

No. 13774

Supreme Court of Illinois

Philips

vs.

Nichols

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United States of America
State of Illinois Cook County } S.S.

Plas before the Honorable
Judges of the Superior Court of Chicago within
and for the County of Cook and State of Illinois
at a regular Term of the said Superior Court of
Chicago begun and holden in the Court House
in the City of Chicago in said County, on the first
Monday being the sixth day of June in the Year of
our Lord One thousand eight hundred and fifty
nine and of the Independence of the United States of
America the Eighty third

Present

The Hon John M. Wilson
Chief Justice of said Court
Van H. Higgins and
Grant Goodrich, Judges
Carlow Haron Prosecuting Attorney
John Gray Sheriff of Cook County

Attest,

Walter Kimball - Clerk

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Be it remembered that heretofore, to wit, on the twenty seventh day of May in the Year aforesaid B. W. Philips by G. B. Thomas his Attorney filed in the Office of the Clerk of the Superior Court of Chicago his certain Declaration in words & figures as follows, to wit,

Bezalel W. Philips
vs.
John A. Nichols

In the Superior Court
of Chicago of the
June Term A.D. 1859.

Bezalel W. Philips Plaintiff in the
action by Jesse B. Thomas his Attorney com-
plains of John A. Nichols Defendant who has
been summoned to answer the plaintiff in an
action on promises.

For that whereas heretofore, to wit, on
the eleventh day of October in the Year of our Lord
one thousand eight hundred and fifty eight at
Chicago to wit at said County of Cook one John
Hoagland made his certain draft or order in
writing for the payment of money commonly called
a check on a Banker according to the usage & custom

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of Merchants bearing date the day and year aforesaid and then and then directed the said draft or order to certain persons by the name style and firm of Morford Brothers and then required the said Morford Brothers to pay to the defendant by the name and style of J. A. Nichols & Co or to his order the sum of three hundred dollars and then and then delivered the said draft or order to the said defendant, and the said defendant to whom or to whose order the payment of said sum of money on said draft or order specified was therein required to be made, to wit on the day and year aforesaid at Cook County aforesaid endorsed the said draft or order, under the name of J. A. Nichols & Co by which said endorsement the said defendant then and then ordered and appointed the said sum of money in said draft or order specified to be paid to the said plaintiff and then and then delivered the said draft or order so endorsed to the said plaintiff.

And the said plaintiff avers that afterward, to wit on the day and year aforesaid at Cook County aforesaid the said draft or order was presented and shown to the said Morford Brothers for payment thereof according to the said usage & practice of Merchants and they were then and then requested to pay the said sum of money therein specified according to the tenor and effect thereof, but that the said

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Murford Brothers did not nor would at the said time when the said draft or order was so shown and presented to them for payment thereof as aforesaid or at any time afterward pay the said sum of money therein specified or any part thereof but then and there wholly neglected and refused so to do of all which the said defendant afterwards, to wit, on the day and year aforesaid had notice.

By means whereof the said defendant then and there became liable to pay to the said plaintiff the said sum of money in said draft or order specified when the said defendant should be thereunto afterwards requested, and being so liable the said defendant in consideration thereof afterwards - to wit, on the day and year aforesaid at Cook County aforesaid, undertook and then and there promised the said plaintiff to pay him the said sum of money in the said draft or order specified when he the said defendant should be thereunto afterwards requested.

And whereas also the said defendant afterwards, to wit, on the first day of May in the Year of our Lord one thousand eight hundred and fifty nine, to wit, at said County, became and was indebted unto the plaintiff in a large sum of money to wit; Three hundred dollars

for money before that time lent and advanced to said Defendant by said Plaintiff at said Defendant's 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 & delivered by said Plaintiff to said Defendant, at the like special instance and request; and also in the like sum for the labor care and diligence of the said Plaintiff, before that time done and performed by said Plaintiff for said Defendant & at the like special instance and request of said Defendant; and also in the like sum *frasa.* 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.

Yet the said Defendant not regarding his said promises and undertakings but contriving to, although often requested so to do, has not paid said

Plaintiff either of said sums of money above mentioned, or any part thereof, but so to do has hitherto wholly neglected and refused, and still does neglect and refuse, to the damage of said plaintiff of three hundred dollars, and therefore he brings this suit.

Jesse B. Thomas
Plaintiff's Attorney,

Copy of Instrument & account sued on

No. 169.

Chicago Oct 11th 1858.

Worford Brothers

Corner of Lake & Lake Street

Pay J. A. Nichols & Co or order Three hundred dollars and charge the same to account of

John Hoagland

Endorsed

Pay R. W. Philips

J. A. Nichols & Co.

John A. Nichols

vs. B. W. Phelps, Jr.,

1859

May 1 st	To money lent and advanced	\$ 300-
"	" " paid laid out &c	\$ 300-
"	" " had and received	\$ 300-
"	" Balance of apt stated	\$ 300-

And afterwards to wit, on the fourth day of June in the year aforesaid there was filed in the office of the clerk of said court a certain demurrer in words and figures as follows to wit

State of Illinois }
Cook County } ss.

Superior Court of Chicago

Rezaliel W. Phelps

vs

John A. Nichols

And the said defendant by Grou & Storrs his attorneys, comes and defends the wrong and injury when he, and says that the said declaration and the matters therein contained in manner and form as the same are above stated and set forth are not sufficient in law for the

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said plaintiff to have or maintain his aforesaid
action thereof against the said defendant and
he the said defendant is not bound by law to
answer the same.

