
 "said Demur be sustained and that leave
 "be given the defendant on his Motion to amend:
 "It is therefore considered by the Court that the
 "Plaintiff have and recover of the Defendant his
 "costs of Demur sustained and that he have
 "Execution therefor."

Record Cir Ct

And afterwards on the said 16th day
of February 1860 - the said Defendant
filed with the Clerk of said Court
in open Court - his amended pleas
- which are in the words & figures following
viz -

5

Phineas Stevens
vs
Giles Hoopkins } ss. DeKalb County Circuit
Court February Term AD 1860

And the said Defendant
for a further & amended Plea in this behalf
by leave &c by White his Attorney comes and
defends the wrong and injury when &c
and says Actionore Because he says that on
the first day of October AD 1858 he offered
and tendered to the said Plaintiff good notes
to the amount ^{and value} of one hundred and twenty four
100 Dollars in full payment of the said
sum in said Declaration mentioned and
that said note have at all times since said
1st day of October AD 1858 and are
now ready to be delivered to said plaintiff
and of this he the said Defendant is ready
to verify &c

Mo White Dft Atty

And for a further & amended Plea by
leave &c the said Defendant by White his
Attorney comes and defends the wrongs
and injury when &c and says
Actionore Because he says that before
said note in said Declaration mentioned
became due and payable he the said Defendant

rendered and offered to pay to the said Plaintiff
 good notes to the amount and value of One hundred
 and twenty four 1/100 Dollars (\$124.10) in full
 satisfaction and payment of said note which
 said Plaintiff then and there neglected and
 declined to Receive, and did then and there
 contract and agree with the said defendant
 to call upon him at some future day for
 said notes and the defendant avers that
 said Plaintiff has never called upon this defendant
 for said notes; and that said notes have at all
 times since said note in said Declaration
 mentioned become due, and are now
 ready to be delivered to the Plaintiff and
 of this the said Defendant is ready to verify to
 Me White Deftly

And for a further and Amended Plea by like
 leave to the said Defendant comes and defends the
 wrong and injury where and says Action on
 Because he says that said promissory note in said
 Declaration mentioned is not the property of the said
 Plaintiff, nor was not at the time of the commencement
 of this suit, but on the contrary thereof, the same then
 and now belonging to and is owned by the Administrator
 of the Estate of William Mower Deed and
 this the Defendant is ready to verify to
 Me White Deftly Ad

Filed Feb 16, 1860 J. H. Beveridge Clerk

6.
And afterwards on the 17th day of
February A.D 1860 - being one of the
days of said term of said Court
the plaintiff filed his return in
the words & figures following viz

" *Pinus Strobus*
"
"
"
Rufus Haptius

And the said plaintiff as to the
pleas of the said defendant by him secondly
thirdly and fourthly above pleaded, says that
the same and the matters therein contained in
manner and form as the same is set forth
are not sufficient in law to bar a recovery
by the plaintiff &c.

Mary Killum & Webster

~~Allyps~~ allyps.

And for Cause of damages the said plain-
tiff shows to the Court. ~~here~~

The the said several pleas does not aver that the plaintiff refused to accept

That said Second and third pleas do not make profert in Curiam and that said third plea is double.

That said, for the place presents an immen-
terial issue

That each and all of said pleas amount
only to the general issue

15.
3th

That said pleas are in other respects in-
formal and insufficient -

Filed Feby 17th 1860

J H Benning CLK.

" \$124.10 Leekale July 10th 1858

" On the first day of October after
date I promise to pay to the order of Phineas
Stevens One hundred twenty four 10/100
dollars in good notes, value received.

" R. Hopkins.

" Filed Feby. 17th 1860 & judy F \$134.36.

" J H Benning CLK

8 -

And afterwards on the 17th day of
February 1860 - being one of the days
of the February Term 1860 of said Court
the following proceedings in said
Cause were had in said Court
viz

(And on the 17th day of
February AD 1860) "This day came the parties
" by their Attorneys and the Plaintiff Demurs to the
" Amended Plea in which the Defendant joins; After
" Arguments of Counsel the Court being fully advised
" order that said Demurer be sustained; It is therefore
" considered by the Court that the Plaintiff have and
" recover of the Defendant his Costs of Demurrer and
" and that he have Execution therefor;
" And the said Defendant Answering no
" Verdict, it is further considered that the
" Plaintiff have judgment by Default

17.

