

No. 12818

Supreme Court of Illinois

Ryenolds, et al

vs.

Paver.

71641  7

145 - 183.

Benjamin B. Reynolds
vs

Charles Faxon

145

1288

1859

United States of America
State of Illinois
La Salle County

Pleas Proceedings
and Judgments held and taken in
and before the La Salle County Court
in the State of Illinois, in vacation after
September Term A.D. 1858 of said County
Court, of said County of La Salle -

Be it remembered that hereto-
fore to wit on the Second day of October
A.D. 1858 the same being one of the days
of the vacation after the September Term
A.D. 1858 of said La Salle County Court,
came Charles Paver by Joseph O. Glover
his attorney, and filed his declaration (a
copy of which appears on page 3 of this
transcript marked "C"), and came also
Benjamin B. Reynolds and David Reynolds
by B. C. Cook their attorney and filed and
served a note and warrant of attorney
(a copy of which appears on pages 5, 6, 7
& 8 of this transcript) and a Cognovit
(a copy of which appears on page 11 of this
transcript) whereupon certain proceedings

were had and entered of Record in
said Court in said Cause, in the
words and figures following to wit -

Charles Paver

"

Benjamin B. Reynolds &

David Reynolds

Assumpsit.

On this second day of
October 1858 came the above named Plaintiff by
Joseph O. Glover his Attorney and the Defendants
by B. C. Cook their Attorney who files and
serves the execution of a Warrant of Attorney
for this purpose and enters appearance of the
Defendants herein files his Cognovit, waives
service of process, and confesses judgment
in favor of the Plaintiff and against the
Defendants for the sum of Four hundred and
Twenty Three Dollars and --- cents, and
waives all right of appeal and all errors
that may intervene in entering judgment and
issuing execution thereon.

It is therefore considered that said Plaintiff
have and recover of said Defendants the said sum of
Four Hundred and Twenty Three Dollars and
--- cents for his damages, and also his
costs and charges by him herein expended
and that he have execution therefor.

1

State of Illinois
La Salle County

1

Pleas, Proceedings and
Judgments, held and taken in and
before the La Salle County Court in the
State of Illinois, at a regular term
thereof, commenced and held at the
Court House in said county on the seventh
day of March A.D. 1859 and of the
Independence of the United States of
America the Eighty third

Present. Hon John O. Champlin Judge
Philo Lindley Clerk
Francis Warner Sheriff

Be It remembered that heretofore to wit
on the 8th day of March A.D. 1859. the same
being one of the days of the March Term 1859
of said Court, came Benjamin B. Reynolds
and David Reynolds by J. Lyle Dickey
their attorney, and filed their motion to
set aside a judgment by confession
rendered in vacation after September Term
1858 of said Court against them, and in
favor of Charles Paver, which motion
is in the words and figures following
to wit.

12819-2

State of Illinois, & County Court thereof
at the March Term 1859

Charles Paver

vs.

Benjamin B. Reynolds &
David Reynolds

Judgment by Confession
Oct 2nd 1858

And now comes the
said defendants and moves the Court to
set aside judgment in said cause
and to permit each of them to file pleas
to said action.

J. L. Dickey
att'y for defts

And thereupon certain proceedings were
had and entered of record in said
cause in said Court in the words &
figures following to wit.

Charles Paver

vs.

Benjamin B. Reynolds &
David Reynolds

Assumpsit

This day comes
Benjamin B. Reynolds one of the defendants
by J. L. Dickey his attorney and enters
his motion to set aside the judgment

entered herein in vacation.

2

Whereupon comes Glover and enters
the appearance of the plaintiff

And afterwards to wit on the 15th day of
March AD 1859, being one of the days of
said term of said court, certain other
proceedings were had and entered of
record in said court in said cause
in the ends and figures following
to wit.

Charles Paver

vs.

Benjamin B. Reynolds
& Daniel Reynolds

Assumpsit

This day again comes
the plaintiff by Glover his attorney - and
the defendants by J. L. Dickey their attorney
and after hearing the arguments of
counsel, the motion entered herein to set
aside the judgment entered in vacation,
is overruled by the court, to which
ruling of the court the said defendants
by their attorney then and there excepted.
Whereupon motion of said plaintiff

attorney the order made in vacation staying the collection of the execution issued herein, is vacated, to which ruling of the court in vacating said order the defendants attorney then and there excepted.

