No. 13736

Supreme Court of Illinois

Burr et al

vs.

Hurd et al

71641 7

J. Hundekoff
vs
[illegible] Buir et als.

6 1/2

6 1/2

131 Ills

1859

Know all men by these presents that We, Edward B Ward. Joseph Priam. Edmund. J. Beebe and George C. Buckle - Jonathan Priam and Benjamin Saunders are held and firmly bound unto Melancthon Burr. Charles Griffith and Giles White in the penal sum of Twenty five hundred dollars. - Witness our hands and seals this 16th day of July A.D. 1855 -

The Condition of the above obligation is such, that whereas the said Melancthon Burr. Charles Griffith and Giles White, did on the 5th day of July A.D. 1855 recover a judgment against the above bounden Edward B. Ward Joseph Priam, Edmund J. Beebe and George C. Buckle in the Cook County Court of Common Pleas, in an action of Assumpsit. for Eleven Hundred twenty five Dollars and sixty nine cents, and costs of suit. in which judgment & proceedings the said Ward. Joseph Priam. Beebe and Buckle complain that there is an Error in substance therein, and to be relieved therefrom, hath applied for and obtained a Writ of Error to remove the same to the Supreme Court of the State of Illinois; - returnable to the said Supreme Court. to be holden at Ottawa, in the third grand division of said State on the Second Monday of June next. Now, if the said Edward B. Ward. Joseph Priam. Edmund J. Beebe and George C. Buckle -

shall duly prosecute their said Writ of Error, and pay to the said Melancthon Burr, Charles Griffith, and Giles White, such judgment, costs and interest and damages as shall be awarded by the said Supreme Court, in case the said judgment shall be affirmed, then this Obligation to be void;- Else, to remain in full force & effect

Edward B Howard (Seal)

W. Perrin (Seal)

Edmund D Bebe (Seal)
by George C Ruckel his Attorney in fact
George C Ruckel (Seal)

Jno. Perrin (Seal)

Benjn Sanders (Seal)

State of Illinois }
Cook County } ss.

Supreme Court —

Edward B. Ward. Joseph Priam
Edmund D. Beebe and George C. Rockle
— ads —
Merlanchon Born. Charles Griffith and Giles White

Jonathan Priam and Benjamin Saunders residents in the said County of Cook — Security in this Cause for the above named defendants, being duly sworn, severally, depose and say:—

And first Jonathan Priam for himself says, that he resides in said Cook County & that he is a free holder in said County — that he is worth the sum of Two Thousand Dollars over & above what will pay all his debts:

And this deponent. Benjn. Saunders for himself says that he is a resident and free holder in said County & that he is worth to Two Thousand Dollars over and above what will pay all his debts. —

Jona. Perrain
Benjamin Saunders

I hereby certify that the said Jonathan Perrain appeared before me a Notary Public in & for the County of Cook and State aforesaid & subscribed to and sworn that the contents of the above affidavit are true

Witness under my hand and notarial seal this 16th day of July 1855.
Geo. H. Clarke Notary Public

I H Dunphy a Justice of the Peace in County of Cook certify hereby that Benjamin Saunders who is personally known to me, appeared before me and has sworn that the contents of the above instrument is the truth, and has signed it

Witness my hand this 16th day of July 1855

H H Dunphy
Justice of the Peace

(Stamp)

Peter A. Peer (Estate)

STATE OF ILLINOIS,
Cook County, } ss.

I, CHARLES B. FARWELL, Clerk of the County Court in and for said County, do hereby certify that W. Dunning Esq whose name is subscribed to the Jurat annexed affidavit was, at the time of signing the same, an acting Justice of the Peace in and for said County, duly commissioned, sworn and authorized to take the same; and full faith and credit ~~is~~ are due to all his official acts.

In Testimony Whereof, I have hereunto set my hand and affixed the official seal of said County Court, this 17th day of July A. D. 1855

C. B. Farwell
Clerk of the County Court.

~~134~~ 29

Hand et al

vs.

Burr et al

6/= 1889

Supds. Bard & affdts

Filed July 19. 1855.

L. Leland Clk.

State of Illinois - Supreme court. 3rd Grand Division
April term A.D. 1859.

