

No. 12954

Supreme Court of Illinois

Tiffany

vs.

Spaulding

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SUPREME COURT OF ILLINOIS,
Third Division—April Term, 1859.

WILLIAM C. TIFFANY,
Plaintiff in Error,
vs
JONATHAN SPAULDING,
Defendant in Error.

POINTS FOR DEFENDANT IN ERROR.

I.

The Circuit Courts of this State are Superior Courts of general jurisdiction, and nothing shall be intended to be out of the jurisdiction of a Superior Court except that which specially appears to be so. Therefore, the statute which prohibits the suing of a *defendant* out of the county where he resides, or may be found, gives him a privilege which he must avail himself of, either by motion or plea, in abatement of the writ.

Kenny, v. Greer, 13 Ill., 432.

Porter, v. Boardman, 17 Ill., 594.

Phelps, v. McGee, 18 Ill., 155.

Waterman, v. Tuttle, 18 Ill., 292.

C. C.

The plaintiff in error in this case, instead of pleading in abatement of the writ, has attempted to avail himself of his privilege, by pleading to the jurisdiction of the Court.

II.

But a plea to the jurisdiction is not a proper plea in such case:

Kenny, v. Greer, 13 Ill., 449.

Cleveland, v. Welsh, 4 Mass., 591.

Briggs, v. Bank of Nantucket, 5 Mass. 94.

Hughes, v. Martin, 1 Ark. 433.

If, however, the Court should hold that a plea to the jurisdiction is a proper plea, the plea in question is fatally defective.

^(h) As to the mode of pleading to the jurisdiction, there is an essential difference to be observed, between a plea to the jurisdiction, in a Court of *limited* and one of general jurisdiction.

In a Court of the former class, it is sufficient to plead negatively—i. e.

to show, by proper allegations, that the Court has *not* jurisdiction; whereas in a *Superior* Court, it is necessary, both at law and in equity, and as well in criminal as in civil cases, not only to show that the Court has *not* jurisdiction, but also to point out, specially, *some other Court* which has it. For if it does not appear that a remedy can be had in some other tribunal, that very fact will, in general, confer jurisdiction upon a Superior Court; as there would otherwise be, for aught that would appear, a failure of justice. Gould's Pleading, page 236—7.

Chitty's Pleadings, vol. 1, page 444.

In *Fabrigos v. Martyn*, Cowper's Repts., 172, Lord Mansfield said, "that in every case to repeal the jurisdiction of the King's Courts, you must show a more proper and sufficient jurisdiction, for if there be no other mode of trial, that alone will give the King's Court a jurisdiction.

See, also, *The King vs. Johnson*, 6 East., 583, new edition, 3 vol., pp. 538, 544. See this case particularly.

Rea, v. Hayden, 3 Mass. 24.

The Earl of Derby, v. Duke of Athol, 1 besey, 202.

Bishop of Sodor, v. Derby, 2 besey, 355.

Lawrence, v. Smith, 5 Mass. 362.

Jones, v. Winchester, 6 N. H., 497.

Dumoussay, v. Deloit, 3 Har and Johnson, 151.

III.

As to the assignment of error by the plaintiff in error, that the Court erred in rendering judgment by default. The record shows that the judgment by the court was (on sustaining the demurrer) that the plaintiff answer over, which was the only correct judgment that could be rendered, that the plaintiff in error having failed to answer, his default was entered.

See page 7 of the record.

E. ANTHONY,
Attorney for Defendant in Error.

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Dufferin
v
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Sexts Bp

See page 1 of the record.

Attorney for Defendant is known.
E. VALLIEN.

that the plaintiff in error having failed to answer, his default was entered, and that which was the only correct judgment that could be rendered, judgment by the court was (as sustaining the defendant) that the plaintiff erred in rendering judgment by default. The record shows that the law to the defendant of error by the plaintiff is error, and that the court

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Defendant v. Duffin; 1 Har. and John on 151.

James v. H. Duffin on 42, 11, 43.

James v. H. Duffin on 42, 11, 43.

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State of Illinois }
County of Cook } ss.

Pleas before the Honorable
John M. Wilson. Judge of the Cook County
Court of Common Pleas. within and for the
County of Cook and State of Illinois, at a
Vacation Term of said Cook County Court of
Common Pleas. begun and holden at the
Court House in the City of Chicago in said
County and State on the first Monday being
the fourth day of January in the year of our
Lord One Thousand Eight Hundred and fifty
eight, and of the Independence of the United
States the Eighty Second.

