

12536

No. _____

Supreme Court of Illinois

Corbin

vs.

Turrⁱ~~x~~ll, et al.

71641  7

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 regular term of the Cook County
Court of Common Pleas begun and holden at the Court House
in the City of Chicago in said County & State on the second Monday
being the eighth day of September in the year of our Lord one
thousand eight hundred and fifty six and of the the Independence
of the United States the eighty first. —

Present the Hon John M Wilson Judge.

Daniel Mc Ilroy Prosecuting Attorney
James I Beach Coroner and Acting
Sheriff of Cook County.

Walter Kimball Clerk.

Attest

Be it remembered that on the fourth day of January in
the year of our Lord one thousand eight hundred and fifty six came
Samuel H Merrill and Aaron Haven by E R Hooper & J Clements their
Attorneys and filed in the office of the Clerk of the Cook County Court of
Common Pleas their Preceipe and Declaration which said Preceipe and
Declaration are in the words and figures as follows to wit.

Samuel M. Turrell

Aaron M. Haven.

Partners &c under the name &
style of Turrell & Haven

versus
Daniel M. Corbin.

Turpe

State of Illinois
Cook County } ss

In Court of Common Pleas
February Term 1856

To the Clerk of said Court.

in my office

Let a summons issue to the said defendant, returnable to the next February term of the said Court, in an action of trespass on the case upon promises. Damages \$800.

Upon the filing of this declaration
E R Hooper &
J F Clements

Atty. for Plff.

State of Illinois
Cook County } ss

Cook County Court of Common Pleas.
Of the February Term in the year of our Lord one thousand eight hundred and fifty four Samuel M. Turrell and Aaron Haven, partners trading under the name & style of Turrell & Haven, Plaintiffs in this suit by E R Hooper & J F Clements their Attorneys complain of Daniel M. Corbin Defendant who was summoned &c in a plea of trespass on the case on promises.

For that whereas also the said defendant heretofore to wit on the sixth day of May in the year of our Lord one thousand eight hundred and fifty four at Chicago aforesaid was indebted to said plaintiffs

in the sum of \$149.⁵⁰/₁₀₀ lawful money of the United States, for the work
 and labor care and diligence of the said plaintiffs by the said plaintiffs before
 that time done, performed and bestowed in and about the business of the
 said defendant, and at his special instance and request; and also, for divers
 materials and other necessary things by the said plaintiffs before that time
 found and provided and used, applied in and about that work and labor for
 the said defendant, and at his like special instance and request; and also
 in the further sum of \$149.⁵⁰/₁₀₀ of like lawful money for divers goods wares and
 merchandise by the said plaintiffs before that time sold and delivered to the
 said defendant and at his like special instance and request; and also in the
 further sum of \$149.⁵⁰/₁₀₀ of like lawful money for money by the said plaintiff
 before that time lent, and advanced to, and paid, laid out and expended
 for the said defendant, and at his like special instance and request; and also
 in the further sum of \$149.⁵⁰/₁₀₀ of like lawful money for other money by the
 said defendant before that time had and received to and for the use of said
 plaintiffs; and also for that the said defendant accounted with the said plaintiffs
 of and concerning divers other sums of money from the said defendant to the said
 plaintiffs before that time due and owing, and then in arrear and unpaid, and upon
 each accounting, the said defendant then and there found to be in arrear and indebted
 to the said plaintiff in the further sum of \$149.⁵⁰/₁₀₀ of like lawful money, and being so
 indebted the said defendant in consideration thereof, afterwards to wit, on the day and
 year last aforesaid, at Chicago undertook, and then and there promised the said
 plaintiffs to pay them the said several sums of money in this count mentioned, when
 he the said defendant should be thereto afterwards requested. Breach. And yet the
 said defendant, not regarding his said several promises and undertakings has not as yet
 paid the said several sums of money, or any or either of them, or any part thereof, to the
 said plaintiffs though often requested so to do, but the said defendant, to pay the
 same has hitherto wholly neglected and refused, and still does neglect and refuse to the

damages of said plaintiffs of Three hundred - and therefore they sue so.