Edward B. Hurd
Joseph Perian
George C. Ruckle
& Edmund D. Bebo
vs
Melancthon Bunn
Charles Griffith &
Giles White

Error to Cook county court of common pleas.

And now come the said defendants in error by Buckmitt & Wallace their attorneys and by leave of the court, say that the said judgment of the Cook county court of common pleas ought not, by reason of the errors above assigned, to be reversed, because they say that since the last continuance of this cause in this court ~~the suit~~ on the 20th day of April A.D. 1859, the said plaintiff in error Edmund D. Bebo, in consideration of the sum of one dollar paid by said defts executed and delivered ~~to these~~ said defendants a release of all errors & mistakes made or committed in said cause in the Cook county court of common pleas — which said release is as follows —

Edward B Hand
Joseph Poisson
George C Ruckle
Edmund D Bube
vs
Melancthon Burr
Charles Griffith &
Giles White

Supreme Court
State of Illinois

Error to Cook County
Court of Common Pleas

In consideration of the sum of One Dollars to me in hand paid by the above named Melancthon Burr, Charles Griffith & Giles White I do hereby release and discharge to them any and all errors and mistakes made or committed in said cause in the Cook County Court of Common Pleas. I do not hereby intend to admit that personal service or any service has ever been made on me in said cause. But I execute this release and discharge the better to enable the above named Burr & others to satisfy the judgment obtained by them out of the security held by the Court for that purpose - as I desire that judgment paid out of that fund —

Witness my hand and seal this Twentieth day of April AD 1859.

In presence of
Geo C Ruckle

Edmund D Bube

Abstract of Record

This was an action of Assumpsit commenced in the Cook County Court of Common Pleas - at the July Term thereof A.D. 1833: before the Hon. John M. Wilson - by Melancthon Burr & als. against Edward B. Hurd et. als

Precipe & Security for Cost

Precipe for Summons & Security for Cost filed on the 20th day of June 1833 - Damages $2000. -

Summons issued on the 20th June 1833 - directed to the Sheriff of Cook County commanding him to summon Edward B. Hurd. Joseph Perian. George C Rex Rel & Edmund V. Beebe - to appear &c -

The Sheriff's return of summons was in the words & figures following—

"Served by reading to the within
" named Edward. B. Howard. Joseph Periam.
" George C. Rockel - this 21. day of June
" 1833. Edward D. Beebe not found"—
" James Andrews Sheriff
" By Isa Snow Deputy"

Declaration — Declaration filed on the 20th day of June 1833 - and was in substance as follows—

Melancthon Burr — Charles Griffith & Giles White partners &c. complain of Edward B. Howard - Joseph Periam and Edmund D. Beebe partners &c — in a plea of trespass on the case upon promises — For that whereas said defts on the 21st day of March 1833 - made their certain promissory Note in writing - whereby said defs promised & became liable to pay, one day after date, to pltffs the sum of $171,23 - —

Then follows

The Common Counts Claiming
$2000. & breach —

On the declaration was the following endorsement —

"Take Notice that a declaration of which the within is a "Copy, has been duly filed in the "Office of the Clerk of the Cook County "Court, and that upon the filing "thereof a Rule was entered in the "above entitled Cause, in the Common "rule Book in said Office requiring "you to plead to said declaration "within ten days after the service "thereof — and Notice of said rule — "or that judgment by default will "be entered against you for want of "such plea — Dated June 20th 1855 —
" Yours — Frink & Winston Attys for Pltffs

Affidavit of Francis H. Young — he says "that on the 21st day of June 1855 he served a declaration & Notice of Rule to plead — of which the within and annexed are true Copies, and also Copy of the Rule itself entered herein

upon Joseph Periam by delivering the same to said Periam personally—

Plea June 22nd 1853— Defts filed plea of Non Assumpsit to the Whole declaration —

Affidavit of Merits is in the words and figures following — filed 22nd June 1853—

"State of Illinois }
"Cook County } ss.