Present. The Honorable John M. Wilson. Judge
John L. Wilson Sheriff
Attest Walter Kimball Clerk

Be it Remembered. That heretofore to wit,
on the Eighteenth day of December A.D. One
Thousand Eight Hundred and fifty seven
Jonathan Shaulding by Elliott Anthony his
Attorney filed in the office of the Clerk of said
Cook County Court of Common Pleas. his
Bond for Costs. Precept for Summons and
Declaration. which said Bond, Precept, and
Declaration are as follows to wit.

Jonathan Spaulding Cook County Court
vs } of Common Pleas
William C. Tiffany } Of the January Vacation
Term A.D. 1858.

I do hereby enter myself as security for costs
in this cause. and acknowledge myself bound
to pay or cause to be paid, all costs which may
accrue in this action. Either to the opposite party
or to any of the officers of this Court. in pursuance
of the laws of this State.

Dated this 17th day of December A.D. 1857
Elliott Anthony.

Cook County Court of Common Pleas
January Vacation Term A.D. 1858

Jonathan Spaulding }
vs } Assumpsit
William C. Tiffany } Damages \$400.
The Clerk of the Court
will please issue a summons in the above entitled
that cause, directed to the Sheriff of Lake County
in an action of Assumpsit, damages as above,
returnable at the January Vacation Term,
and much obliged
Yours &c.

E. Anthony
atty for Plff

Cook County Court of Common Pleas
Of the January Vacation Term A.D. 1858
State of Illinois
County of Cook ss.
Jonathan Spaulding plaintiff

in this suit, by Elliott Anthony his Attorney
complains of William C. Tiffany, defendant
who is summoned, of a plea of trespass on the
case on promises. For that whereas the said
defendant heretofore, to wit, on the Eighteenth
day of October in the year of our Lord one
Thousand Eight Hundred and fifty three at
Waukegan, to wit, at said County of Cook,
made his certain promissory note in writing
bearing date the day and year aforesaid, and
then and there delivered the same to J. T. Gordon
in and by which said note said defendant, by
the name style and description of Wm C. Tiffany
promised to pay the order of the said J. T. Gordon
Two Hundred Dollars, six months after date
at the office of J. H. Kimble & Co, Waukegan,
for value received. And the said J. T. Gordon
to whom or to whose order said note was payable
afterwards, to wit on the day and year aforesaid,
at Waukegan, that is to say at the County of
Cook aforesaid, endorsed said note in writing
by which said endorsement, ^{the said J. T. Gordon} then and there order-
ed and appointed the said sum of money in said
note mentioned to be paid to said plaintiff
and then and there delivered said note, so
endorsed to the said plaintiff. By means
whereof and by force of the Statute in such cases
made and provided, the said defendant
became liable to pay said plaintiff said sum
of money mentioned in said note. And being
so liable in consideration thereof then and there
undertook and promised to pay the same
to the said plaintiff, according to the tenor & effect
of the said note and of the endorsement aforesaid

to wit at the place aforesaid.

And whereas also, the said defendant afterwards to wit, on the Fourteenth day of December in the year of our Lord One Thousand Eight Hundred and fiftyseven to wit at said County, became and was indebted unto the plaintiff in a large sum of money, to wit. Four Hundred Dollars for money before that time lent and advanced to said defendant by said plaintiff at said defendants request, and also in the like sum for money before that time paid, laid out, and expended for said defendant by the said plaintiff, at the like special request of said defendant, And in the like sum for money before that time had and received by said defendant, to and for the use of said plaintiff, and also in the like sum for goods, wares and merchandise, before that time sold and delivered by said plaintiff, to said defendant at his like special instance and request, and also in the like sum for the labor care and diligence of said plaintiff, before that time done and performed by said plaintiff for said defendant, and at the like instance and request of said defendant, and also in the like sum then and there found to be due and owing to said plaintiff, on an account stated between them, And being so indebted said defendant, in consideration thereof, then and there undertook and promised to pay said plaintiff, said several sums of money above mentioned, when thereunto afterwards requested.

But the said defendant not regarding his said promises and undertakings

to wit at the place aforesaid.

