

13167

No. _____

Supreme Court of Illinois

Dewey

vs.

Hamilton

71641  7

3 Nov 1951

Edward M. Dewey

vs

George J. Hamilton
et al

6981

ED. M. DEWEY,

VS

L. D. HAMILTON,
JEFFERSON L. DUGGER.

} ERROR FROM CIRCUIT COURT, COOK COUNTY.

Pages 1, 2, *Action of Assumpsit, begun Oct. 22d, 1858. Procipe and Declaration filed*
3 and 4 of *that day.*
Record.

4

Suit brought upon promissory note, dated and made payable at Atlanta, (Logan County,) Illinois. *He lives in Cook County*

5

Summons issued to Sheriff of Cook County for both defendants. Also to Sheriff Logan County for both defendants.

6

Summons to Cook Co. returned, served on Dugger in Cook Co. Hamilton not found Oct. 22d, 1858.

8 9

Writ to Logan Co. returned, served on Hamilton in Logan Co., Nov. 8, 1858; also, a copy of declaration in this case, served on him in Logan Co., Nov. 9, 1858.

Nov. 18, 1858, defendant Hamilton files plea in abatement as follows.

9 10

And the said Lorenzo D. Hamilton, one of the defendants in the above entitled cause, comes and says, that this court ought not to have, or take further cognizance of this action aforesaid; because, he says, that the said supposed cause of action, and each and every one of them, arose in the county of Logan, in the State of Illinois, and not within the county of Cook aforesaid, and were specifically made payable at Atlanta, in said Logan county, and not in the county of Cook aforesaid, and that he, the said Hamilton, resides in said Logan county, and not within said Cook county, and that process was served in this cause on him; the said Hamilton in said county of Logan, and not in said county of Cook, and that said Jefferson L. Dugger, is also a resident of said Logan county, and not of said Cook county, and that process in this cause was served on Dugger, in said Cook county, and not in Logan county aforesaid, where he resides, and this the said defendant Hamilton is ready to verify, wherefore he prays judgment, whether the court can or will take further cognizance of the action aforesaid.

L. D. HAMILTON.

Sworn to, etc.

11

Plaintiff demurred to this plea.

12 14

Court sustained demurrer, and ruled defendant Hamilton to plead over.

14

No further plea was filed, and judgment was rendered against both defendants.

And now comes the said Hamilton, one of the defendants in the above entitled cause, and says, that in the proceedings of said court and the record thereof, there is manifest error in this, to wit:

1. That the court erred in sustaining the demurrer to defendant Hamilton's plea.

2. That the court erred in rendering judgment for the plaintiff against defendant Hamilton.

3. That the court erred in not rendering judgment for defendant Hamilton.

By SCAMMON & FULLER,

His Attorneys.

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E. M. Dewey

^{as}
L. D. Hamilton &
J. L. Duggar
330

abstract

SUPREME COURT.

STATE OF ILLINOIS.

ED. M. DEWEY,
Defendant in Error,
vs.
L. D. HAMILTON,
Impleaded, &c., Plaintiff in Error.

Error to Cook County Court.

POINTS OF DEFENDANT IN ERROR.

This suit was brought in Cook County, the place of residence of the plaintiff. Defendant Dugger was served in Cook County. Summons was sent to Logan County for defendant Hamilton, who was there served. The action was upon a promissory note. Hamilton appeared and plead, that both defendants resided in Logan County, and that the fact that Dugger was served in Cook County, did not confer jurisdiction as to Hamilton. Plaintiff demurred to this plea. The Court sustained the demurrer, and gave judgment against both defendants. Defendant Hamilton assigns error.

The only question arises upon the construction of the word "resides," as stated in points of plaintiff in error.

We think the decision in case of Kennedy, et. al., vs. Greer, 13th Ills., 432, (see page 447) is an approval of the case of Linton vs. Anglin, 12 Ill., 284, where the Court construe the word resides, "to include the place where the defendant, for *the time being*, might be, whether that was his permanent place of residence or not." By this approval overruling the case of Semple vs. Anderson, which was decided subsequently to the case of Linton vs. Anglin, but prior to the case of Kennedy vs. Greer.