It is therefore considered by the Court that said plaintiff have and recover of said defendants his costs and charges by him herein expended and that he have execution therefor

And thereafter to wit on the 17th day of March 1859 the said defendants by their said attorney filed in the office of the clerk of said court their Bill of Exceptions in said cause which is in the words and figures following to wit:

State of Illinois
La Salle County & County Court thereof
at the March Term 1859

Charles Paver

vs. Judgment by Confession
Benjamin B. Reynolds Oct. 2nd 1858 in vacation
& David Reynolds

Be it remembered that
on the 8th day of March 1859 (being one of
the days of said March Term of said Court
came into Court the said Benjamin B.
Reynolds & David Reynolds the defendants
against whom said judgment had
been rendered as aforesaid, and
filed with the clerk of said Court an
affidavit & certain exhibits thereto
attached, which exhibits were marked
respectively, A B C & D, which
affidavit and attached exhibits were
in the words & figures following. viz.

"A." \$413.00

Ottawa April 1st 1858

Six months after date for value received
we promise to pay Charles Paver or order Four
Hundred & Thirteen Dollars, and if not paid
when due, then at the rate of Three per cent
per month as damages until paid

Benjamin B. Reynolds
David Reynolds.

Wm C. Richardson

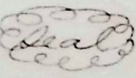
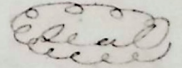
"B."

To any Attorney or Attorneys of the Supreme Court of the State of Illinois, or of any Court of Record of the United States or Elsewhere.

These are to authorize and desire you to appear for Benjamin B. Reynolds & David Reynolds & William C. Richardson jointly and severally or the survivor or survivors of either or any of us, in any Court of Record in any state, district or territory of the United States, and receive a declaration, in debt or assumpsit, on the promissory note above written, bearing even date herewith at the suit of Charles Paver or his executor, administrator or assigns, and confess the action for the amount in said Promissory note expressed, and interest, or for such as may be due thereon and said damages, with ten dollars, for attorneys fees, besides costs, or else to

suffer judgment to pass against us
 by nil dicat or otherwise, and judgment
 or judgments may be thereupon forthwith
 entered of record, either in term or vacation
 as of any term in either of said courts,
 against us or any or either of us. And
 we do jointly & severally hereby release
 and authorize you to release all
 errors which may be made in entering
 such judgment or judgments, and in
 the form of, or issuing of any execution
 therein at any time thereafter, without
 revival of judgment or otherwise, and
 waive all exemption of property from
 execution and sale therein, which now
 is or may hereafter be in force in this
 or any State District or Territory, and
 for so doing this shall be your sufficient
 warrant.

In Witness whereof we have
 herunto set our hands and
 seals the first day of April A.D. 1858

Benjamin D. Reynolds 
 David Reynolds 

State of Illinois }
 La Salle County }
 Charles G. Miller

States on oath that he is acquainted
 with the handwriting of Benjamin B
 Reynolds, that the signature of said
 Benjamin B. attached to the within note
 and warrant of Atty is in the opin-
 ion of deponent genuine.

William Miller being sworn
 states on oath that he was present
 and saw Daniel Reynolds execute the
 within note & warrant of Attorney
 subscribed and sworn
 before me this 2nd day of } C. G. Miller
 October A.D. 1858

J. O. Glover, Mayor of } Wm Miller
 the city of Ottawa }

" filed Oct 15 1858

J. Lindley clk

Herrick. "

(copy)

State of Illinois } And county court thereof
 La Salle County } to vacation after
 September A.D. 1858

Charles Paver Assumpsit

Damages \$800.