And whereas also, the said defendant afterwards to wit, on the Fourteenth day of December in the year of our Lord One Thousand Eight Hundred and fiftyseven to wit at said County, became and was indebted unto the plaintiff in a large sum of money, to wit. Four Hundred Dollars for money before that time lent and advanced to said defendant by said plaintiff at said defendants request, and also in the like sum for money before that time paid, laid out, and expended for said defendant by the said plaintiff, at the like special request of said defendant, And in the like sum for money before that time had and received by said defendant, to and for the use of said plaintiff, and also in the like sum for goods, wares and merchandise, before that time sold and delivered by said plaintiff, to said defendant at his like special instance and request, and also in the like sum for the labor care and diligence of said plaintiff, before that time done and performed by said plaintiff for said defendant, and at the like instance and request of said defendant, and also in the like sum then and there found to be due and owing to said plaintiff, on an account stated between them, And being so indebted said defendant, in consideration thereof, then and there undertook and promised to pay said plaintiff, said several sums of money above mentioned, when thereunto afterwards requested.

But the said defendant not regarding his said promises and undertakings

but contriving to do so, although often requested to do so has not paid said plaintiff. Either of said sums of money above mentioned, or any part thereof, but he to do has hitherto wholly neglected and refused, and still does neglect and refuse, to the damage of said plaintiff of Four Hundred Dollars, and therefore he brings this suit &c.

Elliott Anthony
Plaintiff's attorney.

Copy of Instrument and account said on.
\$200. Waukegan Ill. Oct. 18th 1853

Six months after date I promised to pay to the order of J. T. Gordon. Two Hundred Dollars, at the office of J. H. Kimble &c. Waukegan. Value received
Due 2nd April. Wm. C. Tiffany

And afterwards, to wit on the same day and year last aforesaid. there issued out of the office of the Clerk of said Court, the Peoples writ of Summons. which said writ. and the Sheriffs Return thereon endorsed, are in the words and figures following, to wit.

State of Illinois
County of Cook ss.

The People of the State of Illinois.
To the Sheriff of Lake County - Greeting:
We command you that you summon William C. Tiffany, if he shall be found in your County personally to be and appear

before the Cook County Court of Common Pleas
of said County on the first day of the next term
thereof. to be holden at the Court House in the
City of Chicago in said County on the first
Monday of January next, to answer unto
Jonathan Spaulding in a plea of trespass on
the case on promises. to the damage of the said
plaintiff as he says in the sum of Four
Hundred Dollars. And have you then and
there this writ. with an endorsement thereon
in what manner you shall have executed
the same.

Exhib

Witness Walter Kimball Clerk
of our said Court and the Seal thereof
at the City of Chicago in said County
this 18th day of December A.D. 1857
Walter Kimball Clerk

Endorsed,

Executed the within writ. by reading
to and in the hearing and presence of William
C. Tiffany this 19th day of Dec. A.D. 1857
P. Munson Sheriff

And afterwards. to wit. on the Twentysfifth
day of December in the year last aforesaid,
the said William C. Tiffany filed in the office
of the Clerk of said County. his Plea in abatement
in the words and figures following to wit.

Cook County Court of Common Pleas

William C. Tiffany

vs } Appraiser.
Jonathan Spaulding And the said William

C. Tiffany in his own proper person comes and
defends the wrong and injury and says that
the Court here ought not further to take cognizance
of or sustain the action aforesaid. because he says
that the cause of action aforesaid. if any accrued
to the plaintiff. accrued to him in the County
of Lake in the State of Illinois. and not in the
County of Cook, That the cause of action aforesaid
was ^{not} specifically made payable at the County of
Cook aforesaid. but was specifically made
payable at the County of Lake aforesaid. that the
said plaintiff is not a resident of the County of
Cook aforesaid. And that the summons herein
was issued to the Sheriff of the County of Lake
aforesaid. and was served upon this defendant
at the County of Lake aforesaid. and this he is
ready to verify. Wherefore he prays judgment
if the Court here will take further cognizance of
or sustain the said action. and for his costs.
William C. Tiffany

State of Illinois
Lake County Ill.

William C. Tiffany defendant
in this cause maketh oath and saith that the
foregoing plea is true in substance and in fact.