1854 Copy of the Note and Account sued on
 May 6 1 Case Catambo Mine 15.00
 5 Baskets Mississipp. Champ 14 fl 6. 80.00
 5 " Phenix " " fl 12. 60.00
 2 " Anchor " " fl 13. 24.
 3 Oaz Tennants Scotch Ale " 20/ 7.50

1854

Sept 9 By Cash

And afterwards to wit on the day and year aforesaid There was issued out of the Office of the Clerk of the Cook County Court of Common Pleas, the Peoples writ of summons in the words
 State of Illinois
 County of Cook }
 of figures following to wit

The People of the State of Illinois. To the Sheriff of said County. Greeting. We command you that you summon Daniel W. Corbin 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 February, next, to answer unto Samuel H. Turrell & Aaron Haven in a plea of Trover on the Case on Promises to the damage of the said plaintiffs as they say in the sum of Three hundred dollars. And have you then and there this writ, with an endorsement thereon, in what manner you shall have executed the same.

Witness Walter Kimball Clerk of our said Court and the seal thereof
 at the City of Chicago in said County, this 4th day of January 1856

Walter Kimball Clerk

On the back of which is the following endorsement.

The within named Daniel W Corbin not found in my County. 28 Jan'y 1856
James Anderson Shff.

By J M Bradley Deputy.

And afterwards to wit on the 31st of March there was issued out of the Office of the Clerk of said Court.
an alias writ of summons, which said writ with the Shffs return endorsed thereon in the words of mine }
following to wit

State of Illinois
County of Cook^{Co}

The People of the State of Illinois. To
the Sheriff of said County Greeting. We command you as we have
before commanded you that you summon Daniel W Corbin if he shall
be found in your County, personally to be and appear before the Cook County
Court of Common Pleas of said County, on the first day of the next term
thereof to be holden at the Court House in the City of Chicago in said
County on the First Monday of April next, to answer unto Samuel S
Furrell & Aaron Haven in a plea of Trespass on the case on promises to the
damage of the said Plaintiffs as they say in the sum of Three hundred dollars.
And have you then and there this writ, with an endorsement thereon in what
manner you shall have executed the same.

Witness Walter Kimball Clerk of our said Court, and the seal thereof
at the City of Chicago, in said County this 31st day of March
A D 1856

Walter Kimball Clerk

On the back of which is the following endorsement, to wit.

Served by adding to the within named Daniel W Corbin this 31st
March 1856.

James S Beach Coroner & acting
Sheriff of Cook Co By John H Oak
Deputy.

And afterwards to wit on the 4th day of June in the year aforesaid the following among other proceedings were had and entered of record in said Court.

Cook Co Court of Common Pleas
June 4th 1856

Samuel H. Durrill et al

as
Daniel W. Corbin } Sub

This day comes the defendant by J. C. Miller his Attorney and on his motion it is ordered that he have leave to file his plea herein.

And afterwards to wit on the day & year aforesaid Daniel W. Corbin by John C. Miller his attorney files his certain plea & affidavit in the words & figures following to wit.

Cook County Court
of Common Pleas

Daniel W. Corbin

vs
Samuel H. Durrill et al

And now comes the said defendant by John C. Miller his Attorney and says that he did not undertake and promise in manner and form, as the said plaintiffs have above thereof complained as against him, and of this he puts himself upon the Country.

John C. Miller
Defts Atty.

State of Illinois
Cook County } ss

Daniel W. Corbin the defendant in the above entitled cause being duly sworn deposes and says that he has a good and sufficient defence to the action in said cause upon the merits.

Sworn & subscribed before me

this 3rd day of June A.D. 1856

C. O. Hoef J. P.

Daniel W. Corbin

and upon and to wit: on the 28th day of October 1856. There was filed in the Office of the said Clerk John C. Miller Affidavit in words & figures following to wit:

In the Cook County Court
of Common Pleas
Daniel W. Corbin

at
Samuel H. Tarrill and
Aaron Kaven

Plaintiff

State of Illinois
Cook County } ss

John C. Miller of the City
of Chicago, being duly sworn deposes and says that he is the Attorney
of Daniel W. Corbin the defendant in the above intitled Cause.