This decision is sound in principle. It gives full and fair effect to the Statute, without injury to any one. Any other construction would, in cases of joint liabilities by defendants, who were transient in their habits, make it almost impossible for a plaintiff to get judgment against more than one defendant, whom he might happen to stumble upon. A very little ingenuity on the part of such debtors, would enable them to avoid joint judgments. Again, Courts always look with disfavor upon objections of this character, without merits, and would be astute to give such construction to the Statute as would prevent the failure of justice, even if it had not been already decided.

SMITH & DEWEY,

For Defendant in Error.

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STATE OF ILLINOIS.

SUPREME COURT.

ED. M. DEWEY,
Defendant in Error.

vs.

L. D. HAMILTON,
Impleaded, &c., Plaintiff in Error.

Points of Defendant in Error.

SMITH & DEWEY,
Attorneys for Def't in Error.

Culver, Page & Hoyne, Chicago.

Filed May 9, 1889
H. Leland
Clerk

United States of America

STATE OF ILLINOIS, COUNTY OF COOK, S. S.

Pleas, before the Honorable George Manierre

Judge of the Seventh Judicial Circuit of the State of Illinois, and Sole Presiding Judge of the Circuit Court of Cook County, in the State aforesaid, and at a ^{Special} term thereof

begun and held at the Court House in the City of Chicago, in said County, on the first ~~Monday~~ Monday, (being the third ~~Monday~~ day) of

January ~~in~~ in the year of our Lord one thousand eight hundred and fifty nine ~~and~~ and of the Independence of the said United States the

Eighty Third; pursuant to an order of said Court made and entered of record at a ~~former term thereof~~ ^{present term} ~~present~~ term thereof, appointing said George Manierre Judge of the 7th Judicial

Circuit of the State of Illinois. }

Charles Haven States Attorney.

John Gray Sheriff of Cook County.

Attest;

W. L. Church Clerk.

Be it remembered, that heretofore, to-wit: on
the 22^d day of October AD 1858, Edward M Derray
Plaintiff, by Smith and Derray, his attorneys, filed
in the Office of the clerk of the Court aforesaid, his
certain process and declaration in the words and
figures following to-wit:

State of Illinois } ss
County of Cook }

Cook Circuit Court
Of the Nov^r Term AD 1858

Edward M Derray
Plaintiff
Sorenzo D Hamilton and
Jefferson D Dugger
Defendants

Upumpsit Damages \$ 2000-

You will please issue
a summons in the above
entitled cause, directed to the Sheriff of Cook
County, and make the same returnable to said
Court on the first day of the next term thereof.

Dated the 22^d day October AD 1858
In the Clerk of said Court.

Yours re. Smith & Derray Plffs attys
Also. Sumt directed to Shff Logan Co. SMD

Cook County Circuit Court
Of the November Term AD 1858
State of Illinois } ss
Cook County }

Edward M Derray of the City of
Chicago County of Cook and State of Illinois, Plaintiff
in this suit by Smith and Derray his Attorneys
complains of Sorenzo D Hamilton and Jefferson
D Dugger, now or late copartners under the firm
name of Hamilton & Dugger. Defendants herein

2.

who have been summoned res. in a plea of trespass
on the case on promises:

For that whereas, the said defendants here-
tofore, to-wit, on the 2^d day of March, in the year
of our Lord One Thousand Eighty hundred and fifty
eight at Atlanta, to-wit, at Chicago in said County
of Cook, made their certain promissory Note in
writing, bearing date, the day and year aforesaid,
and then and there delivered the same to one, S.
M. Stroud, in and by which said Note, said defen-
dants, by the name, style and description of
Hamilton Dugger, promised to pay to the order of
the said S. M. Stroud, on the fifteenth day of
September. (N^{ext} the fifteenth day of September
@ 1858 meaning). Seven hundred and eleven
dollars and seventeen cents, at the Office of
S. N. Gill Atlanta Illinois, with Exchange on
New York, for value received,

And the said S. M. Stroud, to whose order
said Note was payable, then and there indorsed,
and under his hand assigned the said Note to
the said plaintiff, and then and there delivered
the same, so endorsed to said plaintiff; by means
hereof and by force of the Statute in such case
made and provided, the said defendants became
liable to pay said plaintiff, 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 plaintiff

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according to the tenor and effect, true intent and meaning of the said Note, and of the endorsement aforesaid, to-wit: at the place aforesaid.

And the said plaintiff avers, that he resides in said County of Cook, and that the cause of action, above mentioned, accrued in said Cook County.