"for want of a Plea, And that he recover of
"the Defendant his Damages sustained
"which are ascertained by the Court at the sum
"of One hundred and thirty four Dollars
"and thirty six cents being the principal
"of the Note and interest as aforesaid ascertained
"together with his Costs herein expended and
"that he have Execution therefor."

State of Illinois
DeKalb County P. J. James & Son, Clerk of the
Circuit Court in & for said County
do hereby certify that the above foregoing is a
true & full transcript of the Record of the proceed-
ings had in said Court in the said entitled Cause.
Witness my hand & Seal of said Court
at Eggenwau in said County this
4th day of June A.D. 1860.
James & Son
Clerk

For \$4.00 Paid by P. Herpkins
Leat a supersedeas issue Bond \$400
Chas. C. Baynton James & Waterman Secretaries
J. H. Bates

State of Illinois, ss.

Supreme Court, Third Grand Division.

Refus Hopkins

vs.

Phineas Stevens.

Error to De Kalb.

And now comes the said plaintiff in error, by Dickey & Wallace, his attorneys, and says, that in the record and proceedings aforesaid, and in the rendering of the judgment aforesaid, it is manifestly erred, in this, to wit:

1st. The said declaration is defective and insufficient.

2nd. The court below improperly sustained the demurrer to the defendants 2nd, 3rd and 4th pleas, and each of them, and did not carry the said demurrer back to the said declaration.

3rd. The court below proceeded to adjudge the said demurrer while the said first plea remained unanswered.

4th. The court below gave final judgment against the defendant for want of a plea, while the said first plea remained unanswered and undisposed of.

5th. The court below gave judgment for

State of Illinois ss
Supreme Court Third Term

Rufus Hopkins }
vs
Phineas Stevens }

And the said defendant
Phineas Stevens afterwards to wit
at the April Term A.D. 1863 of said
Supreme Court by A. M. Armstrong
his attorney came & say ~~that~~
by way of confession of one of
the errors in this record
assigned. that it is true as
in said assignment of errors
fourthly herein assigned that the
court below gave judgment for
want of a plea when in fact there
was a plea on file. as to the
other errors assigned the defendant
herein & hereby expressly denies
the existence of the same
and asks that no judgment
in other respects may be

36 473 98

Reufus Hopkins

vs.

Phineas Stevens.

Transcript of Record

and

Assignment of Errors.

Filed June 9 1860

L. Leland

clerk-

affirmed

all of which is

correctly submitted

W. W. Thompson

depts atty

STATE OF ILLINOIS, }
SUPREME COURT, } ss.

The People of the State of Illinois,

To the Clerk of the Circuit Court for the County of De Kalb Greeting:

Because, In the record and proceedings, as also in the rendition of the judgments of a plea which was in the Circuit Court of De Kalb County, before the Judge thereof, between Phineas Stevens

plaintiff, and Rufus Hopkins

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

as we are informed by his complainant— 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. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 9th day of June— in the Year of Our Lord One Thousand Eight Hundred and Sixty—



L. Leland

Clerk of the Supreme Court.

W. B. Rice Deputy

362128

Rufus Hopkins

No.

Thomas Stevens

WRIT OF ERROR.

This Writ of Error is made a
Supersedeas, and as such is to be
obeyed by all concerned.

L. Leland

Clerk.

Joseph B. Allen

FILED

June 7

A. D. 1860

L. Leland

Clerk.



SUPREME COURT OF ILLINOS,

THIRD GRAND DIVISION.

APRIL TERM THEREOF, A. D. 1862'

RUFUS HOPKINS
vs.
PHINEAS STEVENS. } *Error to De Kalb.*

ABSTRACT OF THE RECORD.

3 STEVENS declared in assumpsit against Hopkins, "For that
whereas the said defendant, on the tenth day of July, in the
year of our Lord one thousand eight hundred and fifty-eight, at
De Kalb, in the county of De Kalb aforesaid, by the name of R.
Hopkins, made his certain *promissory note* in writing, bearing
date the day and year last aforesaid, and then and there deliv-
ered the same to the plaintiff, and thereby promised to pay to
the order of the plaintiff, on the first day of October next ensu-
ing the date thereof, one hundred twenty-four 10-100 dollars, *in*
1 *good notes*, for value received, &c." Declaration filed July 15,
1859.

6 Aug. 4, 1859, defendant pleaded *non assumpsit* and three
special pleas.

5-11 At February term, 1860, a demurrer was sustained to the
special pleas, and defendant, by leave, &c., pleaded three
amended pleas.