" I Benj" E. Gallup depose "and say, that I am the attorney of "the defendants in the above suit— and "that I am advised and believe that "said defts have a good defence to "said suit, or a portion of the same "upon the Merits"—

"Subscribed and sworn to "before me this 22nd day of "June 1853 — } Benj" E. Gallup

W. Kimble Clerk

July, Term vacation — The Attys for pltffs move the Court to
5th July — Strike the defts plea from the files
for want of a sufficient affidavit of
merits — motion sustained; and thereupon defendants
are three times called &c but come
not — but make default — which
is ordered to be taken, and the Court
assesses plaintiffs damages at
$1125.69. — And it is Ordered by
the Court that the pltffs have and
recover of defts their damages of
$1125.69. and costs & charges — "and
have execution"

State of Ills Supreme Court June Term 1833

Buss et al
vs
Herrod et al

Error to C. C. C. Common Plea

And now comes said plaintiff in error and says that there is manifest error in the proceeding, and judgmt in the Court below & especially - that the court erred -

1st In rendering judgment vs all defendants when process was served only on one -

2d - In rendering judgmt at a vacation term without the notice required by law - (see

3d - The court erred in striking the plea of defendants from the files - the affidavit of merits being good

4th - The court erred in rendering judgmt vs defendants in manner as the same was done

Dickey Mather & T. Ogden atty's for pltff in error -

State of Ills Supreme Court June Term 1833-

Buss et al
vs
Herrod et al

Error

Detached from record for printing

6/2

Printed by Jameson & Morse, 14 La Salle street.

SUPREME COURT.

April Term, A. D. 1859.

EDWARD B. HURD et al.
vs.
MELANCTHON BURR et al.

The defendants in error respectfully submit:

1st. That the affidavit filed by defendants in the court below was insufficient and defective, and that by reason thereof, plaintiffs were entitled to judgment.

(A) The affidavit should have been made by defendants, or one of them: an attorney, as such, is not authorized to make the affidavit required by law.

Practice Act of 1853 *relating to Cook County Court of Common Pleas.*
Sections (33 *and* 14).
Bancroft v. Eastman, 3*d Gil.*, 259.
Roosevelt v. Dale, 2*d Cowen*, 581.
Cunningham v Goelet, 4 *Denio*, 71.

(B) The statement in an affidavit of this nature that the affiant is *informed* and *believes* that the defendant has a substantial defense on the merits is not sufficient.

Briggs v. Briggs, 3 *Johnson*, 258.
Brown v. Corvell, 3 *Doug.*, 452.
Adamson v. Wood, 5 *Black.*, 448.

(C) The affidavit is defective, because in the alternative, and nothing is therein stated absolutely, and no indictment for perjury could be founded upon it.

Castle et al. v. Judson et al., 17 *Ill.*, 383.
4 *Black. Com.*, 137.
3 *Greenleaf's Evidence*, § 188.
Adamson v. Wood, 5 *Black.*, 448.

2d. That although process was not served upon all the defendants, yet, as they *appeared* and *pleaded*, judgment could be rendered against them, notwithstanding, the court, on motion of the plaintiff, struck the plea from the files.

(A) The plea was not the appearance of the defendants. They must have been in court *before* they could file the plea. They *appeared* and *then* pleaded, and striking the plea from the files could not operate to strike their appearance from the docket. In order to file and defend their plea, they must have come under the jurisdiction of the court, and because they failed to make good the defense interposed, they cannot say they never interposed any. They have had the advantages of presenting a defense, and they cannot say that because their defense was stricken out as frivolous, that therefore, they themselves are not in court.

When a party appears and files a plea, he submits himself to the jurisdiction of the court, and is as completely subject to that jurisdiction as though he had been served with process.

The process is a means by which the law has provided that a plaintiff may coerce the appearance of a defendant. If a defendant comes without it, the plaintiff does not need it: and when a defendant does come into court, and the fact appears of record that he has been notified of the pending case, and answered the plaintiff's demand in any other way than by a plea to the jurisdiction of the court, he is subject to that jurisdiction for the purposes of that case, whether his answer made was good, bad or indifferent.

(B) It may be questioned whether or not the court was authorized under the laws of this State to strike the plea from the files.

