

13660

No. _____

Supreme Court of Illinois

Great Western Ins.Co.

vs.

Rees

STAT.

SUPREME COURT,
Third Grand Division.

No. 299.

Great Neck
N.Y.
2^d
Rece

1862

3660
Deceased

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Pleas, before the Honorable, the Judges of the Superior Court of Chicago, within and for the County of Cook and State of Illinois, at a regular Term of said Superior Court of Chicago, begun and holden at the Court House, in the City of Chicago, in said County and State, on the first Monday, being the Seventh day of April in the year of our Lord One Thousand Eight Hundred and Sixty Two and of the Independence of the United States of America the Eighty Fifth

Present, The Honorable John McMillen Chief Justice of the }
Superior Court of Chicago. }

Saml H Higgins }
and Grant Goodrich } Judges.

Charles Warren Prosecuting Attorney.

Anthony Kernig Sheriff of Cook County.

Attest, Thomas B Carter Clerk.

1. It is remembered that herefor to wit on the Twenty second day of February in the Year of Our Lord One Thousand Eight hundred and Sixty one, James H. Rice for the use of Edward H. Haddock by Leamon Mc Cagg & Fuller filed in the office of the Clerk of the Superior Court of Chicago his Customs Declaration in words and figures following to wit:

Superior Court of Chicago
March Term A.D. 1861

State of Illinois }
County of Cook }

James H. Ross who sues for the
use of Edward H. Haddock by Lemmon W. Cagg
& Haller his attorneys Complainis of the Great
National Insurance Company a Corporation duly
established by the laws of the State of Illinois,
Defendant Duly Summured of a Plea of trespass
in the Coven Promises

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Now that whereas Hunt for Court: on the
eighteenth day of March in the Year of our Lord
One thousand eight hundred and fifty eight at
Chicago Cook County of Cook by a Coven
Contract in writing made by the said defendant
the date whereof is a Coven day and Year therein
named. to wit: the day and Year last aforesaid.
in Consideration that the said plaintiff would then
and there, at the special instance and request of the
said defendant fill the said defendant the lease of
office no 148 (East half) South Water Street: the
said Defendant undertook and there and there
faithfully promised the said plaintiff to pay to him
or to his order Six hundred and fifty five dollars and
Twenty five Cents as follows: Eighteen dollars and
Seventy five Cents on the first day of May A.D. 1858
and Ninety Seven dollars and fifty Cents quarterly thereafter

on the first day of August, November, February and
May of each year until the first day of August
A D 1862. The said sums being payable at the
office of the Exchange Bank in Chicago, Illinois.

And the said Plaintiff in fact saith that
after the making of the said Contract to wit, on the
first day of February 1861 a large sum of money
became and was due and payable from the said
defendant to the said Plaintiff, to wit: the sum of
One hundred and eighty seven dollars and fifty Cents
(187.50) by virtue of the said Contract and of the
promises and undertakings of the said defendant
therein contained as follows, Thirty seven dollars
and fifty Cents on the first day of February A D 1860
Thirty seven Dollars and fifty Cents on the first day
of May A D 1860, Thirty seven dollars and fifty
Cents on the first day of August 1860, Thirty seven
Dollars & fifty Cents on the first day of November 1860
and Thirty seven dollars and fifty Cents on the first
day of February 1861, to wit, at the County
aforesaid. Yet the said Defendant disregarding
his said promises and undertakings in that behalf
hath not paid the said sum of One hundred and
eighty seven dollars and fifty Cents to the said
Plaintiff or any part thereof, but to do so hath
wholly refused and still does refuse to the damage
of the said Plaintiff of Two hundred dollars and
therefore he brings suit &c

Samuel McCagg & Fuller
Second Count

5 And for that whereas sent for to wit,
on the eighteenth day of March in the Year of our
Lord one thousand eight hundred & fifty eight,
at Chicago, to wit at Cook County, in Consideration
that said Plaintiff would then and there sell said
Defendant the lease of office No 1418 (last half) South
Water Street - the said Defendant then and there
promised and undertook to pay said Plaintiff or to his
order another large sum of money to wit the sum of Six
hundred and fifty Six dollars and twenty five Cents
at the office of the Exchange Bank Chicago, Illinois
in manner following: Eighteen Dollars and seventy
five Cents on the first day of May A D 1858 and thirty
seven Dollars and fifty Cents quarterly thereafter
on the first days of August, November, February and
May of each Year untill the first day of August
A D 1862 and in case of the loss of the building by
fire, the sum accruing to terminate therefrom, and
said Plaintiff says that after the making of said
promises and undertakings by said Defendant to wit:
on the first day of February A D 1861 a large sum of
money to wit: the sum of One hundred and eighty
seven dollars and fifty Cents became due and was
payable from said Defendant to said Plaintiff by virtue
of and according to the terms of said Contract and of
said promises and undertakings so made by said