Benjamin B. Reynolds & David Reynolds

Charles Paver plaintiff in
 this suit by A. O. Glover his attorney
 complains of Benjamin B. Reynolds and David
 Reynolds defendants summoned &c of a plea
 of Assumpsit; For that the said defendants
 at Ottawa, to wit at the county of La Salle
 heretofore, to wit on the first day of April
 A.D. 1858 by their certain promissory
 note of that date by them subscribed for
 value received, promised to pay the
 plaintiff or his order the sum of Four
 hundred & thirteen dollars, six months
 after the date of said note and the
 plaintiff avers that the said six months
 the time limited in said note for the
 payment thereof has long since elapsed,
 yet, though often requested, the said
 defendants have never paid the same
 nor any part thereof.

And for that the said

defendant at the county aforesaid, hereto-
 fore to wit, on the first day of October
 A.D. 1858, being justly indebted to the
 plaintiff in the sum of eight hundred
 Dollars, for so much money before that
 time had and received by said
 defendants to and for the use of the
 said plaintiff, and in the like sum
 for so much money before that time
 laid out and expended by said plaintiff
 to and for the use of said defendants
 at their special instance and request;
 and in the like sum for so much
 money loaned by said plaintiff to
 defendants at their request; and in
 the like sum for goods, wares and
 merchandises before that time sold
 and delivered by said plaintiff to
 said defendants at their request; and
 in the like sum for work and labor
 before that time done and performed
 by said plaintiff for said defendants
 at their request; in consideration thereof
 then and there promised the said
 plaintiff to pay him the said several
 sums of money when they should be
 thereto afterward requested,

(Copy)
Yet, though often requested, the said defendants have never paid the same on any part thereof.

Whereby the plaintiff has suffered damage in the sum of eight hundred dollars, and therefore he brings his suit.

J. C. Glover, pliffs atty.

" Filed Oct 1st A.D. 1858

P. Lindley, clk

Herrick — "

"D." Charles Paver

vs.

Benjamin B. Reynolds

and David Reynolds

La Salle County Court
to vacation after
September Term A.D. 1858

And now comes the said defendant by B. C. Cook their attorney in fact and say that ^{they} cannot deny the matters and things in the said plaintiffs declaration above alleged against them, but confess the same, and that they are indebted to the said plaintiff, by reason of the premises, in the sum of Ten Hundred and Thirteen Dollars, for the damages by him sustained, and in the sum of Ten dollars

(Copy)
Yet, though often requested, the said defendants have never paid the same on any part thereof.

Whereby the plaintiff has suffered damage in the sum of eight hundred dollars, and therefore he brings his suit.

J. C. Glover, pliffs atty.

" Filed Oct 1st A.D. 1858

P. Lindley, clk

Herrick — "

"D." Charles Paver

vs.

Benjamin B. Reynolds

and David Reynolds

La Salle County Court

to vacation after

September Term A.D. 1858

And now comes the said defendant by B. C. Cook their attorney in fact and say that ^{they} cannot deny the matters and things in the said plaintiffs declaration above alleged against them, but confess the same, and that they are indebted to the said plaintiff, by reason of the premises, in the sum of Ten Hundred and Thirteen Dollars, for the damages by him sustained, and in the sum of Ten dollars

(Copy)

Attorney's fees— And said defendants hereby agree that no writ of error or appeal shall be prosecuted upon the judgment entered by virtue thereof and release all errors that may intervene in the entering up of the same or issuing execution thereon, and waive all exemption of property from execution and sale thereon which now is, or may hereafter be in force in this or any state, District or Territory

P. C. Cook
 Lefts Atty —

Filed Oct 1st AD 1858
 P. Guidley CLK
 Herrick

State of Illinois
La Salle County County Court Thereof

Benjamin B. Reynolds of said County being duly sworn, on oath says, that it appears by the records of the County Court of La Salle County aforesaid that on the 2nd day of October 1858 in vacation - a judgment was entered of record in that Court in favor of Charles Paver as plaintiff and against affiant and one David Reynolds, as defendants, for the sum of \$423, and costs.

Affiant further states that it appears from the files of said Court, that said judgment was entered in a suit or proceeding in assumpsit against affiant and said David Reynolds jointly wherein no process was issued - but a declaration charging them (as joint debtors) was filed and a cognovit was filed thereto by D. C. Cook professing to act as attorney for affiant & said David Reynolds by virtue of a power of attorney & a promissory note, a copy of which note and power of attorney is hereto attached and marked Exhibit "A" & "B"

affiant further states that he never gave any authority in that behalf other than that contained in said power of attorney & that said judgment is founded solely on said note & power of attorney.