The 3d and 14th sections of the act, relating to practice in the circuit and common pleas courts of Cook county, require that wherever a defendant in an action founded upon contract shall file a plea, he shall at the same time file an affidavit, setting forth that he has a good defense to the action on the merits. These sections also provide that in case no sufficient affidavit is filed as required by law, *that the plaintiff shall be entitled to judgment.*

The plea of defendants, *as a plea*, may be perfectly good; that it is not accompanied by an affidavit is no sufficient reason for striking it from the files as *frivolous*. But the plaintiff is entitled to his judgment, for the reason that the law provides, *he shall have it if the affidavit is not filed.* The failure to file the affidavit does not affect the plea, otherwise

than that defendant shall not be allowed to try the issue joined. Judgment goes against him by default, and his default is in *not filing his affidavit*, not in failing to plead. The judgment is not a judgment of *nil dicit.*

If, then, the court should have stricken the plea from the files without authority so to do, the defendants were *in court*, and although the court below erred in so ordering the plea to be stricken from the files, this court will not reverse on that ground, for the reason that plaintiffs in error cannot complain of the erroneous decision as injurious to them.

BECKWITH MERRICK & CASSIN,
Attorneys for Defendants in Error.

No. 612

Supreme Court

Edward R. Hunt et al

vs

Melancthon Burr et al

6½

Printed by Jameson & Morse, 14 La Salle street.

SUPREME COURT.

APRIL TERM, A. D. 1859.

EDWARD B. HURD et al.
vs.
MELANCTHON BURR et al.

The defendants in error respectfully submit:

1st. That the affidavit filed by defendants in the court below was insufficient and defective, and that by reason thereof, plaintiffs were entitled to judgment.

(A) The affidavit should have been made by defendants, or one of them: an attorney, as such, is not authorized to make the affidavit required by law.

Practice Act of 1853 *relating to Cook County Court of Common Pleas.*
Sections (33 *and* 14).
Bancroft v. Eastman, 3*d Gil.*, 259.
Roosevelt v. Dale, 2*d Cowen*, 581.
Cunningham v Goelet, 4 *Denio*, 71.

(B) The statement in an affidavit of this nature that the affiant is *informed* and *believes* that the defendant has a substantial defense on the merits is not sufficient.

Briggs v. Briggs, 3 *Johnson*, 258.
Brown v. Corvell, 3 *Doug.*, 452.
Adamson v. Wood, 5 *Black.*, 448.

(C) The affidavit is defective, because in the alternative, and nothing is therein stated absolutely, and no indictment for perjury could be founded upon it.

Castle et al. v. Judson et al., 17 *Ill.*, 383.
4 *Black. Com.*, 137.
3 *Greenleaf's Evidence*, § 188.
Adamson v. Wood, 5 *Black.*, 448.

2d. That although process was not served upon all the defendants, yet, as they *appeared* and *pleaded*, judgment could be rendered against them, notwithstanding, the court, on motion of the plaintiff, struck the plea from the files.

(A) The plea was not the appearance of the defendants. They must have been in court *before* they could file the plea. They *appeared* and *then* pleaded, and striking the plea from the files could not operate to strike their appearance from the docket. In order to file and defend their plea, they must have come under the jurisdiction of the court, and because they failed to make good the defense interposed, they cannot say they never interposed any. They have had the advantages of presenting a defense, and they cannot say that because their defense was stricken out as frivolous, that therefore, they themselves are not in court.

When a party appears and files a plea, he submits himself to the jurisdiction of the court, and is as completely subject to that jurisdiction as though he had been served with process.

The process is a means by which the law has provided that a plaintiff may coerce the appearance of a defendant. If a defendant comes without it, the plaintiff does not need it: and when a defendant does come into court, and the fact appears of record that he has been notified of the pending case, and answered the plaintiff's demand in any other way than by a plea to the jurisdiction of the court, he is subject to that jurisdiction for the purposes of that case, whether his answer made was good, bad or indifferent.

(B) It may be questioned whether or not the court was authorized under the laws of this State to strike the plea from the files.