Defendant, and a now wholly due and unpaid
by said Defendant to said Plaintiff

And said Plaintiff further says that the
building referred to in said Contract has not been
lost by fire or any part thereof

Yet said Defendant disregarding his said
promises and undertakings has not paid said Plaintiff
the said sum of One hundred and eighty seven dollars
and fifty Cents or any part thereof, but the often
requested has hitherto wholly refused and neglected
to do so Plaintiff damage of Five hundred Dollars
and therefore he brings suit &c

Samuel M. Cagg & Hallen
Pliffs Attys

And for that whereas the said Defendant heretofore
to wit on the first day of February A D 1861 to wit
at said Cork County was indebted to the Plaintiff
in the sum of Five hundred Dollars for money
before that time lent by said Plaintiff to said Defend-
ant at his request

And in the like sum for money then and there
paid by the Plaintiff for the use of the Defendant at
his request

And in the like sum for money then and there
received by the Defendant for the use of the Plaintiff

And in the like sum for money then and there
found to be due and owing to said Plaintiff from

Said Defendant upon an account stated between them
 By means whereof and by force of the Statute
 in such Case made and provided, the said Defendant
 became liable to pay the Plaintiff the said several
 sums of money above mentioned, and being so liable
 in consideration thereof then and then on demand
 and promised to pay the same to said Plaintiff when
 requested, Yet said Defendant hath not paid said
 several sums of money or either of them or any part
 thereof but to do so though often requested hath
 refused and still does refuse.

To Plaintiff Damages of Five hundred Dollars and
 therefore he brings Suit &c

Samuel McCagg & Father
 Atty

Copy of Instrument filed on
 Feb 25th 1888 Chicago Branch 18th 1888

For value received the Great Western Insurance
 Company promise to pay to the order of James H. Rus-
 sell hundred fifty six ²⁵/₁₀₀ Dollars as follows:
 Eighty one ⁷⁵/₁₀₀ Dollars on the first of May next, and
 thirty seven ⁸⁰/₁₀₀ Dollars quarterly thereafter on the
 first days of August, November, February & May of each
 year until the first day of August A.D. 1892, the
 being for the sale of the lease of Office nos 148 (east
 half) South State Street & in case of loss of the building
 by fire the sum accruing herein to terminate therefrom
 payable at the office of the Exchange Bank Chicago Ill

\$656²⁵

James H Rens Pres
Great Western Ins Co
H W Zimmermann Secy
G W Ins Co

over

Endorsed James H Rens

May 3^d 1858 Paid on a/c of this note \$15.⁷⁵
Account

Great Western Insurance Company

To James H Rens inc &c Dr

Feb 1 1861	To Money lent	\$500
" "	paid for you	500
" "	received for me \$1000	500
" "	due on account stated	500

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And afterwards to wit on the Fifth day of
March in the Year aforesaid. The Great Western
Insurance Company by Arthur W Windell its
Attorney filed in the office of the Clerk aforesaid
its Return Plus in words and figures following
List:

Plea

In the Superior Court of Chicago
March Term AD 1861

The Great Western
Insurance Company
Defendants
vs

James H. Rees who sues
to the use of Edward H.
Laddock.

Plaintiff.

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And now come the said Great Western Insurance Company defendants in the above entitled cause by their Attorney Arthur W. Windett and defend the wrong and injury when &c and say that they did not undertake or promise in manner and form as the said Plaintiff have above then of complained against them. And of this they put themselves upon the Country &c.

Arthur W. Windett.