Deponent further states that the plea of the defendant to the said
action with the affidavit of merits, was filed by leave of Court, first granted
for that purpose upon the motion of this deponent on the same day that
the plea and affidavit were filed which said deponent supposed to have
been entered at the time by the Clerk. Deponent further states that
he first learned that the said order had not been entered by the Clerk
from the Plaintiffs Attorney during the present term of this Court. This
information was communicated to deponent after the plea and affidavit had
been stricken from the files and a default entered against the defendant.

Plaintiffs Attorneys at the time of communicating this information to deponent,
requested that the case should not be called up by deponent without notice
and that it was there agreed, that said Attorney should call the case
up during the absence of the other - and that deponent attended a number
of days upon the sittings to the Court, in pursuance of a request from the
Plaintiffs Attorney, at none of which times did deponent meet said
plaintiffs Attorney. Deponent further states that he has been for nearly

five weeks unable to attend to business in consequence, the sickness of himself and family, and is now unable to attend to business.

Subscribed before me

John C. Miller

this 23^d day of October 1856

W. C. Hoag

J. J.

And afterwards to wit, on the same day & year aforesaid there was filed in said office the affidavit of Daniel W. Cortin in the words & figures following to wit.

Cook County Court
of Common Pleas
Daniel W. Cortin

at
Samuel H. Turill
and Aaron Haven

State of Illinois
Cook County }
Yes

Daniel W. Cortin defendant in the above entitled cause being duly sworn deposes and says that he has a good and sufficient defence to the above action upon the merits.

Deponent further states that he retained John C. Miller to act as his Attorney and defend said action - that during this term of Court his said Attorney was taken sick, that he has not employed other Counsel supposing that his said Attorney would recover in time to attend to said cause.

Deponent further states that A. D. Ellis a resident of the State of Michigan is an important and material witness for the defence in said cause and he expects to be able to prove by said A. D. Ellis that the goods mentioned in said plaintiffs declaration were sold and delivered to said A. D. Ellis by the said plaintiffs, and that they were not sold or

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delivered to defendant, and that defendant did not undertake in any manner to be chargeable for the payment of the price or value of said goods.

Snow & Subscribed

before me this - day of }
October 1856

D W Corbin

C D Hoff J. P.

And afterwards to wit on the 1st day of November in the year aforesaid there was filed in the office said Clerk of said by J C Miller Esq Atty at Law in the words of figures following to wit

Cook County Court
of Common Pleas
Daniel W Corbin

vs
Samuel S. Tarrell &
Aaron Haven

And now comes the said defendant by John C Miller his Attorney and moves the Court to set aside the default in the above entitled cause.

Dated 1 Nov. 1856

John C Miller

And afterwards to wit on the 10th day of Sept 1856 the following among { Depts Atty.
other proceedings were had and entered of record in said Court to wit

Samuel S. Tarrell &
Aaron Haven

vs
Daniel W Corbin

This day come the said plaintiffs by Hoopes & Clements their Attorneys and on their motion it is ordered that the plea of said defendant filed herein be stricken from the files of this cause for reason of the same not being filed under the rule and that the default of said defendant be entered which is

X

hereby done. Wherefore the said plaintiffs ought to have and recover of the said defendant their damages herein sustained by occasion of the premises and which said damages are hereafter to be assessed by the Court.

And afterwards to wit on the 12th Sept 1856 the following proceeding, among others was had and entered of record in said Court to wit.

Samuel S^r Turrill &

Saron Maren

as

Daniel M Corbin

} Test.

And now again come the said plaintiffs by their Attorneys aforesaid and the Court now after hearing the testimony adduced by said plaintiffs, being now fully advised in the premises assesses said plaintiffs damages to the sum of One hundred forty nine dollars & fifty cents.

Therefore it is considered that the said plaintiffs do have and recover of the said defendant their damages of One hundred forty nine dollars & fifty cents in sum aforesaid by the Court assessed & also their Costs by them in this behalf expended & have execution therefor.

And afterwards to wit on 1st Nov 1856 the following among other proceedings, was had and entered of record in said Court to wit.