And Whereas also, the said defendants afterwards, to-wit: on the twentieth day of October in the year of our Lord One Thousand Eight hundred and fifty, to-wit: Eight in said County, became and is indebted unto the plaintiffs in a larger sum of money, to-wit: Three Thousand Dollars, for money before that time lent and advanced to, and paid, laid out and expended for said defendants by said plaintiff at said defendants request; and for money before that time had and received by said defendants, to and for the use of said plaintiff; and also in like sum for goods, wares and merchandise, before that time sold and delivered by said plaintiff to said defendants, at like special instance and request; and also in ~~the~~ like sum for ^{their} labor, care and diligence of said plaintiff, before that time done and performed by said plaintiff: for said defendants, and at the like special instance and request of said defendants, and also in a like sum, then and there found due and owing said plaintiff, on an account stated between them and being so indebted ^{said defendants} in consideration thereof.

12
He and there undertook and promised to pay
said plaintiff, said last mentioned sum of money
when thereunto afterwards requested.

Yet the said defendants not regarding
their said promises, and undertakings, by com-
mencing &c, although often requested to do, have
not paid said plaintiff, either of said sums
of money above mentioned, or any part thereof, but
so to do, have hitherto wholly neglected and re-
fused, and still do neglect and refused, to the
damages of said plaintiff of Two thousand dollars
and therefore he brings this suit &c

Smith & Darray

"copy of instrument sued on"

" \$ 1014¹⁴/₁₀₀"

Atlanta Ill Mich 2^d 1858

" On the fifteenth day of September next
" we promise to pay to the order of S M Stroud
" Two hundred and Eleven¹⁴/₁₀₀ Dollars at the
" office of S W Gill Esq: Atlanta Ills with
" Exchange on New York, Value Received

(Signed) W Hamilton & Dugger

(Endorsed) "S M Stroud"

Lorenz, W Hamilton &

Jefferson & Dugger

Do Edward M Darray &

Do Money lent and advanced
to Money expended and paid out
Do Money received for use of
Do Goods wares and merchandise
Do Labor and Services
to Balance on account stated

\$ 2000.
\$ 2000.
\$ 2000.
\$ 2000.
\$ 2000.
\$ 2000.

And thereupon on the day and year aforesaid the following proceedings were had and entered of record therein, in the common Rule Book of said Court, to-wit:

On reading and filing the plaintiffs declaration in this cause, on motion of Smith & Werray plaintiffs attorneys, it is ordered that said defendants plead to said plaintiffs declaration within twenty days, after service of a copy thereof and a copy of this rule on them, or in default thereof their default for want of a plea, will be entered, and judgement entered against them, at the expiration of said rule to plead.

And thereupon, on the day and year aforesaid, to-wit October 2^d @ 1858, the said plaintiff sued out of the Office of the Clerk of the Court aforesaid two certain writs of summons directed to the Sheriffs of Cook and Logan Counties to execute, and clothed in the words and figures following, to-wit:

State of Illinois } ss
County of Cook }

The people of the State of Illinois, to the Sheriff of said County Greeting: We command you that you summon Lorenzo Hamilton and Jefferson S. Dugger, if they shall be found in your County, personally to be and appear before the Circuit Court of Cook County, on the first day of the next term thereof, to be holden at the Court House, in Chicago

in said County, on the ~~first~~ Monday of November
next, to answer to Edward M Darray, in a
plea of trespass on the case upon promises, to the
damages of the said plaintiff, as is said, in
the sum of two thousand dollars.

And have you then and there this writ
with an endorsement thereon in what manner
you shall have executed the same,

Witness William S Church, clerk of our
said Court and the seal thereof ~~seal~~, at
Chicago aforesaid, this twenty second day of
October AD 1858,

State of Illinois

County of Cook

The People of the State
of Illinois, to the Sheriff of Logan County Greeting,

We command you that you summon
Sorenz, O Hamilton and Jefferson S Dugger
if they shall be found in your County, personally
to be and appear before the Circuit Court of
Cook County, on the first day of the next term
thereof, to be holden at the Court House in
Chicago in said County, on the third Monday
of November next, to answer unto Edward
M Darray, in a plea of 'Trespass on the case
upon promises, to the damages of the said
plaintiff as is said in the sum of two thousand
dollars; And have you then and there this
writ with an endorsement thereon, in what
manner you shall have executed the same

7
Witness William S. Church, Clerk of our said
Court, and the Seal thereof, Seal, at Chicago
aforesaid, this Twenty Second day of October
A.D. 1858.
Wm S Church
clerk

And afterwards, to-wit, on the 22^d day of
October in the year last aforesaid, the writ issued
to the Sheriff of Cook County, was returned into
the Court aforesaid by said Sheriff, endorsed
as follows to-wit:

"Served by reading to the within named
defendant Jefferson S. Dugger, the other not
found in my County. ^{the 22^d Oct 1858} Fees, 1 service 5[¢] 1 mile
5[¢] 1 Return 10[¢] 65[¢] paid by self atty.
John S. Wilson, Sheriff, by S. Miles, Deputy.