☞ Affiant further says that the consideration of said note & said note itself as he is advised and believes was unlawful & usurious as is hereinafter stated -

Affiant further states that on or about the 1st of April 1858 Affiant was indebted to one Charles G. Miller in about the sum of \$350.- for which said Miller held the notes of affiant as follows - viz: One note signed by Affiant dated June 1st 1856 payable to the order of said C. G. Miller ninety days after date for \$300. & ten per cent per annum interest, on which there had been paid as follows. On 2nd of September 1856, one hundred dollars, & on the 10th of the same month the further sum of fifty dollars & again on the 3^d day of November 1857 the further sum of one hundred dollars which

left a ballance unpaid on said note on the 1st of April 1858 of about sixty eight dollars.-

Also another note signed by affiant, dated Feb 15th 1858 payable four months after date to said C. G. Miller for \$280.20 with interest at the rate of ten per cent, and on the first of April 1858- the interest on this last note had increased the amount to about \$382.- which with the ballance then due on the other note say \$68. made the amount of the debt of affiant to said Charles G. Miller on the said 1st day of April 1858 about (\$350.) three hundred and fifty dollars.

Affiant further states that on or about the 1st day of April 1858, Affiant went to the place of business of said Charles G. Miller in attainment at the request of said Miller & there met with said Charles G. Miller and said Charles Paver- and it was represented to affiant by said Charles G. Miller in the presence and hearing of said Paver- that said Miller was in debt to said Paver in a large sum (the amount stated affiant does

not exactly remember) but much larger than affiant's debt to Miller and that said Paver held a mortgage on Miller's property which he Paver was about to foreclose at a great sacrifice to Miller unless some arrangement could be made to satisfy Paver and after some negotiations, it was agreed by & between said Paver & Miller and affiant that said Miller should discharge affiant from his debt of \$350. as aforesaid by surrendering to affiant his promissory notes aforesaid & in lieu thereof affiant would give to said Charles Paver a promissory note of that date with David Reynolds & one William C. Richardson as security payable to said Paver six months after date for the sum of affiant's said debt to said Miller & interest at the rate of three per cent a month thereon and that said note should be what was commonly called a judgment note. - Affiant further states that thereupon a computation was made of interest at three per cent a month for six months upon the

amount of the debt of affiant to said Miller & that interest being added to the principal of affiant's debt to said Miller the amount was found to be \$413. and for that amount a note was given - signed at the bottom by affiant & said David Reynolds & on the back by said Wm C. Richardson - a copy of which note and signatures is hereto attached & marked "A" to which note was attached a power of attorney - which affiant & said David Reynolds executed - a copy of which power of attorney is hereto attached and marked "B" -

Affiant also attaches hereto a copy of the declaration in said proceeding marked "C" - also a copy of said Cognovit marked "D." -

Affiant further states that said judgment is founded solely upon said note for \$413. and upon said power of attorney - & that said note for said \$413. was given in pursuance of said unlawful agreement for interest at the rate of 3 per cent per month and for no other consideration than as above stated

of all which said Charles Paver was well aware when he took said note. -

Affiant is advised & believes that said power of attorney does not authorize the entering of affiant's appearance nor the confession of a judgment in a joint proceeding against merely a part of the makers of said note, and that said proceedings are in that behalf irregular. -

Affiant further says that execution has been sued out upon said judgment & the sheriff of La Salle County has levied the same upon the personal property of affiant & unless said judgment is set aside proposes to sell the same.

Affiant is advised by Counsel & believes that he has a good legal defence on the merits to at least a large portion of said action.