12 2d. "That on the first day of October, A. D. 1858, he offered
and tendered to the said plaintiff good notes to the amount and
value of one hundred and twenty-four 10-100 dollars, in full

payment of the said sum in said declaration mentioned, and that said notes have at all times since said 1st day of October, A. D. 1858, and are now, ready to be delivered to said plaintiff." Verification.

3d. "That before said note in said declaration mentioned became due and payable, he, the said defendant, tendered and offered to pay to the said plaintiff good notes to the amount and value of one hundred and twenty-four 10-100 dollars, (\$124.10) in full satisfaction and payment² of said note, which said plaintiff then and there neglected and declined to receive, and did then and there contract and agree with the said defendant to call upon him at some future day for said notes. And the defendant avers that said plaintiff has never called upon this defendant for said notes, and that said notes have at all times since said note in said declaration mentioned became due, and are now, ready to be delivered to the plaintiff." Verification.

13 4th. "That said promissory note in said declaration mentioned is not the property of the said plaintiff, nor was not at the time of the commencement of this suit, but on the contrary thereof, the same then and now belonging to and is owned by the administrator of the estate of Hiram Mower, deceased." Verification

14 Plaintiff, at the same time, demurred specially to the 2d, 3d, and 4th amended pleas, the plea of *non assumpsit* still remaining unanswered and undisposed of. The Court sustained the
16 demurrer, and the Record proceeds: "And the said defendant answering no further, it is further considered that the plaintiff
17 have judgment by default for want of a plea, and that he recover of the defendant his damages sustained, which are assessed by the Court at the sum of one hundred and thirty-four dollars and thirty-six cents, being the amount of the note and interest as aforesaid assessed, together with his costs herein expended, and that he have execution therefor."

POINTS MADE FOR PLAINTIFF IN ERROR.

I.

The declaration shows no cause of action. At common law, a *promissory note* must be for the payment of *money only*. Our Statute has made a promise to pay a given sum in *personal property*, but does not embrace such an instrument as that described in the declaration. It is a mere, simple, common law, naked promise, and shows no cause of action, without an averment in the declaration of a *consideration*.

II.

The second and third amended special pleas,—each show a full defence.

It is like a contract to deliver wheat, or any other valuable thing, not money. An ability, readiness, and offer to perform, and a continuing readiness and ability to perform, is equivalent to performance; at least it shows that as yet defendant has been guilty of no breach of his promise.

III.

The plaintiff, by demurring to the special pleas without joining the issue tendered by the plea of non assumpsit, discontinued his whole action.

IV.

It was irregular and erroneous to render judgment by default, without first disposing of the plea of non assumpsit.

W. B. SCATES,
T. LYLE DICKEY,
For Plt'ff in Error.

21 36

Hopkins
vs
Stevens

Abstract & Points
for Plaintiff

Filed May 8. 1862
L. Seland
Clerk

SUPREME COURT OF ILLINOS,

THIRD GRAND DIVISION.

APRIL TERM THEREOF, A. D. 1862'

RUFUS HOPKINS
vs.
PHINEAS STEVENS. } *Error to De Kalb.*

ABSTRACT OF THE RECORD.

3 STEVENS declared in assumpsit against Hopkins, "For that
whereas the said defendant, on the tenth day of July, in the
year of our Lord one thousand eight hundred and fifty-eight; at
De Kalb, in the county of De Kalb aforesaid, by the name of R.
Hopkins, made his certain *promissory note* in writing, bearing
date the day and year last aforesaid, and then and there deliv-
ered the same to the plaintiff, and thereby promised to pay to
the order of the plaintiff, on the first day of October next ensu-
ing the date thereof, one hundred twenty-four 10-100 dollars, *in*
1 *good notes*, for value received, &c." Declaration filed July 15,
1859.

6 Aug. 4, 1859, defendant pleaded *non assumpsit* and three
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special pleas, and defendant, by leave, &c., pleaded three
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12 2d. "That on the first day of October, A. D. 1858, he offered
and tendered to the said plaintiff good notes to the amount and
value of one hundred and twenty-four 10-100 dollars, in full

payment of the said sum in said declaration mentioned, and that said notes have at all times since said 1st day of October, A. D. 1858, and are now, ready to be delivered to said plaintiff." Verification.