Atty. for Deft

And for a second and further plea in this behalf by leave of Court there do first had and obtained the said defendants by their said Attorney say that now because they say that all of the said several sums of money mentioned in and claimed

by the said Plaintiffs declaration, are in fact only one and the same sum of money viz the same sum of money mentioned in said supposed promissory note or contract in writing declared upon the first and Second Counts of said declaration. And the said defendants say that if any such note or contract as is therein declared upon was at any time made executed and delivered by them as is therein charged against them the same was so made executed and delivered upon the sole and only consideration as follows viz: That on the said eighteenth day of March A.D. 1838 viz: at Chicago a certain Insurance Company named the Garden City Insurance Company of which said Haddock was then and there a stockholder and director, being then about to close up and wholly cease from farther prosecuting its business as an Insurance Company and otherwise entered into and made a certain bargain and agreement with these defendants in substance as follows viz: That they the said Garden City Insurance Company would bargain sell and transfer to these defendants their interest in a certain lease ^{of an office} then and therefore occupied

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by the said Garden City Insurance Company
as a place of business in the City of Chicago
and being the same lease and office
mentioned in said note or contract in
writing and in said Plaintiffs said
Declaration mentioned And also the
good will of their said business as an
Insurance Company and their list of
Risks insured in their said company and
therewith the right of said Garden City
Insurance Company therein And that
these defendants should have the power
and right to take use and enjoy the same
and the whole benefit and advantage thereof
for the advancement and promotion of said
defendants and of their business as an Insu-
rance ^{Company} without let or hindrance on the part of
or by the said Garden City Insurance
Company its officers and agents or others upon
and for the consideration that said defendants
would pay them therefore the sum expressed
in said note or contract in writing to wit
the sum of six hundred and fifty six
dollars and twenty five cents at the
times and in the manner expressed
in said note or contract and would
give them therefor said note to secure
the same And these defendants in

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fact say. that confiding in the good faith of the said Garden City Insurance Company and in their agreement as aforesaid they made and executed said note or contract in said declaration mentioned and delivered the same endorsed and assigned by said James H. Rees. to said Garden City Insurance Company and that the whole and sole consideration therefor was the said assignment and sale agreed to as aforesaid to be made by said Garden City Insurance Company of said Lease and good will and list of Risks and of the Right of these defendants to use and enjoy the same in the manner before stated and said agreement of said Garden City Insurance Company as above set forth And the said defendants in fact farther say that said Garden City Insurance Company fraudulently intending to wrong and injure these defendants in that behalf ^{did not} would sell and deliver the said good will of their said business and said list of Risks to these defendants with the power and right to use and enjoy the same in the prosecution and

13.

promotion of their business as aforesaid and absolutely refused to perform their said agreement. And the said defendants further state that the said good will and Right to use said list of Risks for the purpose aforesaid was then and there of great value to wit of the value of five hundred dollars. And that these defendants were wholly deprived of and lost the same and the use profit and advantage of the same thence hitherto and until now by means of the wrongful acts and conduct of said Garden City Insurance Company as aforesaid and thereby and in consequence of said wrongful conduct and acts of said Garden City Insurance Company and wholly by means thereof the consideration for the making and giving of said note or Contract in writing for the payment of said sum of money above sued for wholly failed to the extent and value of five hundred dollars. Whereof the said Edward H. Haddock and said plaintiff before the assignment by said Garden City Insurance Company of their interest in said note to said Haddock had actual and full notice.

And this the said Defendants are ready
to verify Wherefore they pray judgment of
said Action &c.

Arthur W Windett

Atty for Deft.

as to first and second counts in said Declaration

14 And for a further plea the
said defendants by leave of Court &c. say
actio now because they say that as to the
sum of Six hundred dollars. parcel of the
sum of money specified in said promiss
ory note or contract in said declaration
mentioned the whole and sole actual
consideration therefore was the pretended
sale by the Garden City Insurance Com-
pany. to these Defendants of the good will
and right of said Garden City Insurance
Company in their business as an Insurance
Company and in their certain list of
Fire Risks. and the right of the said defen-
dants to succeed therein therein possess and
enjoy the same and to that end to have
and use the said list of Risks. which was
then of great value to wit of the value
of Six Hundred Dollars. and which said
Garden City Insurance Company then
and there to wit on the said Eighteenth

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day of March A.D. 1858 promised and agreed with these defendants that they should have peace use and enjoy without let or hindrance by or on the part of said Garden City Insurance Company its Servants Officers or others. In sole considerations whereof the said note or contract in said declaration (mentioned as to said Six Hundred Dollars of the same therein expressed) was made and given by these defendants to said Garden City Insurance Company. Yet the said defendants aver that after the making and given of said note or contract by these defendants to said Garden City Insurance Company they the said Garden City Insurance Company wrongfully and without just cause absolutely refused to allow or permit the said defendants to have peace use or enjoy the said right or good will of said Company in their said business or to have and use said list of Risks or to succeed said Company in their said business but wrongfully and without cause interrupted disturbed and prevented the defendants in their peace use and enjoyment thereof in such manner that the said defendants

were thereby wholly deprived of and lost-
the same and the value profit and advan-
tage thereof. And so the defendants
aver that the consideration of said
note or contract to the extent of Six
Hundred Dollars wholly failed and
became lost to said defendants solely
by the wrongful acts of said company
and in violation of their said agreement
of all which matters said Waddick before
he became interested in said Note or
Contract had actual notice

And this the said defendants
are ready to verify. Wherefore they pray
judgment &c.