Subscribed and sworn to before me

Wm C. Tiffany

this 24th day of December A.D. 1857

Chas R. Stiehl

Seal

Notary Public for Lake Co. Ill.

And afterwards. to wit. on the fifth day of
January A.D. Eighteen Hundred and fifty
Eight. the said Plaintiff by his said attorney

filed in the office of the Clerk of said Court his
Demurrer to said Defendant's Pleas, in the
words and figures following, to wit.

Jonathan Shaulding Cook County Court
vs } of Common Pleas.
William C. Tiffand January Vacation Term
A.D. 1858.

And the said plaintiff saith that the said plea
of the said defendant, and the matters therein
contained in manner and form as the same
are above pleaded and set forth, are not suffi-
cient in law to quash the said writ, and that
he the said plaintiff is not bound by the law
of the land to answer the same.

And this he is ready to verify. Wherefore for
want of a sufficient plea in this behalf, the
plaintiff prays judgment &c.

Elliott Anthony
att'y for Plff

And afterwards, to wit. on the Eleventh day of
January in the year last aforesaid, said day
being one of the days of the January Term
of said Cook County Court of Common Pleas,
the following among other proceedings was
had in said Court and entered of Record
to wit.

Jonathan Shaulding
vs } Spt.
William C. Tiffand

This day comes the said
plaintiff by E. Anthony his attorney, and the

said defendant by Ferry Williams his attorney
also comes, and the Court after hearing said
plaintiffs demurrer to said defendants plea
in abatement filed in this cause, the Court
being now fully advised in the premises,
sustains said demurrer, And on motion
of said plaintiff it is ordered that said de-
fendant answer over instantly, And said de-
fendant being thereupon called comes not, nor
does any person for him, but makes default,
which is ordered to be taken for want of a plea,
Wherefore the said plaintiff ought to have and re-
cover of the said defendant his damages herein
sustained by occasion of the premises, And
the Court now after hearing the allegations
and proofs submitted by said plaintiff, assesses
said plaintiffs damages to the sum of Two
Hundred and forty five Dollars and sixty
cents.

Therefore it is considered that the said
plaintiff do have and recover of the said de-
fendant, his damages of Two Hundred and
forty five Dollars and sixty cents in form aforesaid
by the Court here assessed, and also
his costs and charges by him about his
suit in this behalf expended and have
Execution therefor.

And afterwards, the costs in this cause were
taxed by the clerk of said Court to the sum
of Seven Dollars and ninety five cents.

\$245.60

\$7.95

State of Illinois }
County of Cook ss.

J. Walter Kimball, Clerk
of the Cook County Court of Common Pleas in
and for said County. do hereby Certify that
the foregoing is a full and true transcript of
the papers on file in my office and the pro-
ceedings entered of Record in said Court, in
the case wherein Jonathan Spaulding is plain-
iff and William C. Tiffany defendants.



In Testimony Whereof Thereunto
subscribe my name and affix
the Seal of said County at Chicago
in said County this 1st day of
April A.D. 1858

Walter Kimball
Clerk

William C. Tiffany Plaintiff v. Supreme Court
April Term 1838

for the Spaulding, Defendant

Error from Cook Co. Ct. of Com. Pleas

Now comes the said W. C. Tiffany by H. Smith his
Atty and moves the Court for a writ of Error in
the above entitled Cause for the manifest Errors appear-
ing upon the Record in his Cause

1 The Court Erred in sustaining the demurrer to the
Plea in abatement filed by the Deft in said
Cause

2 The said judgment is otherwise erroneous and
Contrary to Law as against the said Tiffany

Wherefore said party prays a writ of Error
& that the same be made a supersedeas
H. Smith Atty for Plaintiff

As additional Errors how of Count for that purpose
having been first obtained the Plaintiff avers the
following

1 The Court Erred in rendering judgment for
the Plaintiff on promissory note payable to J. T. Goodwin or
order and not indorsed to Deft in Error

2 Court Erred in rendering judgment by Default
H. Smith Atty for Plaintiff

And the said defendant in
Error by Elliott Anthony his attorney
comes & says that there is no error
in the record & ^{judgment} proceedings aforesaid
in manner & form as above alleged
by the plaintiff in error &c. Wherefore
the said defendant prays that the
said judgment may be in all things
affirmed.