3d. "That before said note in said declaration mentioned became due and payable, he, the said defendant, tendered and offered to pay to the said plaintiff good notes to the amount and value of one hundred and twenty-four 10-100 dollars, (\$124.10) in full satisfaction and payment² of said note, which said plaintiff then and there neglected and declined to receive, and did then and there contract and agree with the said defendant to call upon him at some future day for said notes. And the defendant avers that said plaintiff has never called upon this defendant for said notes, and that said notes have at all times since said note in said declaration mentioned became due, and are now, ready to be delivered to the plaintiff." Verification.

13 4th. "That said promissory note in said declaration mentioned is not the property of the said plaintiff, nor was not at the time of the commencement of this suit, but on the contrary thereof, the same then and now belonging to and is owned by the administrator of the estate of Hiram Mower, deceased." Verification

14 Plaintiff, at the same time, demurred specially to the 2d, 3d,
and 4th amended pleas, the plea of *non assumpsit* still remain-
16 ing unanswered and undisposed of. The Court sustained the
demurrer, and the Record proceeds: "And the said defendant
17 answering no further, it is further considered that the plaintiff
have judgment by default for want of a plea, and that he recover
of the defendant his damages sustained, which are assessed
by the Court at the sum of one hundred and thirty-four dollars
and thirty-six cents, being the amount of the note and interest
as aforesaid assessed, together with his costs herein expended,
and that he have execution therefor."

POINTS MADE FOR PLAINTIFF IN ERROR.

I.

The declaration shows no cause of action. At common law, a *promissory note* must be for the payment of *money only*. Our Statute has made a promise to pay a given sum in *personal property*, but does not embrace such an instrument as that described in the declaration. It is a mere, simple, common law, naked promise, and shows no cause of action, without an averment in the declaration of a *consideration*.

II.

The second and third amended special pleas,—each show a full defence.

It is like a contract to deliver wheat, or any other valuable thing, not money. An ability, readiness, and offer to perform, and a continuing readiness and ability to perform, is equivalent to performance; at least it shows that as yet defendant has been guilty of no breach of his promise.

III.

The plaintiff, by demurring to the special pleas without joining the issue tendered by the plea of non assumpsit, discontinued his whole action.

IV.

It was irregular and erroneous to render judgment by default, without first disposing of the plea of non assumpsit.

W. B. SCATES,
T. LYLE DICKEY,
For Plt'ff in Error.

2/36

R. H. Hopkins

or

P. Stevens

Abstract & Points
for Plff

Filed May 8, 1862

J. L. Leane
Clerk

Scatterdickery
for Plff.

STATE OF ILLINOIS,
SUPREME COURT

} ss. The People of the State of Illinois,

To the Sheriff of De Kalb County, GREETING:

Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Circuit Court of De Kalb County, before the Judge thereof, between

Phineas Stevens

plaintiff, and

Rufus Hopkins

defendant, it is said that manifest error hath intervened, to the injury of the said Rufus Hopkins

as we are informed by his 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

Phineas Stevens

that he be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, to hear the record and proceedings aforesaid, and the errors assigned, if he shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said

Phineas Stevens

notice, together with this writ.

Witness, The Hon. John D. Eaton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 24th day of February in the year of our Lord One Thousand Eight Hundred and Sixty-two

L. Deland

Clerk of the Supreme Court.

21 36

De Kalb

Reuben H. Johnson

No. 36 vs.

Phineas Stevens

SCIRE FACIAS.

Filed April 4 1862

L. W. Dean Clerk.

I have served the within Scire Facias
by reading the same to the within named
Phineas Stevens this 4th day of March 1862
Baldwin Woodruff Sheriff of De Kalb County
by C. R. Woodruff Deput Sheriff

Serv's 5⁰⁰
Mileage 25⁰⁰
Ret 1⁰⁰
31⁰⁰ fees

SUPREME COURT OF ILLINOS,

THIRD GRAND DIVISION.

APRIL TERM THEREOF, A. D. 1862'

RUFUS HOPKINS
vs.
PHINEAS STEVENS. } *Error to De Kalb.*

ABSTRACT OF THE RECORD.

3 STEVENS declared in assumpsit against Hopkins, "For that
whereas the said defendant, on the tenth day of July, in the
year of our Lord one thousand eight hundred and fifty-eight, at
De Kalb, in the county of De Kalb aforesaid, by the name of R.
Hopkins, made his certain *promissory note* in writing, bearing
date the day and year last aforesaid, and then and there deliv-
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the order of the plaintiff, on the first day of October next ensu-
ing the date thereof, one hundred twenty-four 10-100 dollars, *in*
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1859.