Arthur W. Windett

Atty for Def.

State of Illinois
Cook County

In the Superior Court of
Chicago March Term A.D. 1861

James H. Rees who sues to the use
of Edward H. Haddock Plff.

vs.

The Great Western Insurance
Company Deft.

1)

James H. Rees being duly
sworn says that he is President of said
Company defendants that he knows the
facts of this case constituting their defence
and that he believes that said defendants
have a good defence to said action on the
merits

Subscribed and sworn to
before me this 3rd day
of March A.D. 1861.

James H. Rees.

Walter Kimball Clerk.

And afterwards to wit on the Eighth day of
March in the Year aforesaid the said ~~Complainant~~
Plaintiff by Lemuel McCagg & Fuller his
Attorney filed in the office of the Clerk aforesaid his
Petition demurring to said Plea in words and
figures following to wit

State of Illinois
County of Cook

Superior Court of Chicago
March Term 1861

James H. Rens for me & C)

The Great Western Ins Co)

19 And now comes the
said Plaintiff by his attorneys and as to the plea
of said defendant by it first above pleaded, and
whereof it has put itself in the Country, the said
plaintiff doth the like &c

Samuel McLaughlin & Fuller

7. And as to the said Plea of the said defendant
by it secondly and thirdly above pleaded the said
Plaintiff says that the same are not sufficient in
law to bar the said plaintiff from maintaining his
said action against the said Defendant, and that
he is not bound to answer the same, and that he
is ready to verify, Wherefore he prays judgment &c

Samuel McLaughlin & Fuller

And afterwards to wit on the Twenty Second day of
March in the Year aforesaid said day being one of
the days of the March term of said Court the following
among other proceedings was had and entered of
record in said Court to wit:

James H Ross use of
E H Haddock

21. The Great Western Insurance Company, Aft

This day comes the said
Plaintiff who sues for the use of E H Haddock
by Scammon Pn Cagy & Kuller his Attorneys and
the said defendant by A W Brudett. Its attorney
also comes, and this cause coming on to be heard, on
the demand of the said plaintiff to the several pleas
of the said defendant and was argued by Counsel
and the Court being fully advised in the premises is
of the opinion that the defendants 2^d & 3^d pleas
and the matters therein are not sufficient in law to
bar the plaintiff in its action as to said pleas the
demurrer is therefore sustained as to the defendants
said second and third pleas herein pleaded

And afterwards to wit on the eighteenth day of April
in the Year in the Year aforesaid said day being
one of the days of the April term of said Court - the
following among other proceedings was had in said

Court and intend of record to wit:

James B. Rice for use of Edward H. Haddock

^{vs}
The Great Western Insurance Company

appt-

This Cause being this day Called for trial, Comes said Plaintiff who sues for the use of E. H. Haddock by Lemmon McCagy & Haller his attorneys, and said defendant by A. W. Brindlett its attorney also Come, And after Argument of the parties made now here in open Court this Cause is Submitted to the Court for trial upon the issues joined therein without intervention of a jury and the Court now here after hearing the evidence and arguments of Counsel and being fully advised in the premises finds issues for said Plaintiff and awards his damages herein against said defendant for the use aforesaid to the sum of Three hundred and Sixty three dollars

And therefore said defendant by its attorney submits its Motion herein for a new trial in said Cause which Motion is hereby overruled to which Ruling of the Court said Defendant excepts and therefore enters its exceptions herein to the Ruling of the Court in overruling its said Motion for a new trial

Therefore it is Ordered that said Plaintiff do have and recover of and from said defendant for the use and benefit of Edward H. Haddock his damages

of three hundred and fifty three dollars in former
afforded found and ascertained by the Court and
also his Costs and Charges in this behalf afforded
and have executed therefor.

And afterwards to wit; on the same day and year aforesaid there was filed in the office of the clerk aforesaid a certain Bill of Exceptions in the words and figures following to wit.