The 3d and 14th sections of the act, relating to practice in the circuit and common pleas courts of Cook county, require that wherever a defendant in an action founded upon contract shall file a plea, he shall at the same time file an affidavit, setting forth that he has a good defense to the action on the merits. These sections also provide that in case no sufficient affidavit is filed as required by law, *that the plaintiff shall be entitled to judgment.*

The plea of defendants, *as a plea*, may be perfectly good; that it is not accompanied by an affidavit is no sufficient reason for striking it from the files as *frivolous*. But the plaintiff is entitled to his judgment, for the reason that the law provides, *he shall have it if the affidavit is not filed.* The failure to file the affidavit does not affect the plea, otherwise

than that defendant shall not be allowed to try the issue joined. Judgment goes against him by default, and his default is in *not filing his affidavit*, not in failing to plead. The judgment is not a judgment of *nil dicit.*

If, then, the court should have stricken the plea from the files without authority so to do, the defendants were *in court*, and although the court below erred in so ordering the plea to be stricken from the files, this court will not reverse on that ground, for the reason that plaintiffs in error cannot complain of the erroneous decision as injurious to them.

BECKWITH MERRICK & CASSIN,
Attorneys for Defendants in Error.

No. 672

Supreme Court

Edward B. Hurd et al

vs

Melancthon Purrel et al

1)

State of Illinois }
County of Cook } S. S.

Pleas before the Honorable John M. Wilson Judge of the Cook County Court of Common Pleas within and for said 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 Second day of July in the year of our Lord one thousand eight hundred and fifty five and of the Independence of the United States the Seventy ninth.

Present the Honorable John M. Wilson .. Judge
James Andrew. Sheriff

Attest.
Walter Kimball. Clerk

Be it Remembered that heretofore to wit on the twentieth day of June A. D. Eighteen hundred and fifty five Melancthon Burr Charles Griffith and Giles White, Plaintiffs by Spink & Winston their Attorneys, filed in the Office of the Clerk of the Cook County Court of Common Pleas, their precipe for summons, against Edward B. Hurd, Joseph Periam, George C. Rickel and Edmund D. Beebe, defendants together with security for costs, which said Precipe & Bond for Costs, are in words and figures as follows, to wit.

Melancthon Burr, Charles Griffith and Giles White ..... } Cook Co Court of Common Pleas. Assumpsit
v
Edward B. Hurd, Joseph Periam } Dac $2000.

2.

George C. Ruckel and
Edmund D. Beebe ..

The Clerk will please issue summons in above entitled cause, and make the same returnable to the next ensuing term.

Very truly Yours
Trink & Winston
Plffs Attys.

Melancthon Burr, Charles
Griffith and Giles White
v
Edward B. Hurd, Joseph Periam
George C. Ruckel and Edmund
D. Beebe .....

Cook County Court of
Common Pleas.

We do hereby enter ourselves security for costs in this cause, and acknowledge ourselves 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 20th day of June
A. D. 1855 .....

Trink & Winston.

And thereupon summons issued out of the Office of the Clerk of said Court in words and figures as follows to wit

State of Illinois }
County of Cook } S. S.

The People of the State of Illinois to the Sheriff of said County. Greeting.

We command you that you summon Edward B. Hurd, Joseph Periam, George C. Ruckel and Edmund D. Beebe, if they 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 July next to answer unto Melancthon Burr, Charles Griffith, and Giles White in a Plea of Trespass on the case on promises to the damage of the said Plaintiffs as they say in the sum of Two thousand dollars.

And have you then and there this Writ, with an Indorsement thereon, in what manner you shall have executed the same.

Witness Walter Kimball, Clerk of our said Court, and the Seal thereof, at Chicago, in said County, this 20th day of June A. D. 1855

Seal.

Walter Kimball. Clerk.

Endorsed as follows

"Served by reading to the within named Edward B. Hurd, Joseph Periam, George E. Ruckel this 21. day of June 1855. Edward D. Beebe not found."

"James Andrew - Sheriff
By Ira Snow. Deputy."

And also on the said twentieth day of June in the year aforesaid the said Plaintiffs, by their said Attorneys, filed in the Office of the Clerk of said Court, their declaration in said cause, in words and figures as follows, to wit.

State of Illinois } ss. Cook County Court of Common Pleas
Cook County } Of the July Term in the year of our Lord one thousand eight hundred and fifty five.