Samuel S^r Turrill & al

as

Daniel M Corbin

} Test.

This day comes the said defendant by J B Miller his Attorney and moves the Court to set aside the default entered herein against him, which motion is overruled by the Court.

\$ 149.50

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State of Illinois
Cook County

I Walter Kimball Clerk of Cook County Court of Common Pleas in and for said County do hereby certify that the above and foregoing is a true copy of all papers now remaining on file in this Office, and of all proceedings had in said Court and entered of record wherein Samuel H. Farwell & Aaron Haven are plaintiffs and Daniel M. Corbin is defendant



In Testimony Whereof I hereunto
subscribe my name and affix my official
seat at Chicago this 28th day of June
1857. Walter Kimball Clerk

Let a supersedeas issue upon filing
this card and the plff in error hand in the
penal sum of three hundred dollars with
JAMES DUFFY & JOSEPH C. HOWE as security

J. D. Eaton

Supreme Court
on error from Cook
County Court of Common Pleas

Daniel W. Corbin
vs
Samuel E. Turrill &
Aaron Haven

And the said Daniel W. Corbin
by Tuley Huntington & Gary his attorneys
comes and says that in the record and
proceedings aforesaid there is error
in this to wit -

1st

That the Court erred in making
the order to strike the said plea of the
said Daniel W. Corbin, filed in said cause,
from the files - And in entering a default
against the said Daniel W. Corbin -

2nd

That said judgment was given in
favor of the said Samuel E. Turrill &
Aaron Haven when by the laws of
the land it ought to have been given
in favor of the said Daniel W. Corbin -
Wherefore the said Daniel W. Corbin

Prays that the judgment aforesaid for the
error aforesaid and for other errors in
the said record and proceeding being
may be reversed, annulled and
altogether holden for nought & that
he may be restored in all things
which he hath lost by occasion
of the said judgment &c

Foley Huntington & Gary

Atty for plff in error

Error from Cook

73.

Daniel, W. Corbin

vs 3

Samuel E. Tenthredine

Transcript & Appendix of
Errors

Filed June 29, 1857

L. Leland
Clerk

57 p. Clk. S. C. -

STATE OF ILLINOIS, }
SUPREME COURT, } ss.

TO THE CLERK OF THE CIRCUIT 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* Circuit Court of *Common Pleas of Book* County, before the Judge thereof, between *Samuel H. Merrill & Aaron Haven* partners under the name & style of *Merrill & Haven*

plaintiffs and *Daniel W. Corbin*

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 of 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 *14th* day of *July* in the Year of Our Lord One Thousand Eight Hundred and Fifty-*Seven*

L. Leland

Clerk of the Supreme Court.

by *J. B. Rice Deputy*

Clerk of the Supreme Court



of Our Lord One Thousand Eight Hundred and Fifty-
four, this 14th day of July, 1857, in the Year
Justice of our said Court, and the Seal thereof, at Ot-

WALTER B. SCATTES, Chief

Samuel H. Turrell & Co.

vs
Daniel Webster

Writ of Error

This writ of error is to
operate as a supersedeas
and as such is to be
obeyed by all concerned

L. Leland
Clerk
by J. B. Rice, Deputy

Filed July 14, 1857

L. Leland
Clerk

plaintiff, and

be done according to law; and we may cause to be done
the same before our Justice of the Peace, in the County of La Salle, on the
said to our Justices of the Peace, in the County of La Salle, on the
and you that if judgment is rendered in the County of La Salle, on the
by a Justice of the Peace, in the County of La Salle, on the
complaint, it is said manifest that error should be corrected if any there
as we are informed

the Judge thereof, between
of a plea which was in the Circuit Court of the County of La Salle, before

BECAUSE

In the record and proceedings, as also in the rendition of the judgment

TO THE CLERK OF THE CIRCUIT COURT FOR THE COUNTY OF

SUPREME COURT.

STATE OF ILLINOIS, } ss.