E. Anthony
att. for Def in
Error

Cook Co. Ct. of Com. Pleas

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Jonathan Spaulding
vs

Wm C. Tiffany

Transcript

Filed April 23 1858

L. Leland

clerk

True & Co

STATE OF ILLINOIS,
SUPREME COURT,

To the Clerk of the Book County Court for the County of Book Greeting:

Because, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the Book County Court of Common Pleas Court of Book County, before the Judge thereof, between Jonathan Spaulding

plaintiff, and James B. Tiffany

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

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 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 11th day of May ——— in the Year of Our Lord one thousand eight hundred and fifty-eight

Clerk of the Supreme Court.

by J. B. Rice Deputy

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Jonathan Spaulding
Deft in error
J. Williams vs
~~James~~ Tiffany
Plff in error

Writ of Error

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

L. Leland Clk
by J. B. Rice Depy

Filed May 11. 1834
L. Leland
Clk



Jonathan Spaulding }
vs
William C. Tiffany }

I Elliott Anthony
attorney for Jonathan Spaulding
do hereby agree to enter my
appearance in this case
in the Supreme Court at
Ottawa at the April Term
1894 to waive all further
notice of any kind—

Elliott Anthony
Atty for Spaulding

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Jonathan Spaulding
atb.

William C. Tiffany

Stipulations.

Filed Apr. 20. 1859.
L. Island Ck.

Know all Men by These Presents, That *William C*

Tiffany
as principal, and *William Lucas & Samuel Shreenleaf*
as security, are held and firmly bound unto *Jonathan Spaulding*

penal sum of *four hundred and fifty dollars* in the
and lawful money of the United States, for the payment of which, well and truly to be made, the said good
William C Tiffany William Lucas & Samuel Shreenleaf
bind ~~themselves~~ *their* heirs, executors, and administrators, jointly, severally, and firmly by
these Presents.

Witness, *our hands & seals*

this *26th* day of *April* A. D. 185*8*

The Condition of the above Obligation is such, That, whereas, the above named
Jonathan Spaulding
did, at the *January* Vacation Term of the *Cook County Court of Common Pleas* Court,
held in and for the County of *Cook* in the State of Illinois, A. D. 185*8* recover a
judgment against the above bounden *William C Tiffany*

for the sum of *two hundred and forty five dollars*
and sixty cents damages with costs of suit *Tiffany* to reverse which said judgment, the said *William C*
has sued out a Writ of
Error from the Supreme Court, within and for the Third Grand Division of said State. Now if the said
William C Tiffany
shall duly prosecute said Writ of Error, and pay, or cause to be paid, all judgments, costs, interest and
damages which the said Supreme Court shall adjudge against *him the said William*
C Tiffany and abide the order and judgment of said
Supreme Court in this behalf, then this obligation is to be void, otherwise to remain in full force and effect.

William C. Tiffany [SEAL.]
Wm Lucas [SEAL.]
S Shreenleaf [SEAL.]

SUPREME COURT OF ILLINOIS,
Third Division—April Term, 1859.

WILLIAM C. TIFFANY, Plaintiff in Error,	}
<i>vs</i> JONATHAN SPAULDING, Defendant in Error.	

POINTS FOR DEFENDANT IN ERROR.

I.

The Circuit Courts of this State are Superior Courts of general jurisdiction, and nothing shall be intended to be out of the jurisdiction of a Superior Court except that which specially appears to be so. Therefore, the statute which prohibits the suing of a *defendant* out of the county where he resides, or may be found, gives him a privilege which he must avail himself of, either by motion or plea, in abatement of the writ.

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Phelps, v. McGee, 18 Ill., 155.
Waterman, v. Tuttle, 18 Ill., 292.
C. C.

The plaintiff in error in this case, instead of pleading in abatement of the writ, has attempted to avail himself of his privilege, by pleading to the jurisdiction of the Court.

II.

But a plea to the jurisdiction is not a proper plea in such case.

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Cleveland, v. Welsh, 4 Mass., 591.
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If, however, the Court should hold that a plea to the jurisdiction is a proper plea, the plea in question is fatally defective.

(^a) As to the mode of pleading to the jurisdiction, there is an essential difference to be observed, between a plea to the jurisdiction, in a Court of *limited* and one of general jurisdiction.

In a Court of the former class, it is sufficient to plead negatively—i. e.