Melancthon Burr, Charles Griffith and Giles White who are Partners under the name and style of Burr, Griffith and White, Plaintiffs in this suit by Frink & Winston their Attorneys, complain of Edward B. Hurd, Joseph Periam,

4

Edmund D. Beebe and George K. Ruckel who are partners under the firm name and style of Ruckel, Beebe & Co; defendants, who were summoned &c in a Plea of Trespass on the case on promises. For that whereas the said Defendant heretofore to wit on the twenty first day of March in the year of our Lord one thousand eight hundred and fifty five at Birmingham, to wit, at Chicago, in said County of Cook made their certain promissory Note and then and there delivered the same to the said Plaintiffs, in and by which said Note, said defendant by the name, style and description of Ruckel, Beebe & Co. promised to pay to the Order of the said Plaintiffs, one day after the date thereof - one hundred and seventy one dollars and twenty three cents ($171 23/100) at the office of said Plaintiffs in New York for value received By means whereof and by force of the Statute in such case made and provided the said defendants became liable to pay said Plaintiffs 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 Plaintiffs according to the tenor and effect true intent and meaning of said Note to wit at the place aforesaid. And whereas also the said Defendants afterwards to wit on the first day of April in the year of our Lord one thousand eight hundred and fifty five, to wit, at Chicago, in said County became and were indebted unto the Plaintiffs in a large sum of money, to wit. Two thousand dollars for money before that time lent and advanced to and paid laid out and expended for said defendants by said Plaintiffs at said defendants request, and for money before that time had and received by said defendants to and for the use of said Plaintiffs; and also in the like sum for goods wares and merchandize before that time sold and delivered by said Plaintiffs to said defendants at like special instance and request. and also in the like sum

for the labor care and diligence of said Plaintiffs before that time done and performed by said Plaintiffs for said Defendants, and at the like instance and request of said Defendants, and being so indebted said defendants in consideration thereof, then and there undertook and promised to pay said Plaintiffs said last mentioned sum of money, when thereunto afterwards requested.

Yet the said defendants not regarding their said promises and undertakings but contriving &c, altho' often requested so to do, have not paid said Plaintiffs either of said sums of money above mentioned, or any part thereof, but so to do have hitherto wholey neglected and refused, and still do neglect and refuse To the damage of said Plaintiffs of Two thousand dollars and therefore they bring this suit &c.

Frink & Winston
Attys for Plaintiffs.

On which said Declaration were the following indorsements.
" Take Notice that a Declaration, of which the within is a copy, has been duly filed in the Office of the Clerk of the Cook County Court, and that upon the filing thereof a Rule was entered in the above entitled cause in the common rule Book in said Office requiring you to plead to said declaration, within ten days after the service of a copy thereof, and Notice of said rule, or that judgment by default will be entered against you for want of such Plea - Dated June 21st. 1855".
" Yours. Frink & Winston - Attys for Pltffs"

"State of Illinois,
Cook County" } S.S.
"Francis H. Young being duly sworn saith that on the twenty first day of June 1855 he served a declaration and Notice of rule to plead, of which the within and annexed are true copies, and also copy of the Rules

itself entered herein upon Joseph Periam by delivering the same to said Joseph Periam personally.

Subscribed and sworn to before me this Twenty first day of June A. D. 1855. . . . . } J. H. Young.
Walter Kimball. Clerk

And thereafter to wit on the twenty second day of June in the year aforesaid, the said defendants, by Benjamin E. Gallup their Attorney, filed in the Office of the Clerk of said Court, their Plea & Affidavit of Merits in words and figures as follows to wit.

Cook County Court of Common Pleas.
July Term 1855.

Edward. B. Hurd & als
vs
Melancthon Burr & als } And the said Edward B. Hurd Joseph Periam, Edmund D. Beebe and Geo. C. Ruckle by Benj". E. Gallup their Attorney, come & defend the wrong and injury when &c. and saith that they did not undertake or promise in manner and form as the said Melancthon Burr, Charles Griffith and Giles White hath above thereof complained against them, and of this they put themselves upon the Country &c.
Benj". E. Gallup. Defts Atty.

State of Illinois }
Cook County ss. }
I Benj". E. Gallup depose and say that I am the Attorney of the defendants in the above suit and that I am advised and believe that said defts have a good defence to said suit, or a portion of

the same upon the merits.

Subscribed & Sworn to before me this 23d day of June 1855 . . . . . } Benj.n F. Gallup.

H. Kimbalk. Clerk

And afterwards to wit on the fifth day of July being one of the days of the July Vacation Term of said Court Eighteen hundred and fifty five, the following proceedings were had in said cause, and entered of Record in said Court, to wit.