The People of the State of Illinois,

GREETING:

Know all Men by These Presents, That Daniel W. Corbin

as principal, and
as security, are held and firmly bound unto

James Duffy Joseph C. Mould

Samuel E. Merrill Aaron Haven

penal sum of Three hundred dollars in the
good and lawful money of the United States, for the payment of which, well and truly to be made, the said

Daniel W. Corbin and James Duffy & Joseph C. Mould
bind themselves, and their heirs, executors, and administrators, jointly, severally, and firmly by
these Presents.

Witness, our hands and seals

this 13th day of July — A. D. 1857

The Condition of the above Obligation is such, That, whereas, the above named
Samuel E. Merrill & Aaron Haven
did, at the September 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. 1856 recover a
judgment against the above bounden Daniel W. Corbin

dollars & fifty cents for the sum of one hundred & forty nine
to reverse which said judgment, the said Daniel W. Corbin

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

Daniel W. Corbin
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 Daniel W.
Corbin 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.

Daniel W. Corbin [SEAL.]

James Duffy [SEAL.]

J. C. Mould [SEAL.]

State of Illinois
Cook County } Then applicants James Duffy -
Joseph O Mould

being duly sworn upon
oath, each for himself doth ~~and~~ depone and say that he is
~~worth~~ ~~that~~ ~~they~~ ~~are~~ ~~not~~ worth the

sum of three hundred dollars over and above
all his debts, liabilities and claims of whatever
nature ^{exclusive of property exempt from execution} existing against him, and fur-
ther saith not.

James Duffy
Joseph O Mould
Subscribed Sworn to before
me the undersigned Clerk of Cook
County Court of Common Pleas in
the said County.
Witness my hand & the
Seal of said Court at Chicago on
said County this 13th day of July 1857
Walter Kimball Clerk

Samuel W. Turnbull & Co

vs
Daniel W. Corbin

Superior Bond

Filed July 14, 1857
W. Deland
Clerk

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION,

APRIL TERM, A. D. 1858.

D. W. CORBIN vs. SAML. E. TURRILL et al.

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10-

THIS action was commenced to the Feb. term, 1856, but service was not made at that term. Alias summons, returnable to the April term, was served 31st March. On the 4th day of June, the general issue was filed by leave of the Court, and an affidavit of merits.

No further order was taken until the 10th day of September, when the plea was stricken from the file, and a default entered, and on the 12th day of September the damages were assessed by the Court, and judgment rendered for \$149, or thereabouts.

Upon this state of facts, I make the following point:

I.

This action was brought to the regular trial term of the Common Pleas, and did not therefore come within the provision of the act relating to the practice in Cook county.

But admitting that it is within said act, and that a rule to plead and notice had been given, expiring before the 4th day of June, still, as no further step was taken by plaintiff, the defendant was at liberty to file a plea, and was entitled to a hearing upon the merits, and it was error to strike it from the files, or give a default.

This point is expressly so ruled in *Castle et al. vs. Judson et al.*, 17 Ill. R. 384-5, which settled the construction of the practice act.

This disposes of this case.

W. B. SCATES,

Of Counsel for Plaintiff in Error.

There is no proof in the record, that copies were served or notice given as required on any rule entered to plead 1 Purple Stat p 323 Sec 3 - p 324 Sec 14 before this plea was filed

2

Furness et al

1872

D. M. Gordon & Son, E. J. Turner, et al.

THIRD GRAND DIVISION,

STATE OF ILLINOIS' SUPREME COURT.

And diagnosis of this case.

This region was brought to the knowledge of the Government and had not previously come within the provision of the act relating

I

And to state still more

most renowned of the 17th or 18th century.

Only of September the damages were assessed by the Court in the
 was taken from the file and a check was issued, and on the 13th
 No further order was taken until the 10th of 1870 September, when the
 and to leave of the Court, and an invoice of moneys.

No further order was taken until the 10th day of September, when the

1875

to the April 1941

1 This action was commenced in the Fed. Ct., 1936, but service was

This report was commingled to the Rep. team, 10/2

✓

1890, 1891

12536

73-133
Daniel W. Corbin
vs

Samuel E. Merrill et al

73

~~12536~~

12536

1858

X

Presented
Application for Discharge