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amended pleas.

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and tendered to the said plaintiff good notes to the amount and
value of one hundred and twenty-four 10-100 dollars, in full

payment of the said sum in said declaration mentioned, and that said notes have at all times since said 1st day of October, A. D. 1858, and are now, ready to be delivered to said plaintiff." Verification.

3d. "That before said note in said declaration mentioned became due and payable, he, the said defendant, tendered and offered to pay to the said plaintiff good notes to the amount and value of one hundred and twenty-four 10-100 dollars, (\$124.19) in full satisfaction and payment² of said note, which said plaintiff then and there neglected and declined to receive, and did then and there contract and agree with the said defendant to call upon him at some future day for said notes. And the defendant avers that said plaintiff has never called upon this defendant for said notes, and that said notes have at all times since said note in said declaration mentioned became due, and are now, ready to be delivered to the plaintiff." Verification.

13 4th. "That said promissory note in said declaration mentioned is not the property of the said plaintiff, nor was not at the time of the commencement of this suit, but on the contrary thereof, the same then and now belonging to and is owned by the administrator of the estate of Hiram Mower, deceased." Verification

14 Plaintiff, at the same time, demurred specially to the 2d, 3d, and 4th amended pleas, the plea of *non assumpsit* still remaining unanswered and undisposed of. The Court sustained the
16 demurrer, and the Record proceeds: "And the said defendant answering no further, it is further considered that the plaintiff
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POINTS MADE FOR PLAINTIFF IN ERROR.

I.

The declaration shows no cause of action. At common law, a *promissory note* must be for the payment of *money only*. Our Statute has made a promise to pay a given sum in *personal property*, but does not embrace such an instrument as that described in the declaration. It is a mere, simple, common law, naked promise, and shows no cause of action, without an averment in the declaration of a *consideration*.

II.

The second and third amended special pleas,—each show a full defence.

It is like a contract to deliver wheat, or any other valuable thing, not money. An ability, readiness, and offer to perform, and a continuing readiness and ability to perform, is equivalent to performance; at least it shows that as yet defendant has been guilty of no breach of his promise.

III.

The plaintiff, by demurring to the special pleas without joining the issue tendered by the plea of non assumpsit, discontinued his whole action.

IV.

It was irregular and erroneous to render judgment by default, without first disposing of the plea of non assumpsit.

W. B. SCATES,
T. LYLE DICKEY,
For Plt'ff in Error.

36 21

Hopkins

~~Stem~~
Stem

Pliffs Abstract-
& Points

Filed May 8, 1862
L. Silance
Clerk.

SUPREME COURT OF ILLINOS,

THIRD GRAND DIVISION.

APRIL TERM THEREOF, A. D. 1862'

RUFUS HOPKINS
 vs.
PHINEAS STEVENS. } *Error to De Kalb.*

ABSTRACT OF THE RECORD.

3 STEVENS declared in *assumpsit* against Hopkins, "For that
whereas the said defendant, on the tenth day of July, in the
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Hopkins, made his certain *promissory note* in writing, bearing
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III.

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IV.

It was irregular and erroneous to render judgment by default, without first disposing of the plea of non assumpsit.

W. B. SCATES,
T. LYLE DICKY,
For Plt'ff in Error.

36-21
 Hooper
 vs
 Stevens
 Pet's Abstract
 Points

COPIES MADE FOR SYLVANUS IN 1830

Filed May 8. 1862
 L. Silance
 Att.

I.

If a declaration does not state the cause of action. At common law, a plaintiff must state the cause of action with sufficient certainty to enable the defendant to prepare his defense. It is a mere rule of common law, and not a principle of justice. It is a mere rule of common law, and not a principle of justice. It is a mere rule of common law, and not a principle of justice.

II.

The second rule is that a plaintiff cannot recover damages unless he has shown a

It is also a contract to deliver goods, or any other valuable thing for money. An ability, readiness, and offer to perform, is a condition precedent to the recovery of damages. It is a condition precedent to the recovery of damages. It is a condition precedent to the recovery of damages.

III.

The plaintiff, by declaring to the effect of non assumpsit, discharges his burden of proof by the plea of non assumpsit. It is a condition precedent to the recovery of damages. It is a condition precedent to the recovery of damages.

IV.

It is a condition precedent to the recovery of damages. It is a condition precedent to the recovery of damages. It is a condition precedent to the recovery of damages.