Melanthon Burr, Charles Griffith and Giles White . . } Ap.ts

-v-

Edward B. Hurd, Joseph Duran George C. Ruckel & Edmund D. Beebe }

And now at this day come the said Plaintiffs by Frink & Winston their Attorneys and the said Defendants by Benjamin F. Gallup their Attorney also come, and on Motion of said Plaintiffs Attorneys it is ordered that the Plea of the said defendants be stricken from the files of this cause for the reason that the same is not supported by a sufficient Affidavit of merits - And thereupon the said Defendants being three times solemnly severally called in open Court, come not, nor does any person for them or either of them but make default which is ordered to be taken and entered of record Wherefore the said Plaintiffs ought to have and recover of the said defendants their damages herein sustained by occasion of the premises and the Court after hearing the testimony adduced by said Plaintiffs being now fully advised in the premises assesses said Plaintiffs damages to the sum of Eleven hundred and twenty five dollars

8)

and sixty nine cents.

Therefore it is considered that the said Plaintiffs do have and recover of the said Defendants their damages of Eleven hundred and twenty five dollars and sixty nine cents in form aforesaid by the court here assessed and also their costs and charges by them about their suit in this behalf expended, and have execution therefor.

State of Illinois }
County of Cook } S.S.

I Walter Kimball Clerk of the Cook County Court of Common Pleas within and for said County and State Do hereby Certify that the foregoing is a true and correct Copy of the Precipe, Bond for Cost, Summons & return, Declaration Notice of Rule to plead & Affidavit of service thereof, and Plea and Affidavit of Merits, and also of the Order entered of Record in said Court, now on file in my Office in the above mentioned cause.

In testimony whereof I have hereunto subscribed my name and affixed the Seal of said Court at Chicago in said County this tenth day of July A. D. 1855.

Walter Kimball Clerk

12 ~~134~~ 37

Melancthon Burr et als

vs.

Edward B. Hurd et als

Copy Record

Filed July 14. 1855.
L. Leland Clk.

No Depositions
Motion July 12th 55

Trans to 2d Cir Ct & Sec 35
p 305

Know all men by these Presents that We James H Eames as principal & William H Eddy & William Gorham as his sureties are held and firmly bound unto Daniel Preston and Daniel Preston 2d in the Penal sum of fifteen hundred dollars for the payment of which well and truly to be made unto the said Daniel Preston & Daniel Preston 2d their executors administrators and assigns we do bind ourselves our heirs executors and administrators jointly severally & firmly by these presents—

Signed sealed & dated this 22nd day of May A.D. 1857—

The condition of this obligation is such that whereas the said Daniel Preston & Daniel Preston 2d at a term of the Cook County Court of Common Pleas began and held in & for Cook County & State of Illinois on the first Monday of February A.D. 1857 did recover a judgment against said Eames in plaintiff with Henry N. Bushnell & Joel Gray. for the sum of six hundred and twenty six dollars & eighty

four cents. & costs of suit — ~~from which~~

And whereas the said Eames has sued out of the supreme court of said State a writ of Error, to remove said judgment & the proceedings therein to the said supreme court for review and hath prayed that such writ of error may be made a supersedeas which prayer hath been allowed by ~~said~~ one of the justices of said court upon the filing of this bond —

Now therefore if the said Eames shall prosecute said writ of error ~~to effect~~ and without delay and shall pay or cause to be paid all costs that may accrue therein and the judgments costs interest and damages in case said judgment shall be affirmed then ~~the above~~ bond to be void or otherwise to remain in full force

J. H. Eames (Seal)
W. O. Eddy (Seal)
(Seal)
W. Freeman (Seal)

State of Illinois }
Cook County } ss.

I Walter Kimball Clerk of the Cook County Court of Common Pleas in & for said County do hereby certify that I am personally acquainted with J. H. Eames, M. H. Eddy & William Fordham whose names are signed to the foregoing bond, and that said persons are responsible and are by me deemed good security for the account mentioned in said Bond.

Certified under my hand & the seal of said Court at Chicago this 22nd day of May 1857

Walter Kimball Clerk

216

James H Eames in Error

vs

David Preston et al

216

Supds Bond

13737

1857

11