And this he is ready to verify, wherefore
by reason of the insufficiency of the said declaration
in this behalf the said defendant prays judgment
and that the said plaintiff may be barred from
having or maintaining his aforesaid action
against him &c

Grow & Storrs
Defts. Attys

And afterwards, to wit, on the eighteenth day
of June in the year aforesaid, said day being one
of the days of the June Term of said Court, the
following among other proceedings was had &
entered of Record in said Court, to wit,

Bezabiel W. Philips

vs

John A. Nichols

} Assumpsit

This day comes the said
plaintiff by W. Thomas his attorney and the said
defendant by Grow & Storrs his attorneys also comes
and Counsel being heard on the demurrer of said

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defendant herein pleaded to plaintiffs declaration
in this cause, and mature deliberation being there-
upon had and the premises fully understood it
appears to the Court that said defendants demur-
rer herein pleaded to plaintiffs declaration in
this cause is not sufficient in law to bar said
plaintiff from having and maintaining his action
against said defendant, the demurrer is there-
fore overruled with leave to defendant to plead
over, and therefore on motion of plaintiff it is
ordered said defendant plead over to plaintiffs
declaration by Monday next,

And afterwards, to wit, on the twenty second day
of June in the Year aforesaid, said day being still
one of the days of said Term of said Court the
following among other proceedings was had and
entered of Record in said Court, to wit,

Bezabiel W. Philips
vs
John A. Nichols

Assumpsit

This day comes the said
plaintiff by J. B. Thomas his Attorney and due
personal service of process of summons issued in
this cause having been had on the said defendant

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and being three times solemnly called in open Court comes not nor does any person for him but herein he makes default, which is on motion ordered to be taken and is hereby entered of Record, wherefore said plaintiff ought to have and recover of the said defendant his damages sustained herein by reason of the premises, and the Court now have after hearing, the allegations and proofs submitted by said plaintiff, and being fully advised in the premises assesses his damages, herein, to the sum of, one hundred, and sixty one dollars and twenty cents
Therefore it is considered said plaintiff do have and recover of the said defendant his damages of one hundred and sixty one dollars and twenty cents in form aforesaid by the Court then assessed and also his Costs and charges in this behalf expended and have execution therefor,

And therefore comes said defendant and prays an appeal herein to the Supreme Court which is allowed upon filing appeal Bond in the sum of three hundred dollars to be approved by a Judge of this Court, within thirty days.

And afterwards, to wit, on the twenty second day of July in the Year aforesaid there was filed in the Office of the Clerk of said Court a certain Appeal Bond in words and figures as follows, to wit;

\$161.20

Know all Men by these presents that we John A. Nichols and E. C. Wilder are held and firmly bound unto Rezael W. Phelps in the penal sum of three hundred dollars lawful money & for the payment of which well and truly to be made we bind ourselves our heirs, executors and administrators jointly severally and firmly by these presents, Witness our hands and seals this 22nd day of July A. D. 1859.

The condition of the above obligation is such that whereas the above named obligee plaintiff on the 22nd day of June A. D. 1859 in the Superior Court of Chicago in and for the County of Cook and State of Illinois recovered a judgment against the above named John A. Nichols for the sum of One hundred and sixty one $\frac{20}{100}$ Dollars besides costs from which the said John A. Nichols has prayed an appeal to the Superior Court of said State, now therefore if the said appellant shall well & duly prosecute the said appeal and shall pay whatever judgments, costs, interest, and damages may be rendered - awarded and assessed, in case the aforesaid judgment shall be affirmed in & by the said Superior Court, then the above obligation to be void - otherwise to remain in full force & effect.

John A. Nichols (Seal)
 E. C. Wilder (Seal)
 John A. Grow

State of Illinois
County of Cook S. S.

I Walter Kimball Clerk of the
Superior Court of Chicago. in and for said County,
do hereby certify that the foregoing is a full, true,
and complete transcript of all the pleadings on
file in my office, and of the proceedings, and
judgment entered of record in said Court in a
certain case wherein Pezalist W. Philips, is plaintiff
and John A. Nichols defendant.

In testimony whereof I hereunto subscribe
my name, and affix the Seal of said
Court, at the City of Chicago. in said
County, this 18th day of April 1860
Walter Kimball Clerk



Supreme Court
April Term 1886.

John A. Nichols } appellant
vs }
B. W. Phillips } appellee
Appeal from Superior Court Chicago

Now comes the said appellant and says that in the proceedings aforesaid and in rendering the judgment aforesaid - manifest error hath intervened to his prejudice in this to wit:

- 1st The said Superior Court erred in overruling appellant demurrer to appellee's declaration.
2. Said Court erred in assessing damages.

3rd Said Court erred in allowing said check in evidence upon said assessment -

Wherefore and for divers other errors in the proceedings and judgment aforesaid - in said record appearing - said appellant prays that the judgment of said court may be reversed and altogether held for naught.

John A. Grow
Att'y for appellant

~~And the said appellee B. W. Phillips by Jacob B. Thomas his attorney says there is no error in the said proceedings and in the verdict thereof~~

~~Jacob B. Thomas
att'y for appellee~~

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Margaret W. Philips
John A. Nichols

Record

Filed April 12, 1860
L. Leland
Clerk

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\$1.50