W. B. SCOTT
 T. PETER DICKER
 Att. for the Defendant

SUPREME COURT OF ILLINOS,

THIRD GRAND DIVISION.

APRIL TERM THEREOF, A. D. 1862'

RUFUS HOPKINS
vs.
PHINEAS STEVENS. } *Error to De Kalb.*

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POINTS MADE FOR PLAINTIFF IN ERROR.

I.

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It was irregular and erroneous to render judgment by default, without first disposing of the plea of non assumpsit.

W. B. SCATES,
T. LYLE DICKEY,
For Plt'ff in Error.

Neopsephus

43
S. Stevens
Stevens

Platts Abstract-

4 Points

Filed May 8, 1862
L. Silance
Att.

Know all men by these presents, that we Rufus Hopkins Charles O'Byrntown & James S. Waterman are held and firmly bound unto Phineas Stevens in the penal sum of Four hundred dollars lawful money of the United States for the payment of which well and truly to be made we bind ourselves our heirs executors and administrators jointly and severally firmly by these presents

Witness our hands and Seals this twenty third day of May A D 1860

The Condition of the above obligation is such that whereas the said Phineas Stevens did at the February Term A D 1860 of the Seneca County Circuit Court by the final order and determination of said Court recover a judgment against the above bounden Rufus Hopkins in an action of Assumpsit for the sum of One hundred and thirty four and 36/100 dollars including costs of suit, from which said judgment the said Rufus Hopkins hath prosecuted a writ of Error to the Supreme Court of the State of Illinois

Now if the said Rufus Hopkins shall prosecute his said writ of

Errors with effect and shall pay
the judgment costs interest and
damages in case the said judgment
shall be affirmed. then the above
obligation to be void otherwise
to remain in full force and
effect.

Rufus Hopkins *Atty*
Charles O'Boyle *Atty*
J. W. M. *Atty*

36. 413 28

Rufus Hopkins

v

Phineas Stevens

Superior court

\$400

Judgment - \$134.36
100

Filed May 26th 1866

J. C. Ireland

Clerk

SUPREME COURT OF ILLINOS,

THIRD GRAND DIVISION.

APRIL TERM THEREOF, A. D. 1862'

RUFUS HOPKINS
vs.
PHINEAS STEVENS. } *Error to De Kalb.*

ABSTRACT OF THE RECORD.

STEVENS declared in assumpsit against Hopkins, "For that
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W. B. SCATES,
T. LYLE DICKEY,
For Plt'ff in Error.

Hopkins

Stevens

Platz Abstract-
& Punkte

Recd May 8. 1862
E. Deland
Clerk.

State of Illinois {
DeKalb County { We Rufus Hopkins Charles
O'Boynston & James D. Waterman
all of said County being duly sworn or
Oath doth say each for himself, that
they are the same persons whose signatures
are subscribed to the bond hereto annexed
and that they are each of them worth
three thousand dollars over and above
the payment of all liens liabilities
dues demands obligations & exemptions
that their property is in the State
of Illinois and consists of land
money at interest cattle horses
growing crops &c

Subscribed and sworn Rufus Hopkins
to before me this 3rd day Charles O'Boynston
of May A.D. 1860 J. D. Waterman

G. M. Alder
Notary Public



36 ~~41398~~

Rufus Hopkins
vs

Phineas Stevens

Affidavit of
goodness of security
for supersedeas
bond

Filed May 26th 1860

L. Leland

Clerk



SUPREME COURT OF ILLINOS,

THIRD GRAND DIVISION.

APRIL TERM THEREOF, A. D. 1862'

RUFUS HOPKINS
vs.
PHINEAS STEVENS. } *Error to De Kalb.*

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II.

The second and third amended special pleas,—each show a full defence.

It is like a contract to deliver wheat, or any other valuable thing, not money. An ability, readiness, and offer to perform, and a continuing readiness and ability to perform, is equivalent to performance; at least it shows that as yet defendant has been guilty of no breach of his promise.

III.

The plaintiff, by demurring to the special pleas without joining the issue tendered by the plea of non assumpsit, discontinued his whole action.

IV.

It was irregular and erroneous to render judgment by default, without first disposing of the plea of non assumpsit.

W. B. SCATES,
T. LYLE DICKEY,
For Plt'ff in Error.

36 21

Hookins
no
Stevens

Pliffs Abstract
& Bonds

Filed May 8, 1862
S. Leland
Clerk.