25~

In the Superior Court of Chicago
of the April Term A.D. 1862
James H. Rees to use of
Edward H. Haddock

The Great Western Insurance
Company

And now this cause came on to be tried and by agreement of parties, a jury was raised and the case submitted to the Court for trial. Plaintiff proved that the building mentioned in the declaration and instrument sued upon had not burned down at the time of bringing this ~~suit~~ action.

Plaintiff offered in evidence an
Instrument in writing as follows.
\$656²⁵ Chicago March 18th 1858.

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For value Rec^d the Great
Western Insurance Company promise
to pay to the order of James H Rees
Six hundred fifty six ²⁵/₁₀₀ Dollars
as follows. Eighteen ⁷⁵/₁₀₀ Dollars
on the first of May next and Thirty
seven ⁵⁰/₁₀₀ Dollars quarterly thereafter
on the first days of August, November,
February & May of each year until the
first day of August A D 1862: this
being for the sale of the Lease of
Office No 148 (East half) South Water
St & in case of loss of the building
by fire the sum accruing hereon
to terminate therefrom, payable at
~~the~~ office of the Exchange Bank.
Chicago Ill.

\$151²⁵

James H Rees Pres.
Great Western Ins Co.
W H Zimmerman Secy.
J H Ins Co

Great Western Ins Co
\$656.25

James H Rees.

May 3rd 1858 Paid amt of this note
\$18.75

Entered by error to cr of Expense &
entry reversed June 6, 58.

27.

Without recourse.

Garden City Insurance Company
D. Knight Secy,
and rested his case.
Defendants by their attorney offered
evidence to show that the consideration
stated in said Narr, and in said
written instrument was not the actual
consideration for making said agreement.
But that the consideration for the
same consisted of a sale and
agreement by the Garden City Insurance
Company to sell and transfer to said
defendant said lease of office
mentioned in said Narr, and also
a certain list of Insurance Risks and
the good will of said Garden City
Insurance Company and the right

to use the same to advance
defendants business, but that said
Garden City Insurance Company
violated said agreement and
deprived said defendants of the
right to use the said list of risks
and good will. And said defendants
also offered evidence of the same
facts in recoupment of damages.

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All of which evidence there offered
by defendants the Court refused
to receive and to allow the same
to be given - to which the said
defendants by their attorney excepted
then and there - which was all
the evidence given on both sides.

The Court found for Plff and
assessed damages at \$363.00.

\$363.00 Defendant moved for a new
trial which motion the Court over-
ruled, and the defendants then and
there excepted - and pray the Court
to sign seal and allow that their
Bill of Exceptions, which is
accordingly done.

Graat Goodrich Seal

State of Illinois
County of Cook } S.S.

24 I. Thomas B. Carter Clerk of the
Superior Court of Chicago, within and for the County &
State aforesaid do hereby certify that the above and
foregoing is a full, true and complete transcript of
all the pleadings on file in my office and of all
orders and judgment entered of record in said Court
in a certain Suit wherein James H. Rees who sues for
the use of E. H. Haddock is plaintiff and the Great
Western Insurance Company 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 22nd day of April A.D.
1862 Thomas B. Carter Clerk



In the Supreme Court of the State of Illinois
of the April Term A.D. 1862.

Third Ground Division,
O'Harra.

The Great Western Insurance Company
Appellant.

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Now & they come to the case of R. H. Studdard
Respondent.

And now come the said Appellant, by Arthur
W. Windett their Attorney, and say that in
the record of proceedings and judgment
premised there is great and manifest
Error in this Court:

First - ^{the Court erred} in refusing the demand
to the second and third Pleas filed
by Defendant Valued -

Second The Court erred in refusing to
allow defendants to prove a variance of
circumstances - in refusing to allow defendant
to prove the actual Circumstances of said
written Contract - as set forth in said Special
Pleas -

Third in refusing to allow defendant to
prove the same facts in Recoupment as
the Plaintiff's Pleas - and overruling the Plaintiff's
the Plaintiff's Allegations in finding the facts
And inasmuch as there are in said
record Proceedings and judgment

Case in rendering judgment for the Plaintiff below for the
Amount set forth in said Record -

went during other part and
manipulated. Every - the mid appellat
pay that with judgment may be
reversed - and the case re-
-minded -

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Arthur W. Woodlett
Att'y for appellants.

James W. Egan
Cammison McLaughlin & Fuller
April 24th 1862

48 299
The Great Western
Insurance
Company

Jana H. Nes
to me

Record.
equipment of
Enemy.

Found in
Do -

Filed Apr. 24, 1862
L. Seland
Clerk.

Fus. \$5.00 paid
J. B. Carter Clerk