Benz B. Reynolds
Subscribed & sworn to before
me March 8-1859

R Lindley clk

E L. Herrick depts

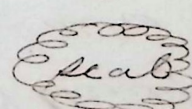
And thereupon said defendants Benjamin B. Reynolds & David Reynolds by J. Lyle Dickey his attorney entered a motion that the court set aside or suspend said judgment and permit said defendants respectively to plead pleas in bar of said action - & thereupon on the same day came the said Charles Paver by Joseph O. Glover as his attorney and waived notice & entered his appearance to said motion, *

Be it further remembered that afterwards upon the 16th day of March 1859 - being one of the days of said March Term - said plaintiff Charles Paver by his attorney J. O. Glover moved the Court to set aside said order staying said execution & for execution of said judgment - & thereupon said motions came on to be heard & upon said hearing said defendants relied upon said affidavit of Benjamin B. Reynolds & the exhibits thereto attached as aforesaid, and no other evidence was given on either side on the hearing of said motions, & the Court upon full consideration refused to set aside or suspend said judgment & refused

* 102 It is further remembered that before that day & in vacation the judge of this Court on application of said defendants had ordered a stay of execution on said judgment

to allow the said defendants Benjamin B. Reynolds & David Reynolds as aforesaid to plead to said declaration but sustained the motion of Paver the plaintiff & set aside & vacated the order made in vacation staying execution & ordered that plaintiff might proceed & have execution of said judgment against said Benj. B. Reynolds & David Reynolds, & the defendants Benjamin B. Reynolds & David Reynolds excepted to each of said rulings and decisions of said court at the time when the said rulings & decisions were made & prayed then & there that this his Bill of Exceptions should be allowed - signed sealed & made a part of the record which is done in open court.

March 16th 1859

J. C. Champlin 

State of Illinois }
La Salle County }
}

J. Philo Lindley Clerk

I the County Court in and for said
County hereby certify the above and
foregoing to be a true full and
complete copy of the proceedings in
the case of Charles Paver vs. Benjamin
B. Reynolds & David Reynolds ~~as per~~
~~as the same appear in the records~~
~~as appearing in the collection of said~~
~~judgment~~ as the same appear of
record and on file in my office.



In testimony whereof I
have hereunto set my
hand and affixed the
seal of said Court at
Ottawa this 24th day of
March A.D. 1859

J. Philo Lindley

Clerk fees 24 folio 11.40

City & State 35

Ad by W.B. Reynolds 4.75

2nd The County Court erred in refusing to set aside said judgment

3rd The County Court erred in granting Pavers motion to vacate the order staying the executions

4- Said proceedings are unjust illegal & irregular

J. S. Drisker
for plaintiff in
error

Let a supersedeas issue in this cause
Bonds of hundred dollars to W. Wakefield
~~Henry~~ and Harmon & Templeton Sureties J. S. Drisker

and now comes the deft in error and
says that in the second proceeding
of said ~~in~~ in the rendition of the said
of said ~~in~~ there is ~~an~~ error & he prays
said deft to be affirmed

founder in error

B. C. Cook
for deft in error

Filed April 21. 1859

L. Leland
clerk

State of Illinois - Supreme
Court - 3rd Grand Division
April Term 1889 -

Benjamin B. Reynolds &
David Reynolds

vs Charles Paver { Error to County
Court of Lusselle

And plaintiffs in error come
by L. Lyle Driskel their attorney
& say that there is manifest error
in the foregoing record - proceedings
& judgment - & pray that the same
may be set aside & for naught held
&c

L. L. Driskel
for plffs in
error

And plaintiffs in error - hereby
assigns as grounds for a writ of error
& as points of error -
1st The county court erred in
entering the original judgment
because it was not authorized
by the warrant of attorney

145-182,

1 Benjamin B. Reynolds
et al vs

Charles Parker
vs

Transcript of Record
vs

Filed March 30 1839
L. Leland
Clerk

STATE OF ILLINOIS,
SUPREME COURT,

ss. The People of the State of Illinois,

To the Clerk of the County

Court for the County of La Salle Greeting:

Because, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the County Court of La Salle County, before the Judge thereof, between Charles Paver

plaintiff, and Benjamin B. Reynolds & David Reynolds

defendants, it is said manifest error hath intervened, to the injury of the aforesaid Benjamin B. Reynolds one of said defendants.

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 plea 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 30th day of March in the Year of Our Lord one thousand eight hundred and fifty-nine.
L. Leland

Clerk of the Supreme Court.
By J. B. Rice Deputy