And afterwards to-wit on the day and year
last aforesaid, a true copy of the foregoing de-
claration, was filed in the Office of the Clerk of the
Court aforesaid, with a copy of the foregoing Rule
endorsed thereon, and with the following further
endorsements, thereon to-wit,

Lorenzo D. Hamilton Chap. Clerk, 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 Co. Circuit Court, and that upon
the filing thereof, a rule was entered in the above
entitled cause, a copy of which rule is hereon endorsed
requiring you to plead to said declaration within
twenty days after a 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 October 22^d 1838

Yours &c Smith & Derray, Attys Peff

And afterwards, to wit on the 13th day of
November in the year last aforesaid, the writ
issued to the Sheriff of Logan County, was returned
into the Court aforesaid by the Sheriff aforesaid
endorsed as follows to wit.

Served by reading to the within
named Lorenzo D Hamilton, the 8th day of November
1838, Decs. 1 Service 5⁰, 12 mile, 60. Return 10. & 1.20
Of George Musick, Sheriff, by A. Garrison, Deputy.

And afterwards, to wit on the day
and year last aforesaid, a true copy of the fore-
going declaration, was filed in the Office of the Clerk
of the Court aforesaid, with a copy of the foregoing
rule endorsed thereon, and with the following
further endorsements thereon, to wit

To Lorenzo D Hamilton & Jefferson
D Dugger, Defts. 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 Circuit
Court, and that upon the filing thereof, a rule was
made in the above entitled cause, a copy of which
is now endorsed, requiring you to plead to said
declaration within twenty days after a service of
a copy thereof and notice of said rule, or that
judgment, by default will be entered against

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you for want of such pleas;

Dated October 22^d 1858

State of Illinois } ss. Yours re Smith & Derray attys for pff
Sagan County } Abel Sarison, deputy Sheriff of said
County, being duly sworn, on oath says, that on the
10th day of November AD 1858, he served a copy of
Declaration, Notice & Rule to plead, of which the within
is a true copy, on the within named Lorenzo D.
Hamilton, by delivering the same to him
Sarison to & subscribed, this 10th day of November, 1858. before me,

Chas Goodrich J. P. Sagan County Illinois.

And afterwards, to wit on the 18th day of November
in the year last aforesaid, said defendant
Lorenzo D. Hamilton, filed in the court aforesaid
his certain plea to said plaintiffs declaration
which is in the words and figures following, to wit;

State of Illinois } ss.
Cook County }

Nov Term 1858
Circuit Court

Edward M Derray

In Assumpsit

Jefferson S Dugger

Lorenzo D Hamilton

And the said Lorenzo D.
Hamilton, one of the defendants in the above entitled
cause, comes and says, that this Court, ought not
to have or take further cognizance of this action
aforesaid, because he says, that the said supposed
cause of action, and each and every one of them,
arose in the County of Logan, in the State of Illinois

and not within the County of Cook aforesaid, and more specifically made payable at Atlanta, in said Logan County, and not within the County of Cook aforesaid, and that he the said Hamilton, resides in said Logan County, and not within said Cook County; And that process was served in this cause on him, the said Hamilton in said County of Logan, and not in said County of Cook, and that said Jefferson Dugger is also a resident of said Logan County and not of said Cook County, and that process in this cause was served on said Dugger, in said Cook County and not in Logan County aforesaid, where he resides, and this, the said defendant Hamilton is ready to verify; wherefore he prays judgment, whether this Court can or will take further cognizance of the action aforesaid.

"S. D. Hamilton,
Sorensen, D. Hamilton, who is one of the Defts in the above entitled cause, and who signed the above written plea, being duly sworn, on oath says, that the facts therein stated, are true in substance and fact.

Subscribed and sworn to before me
Seventeenth day of November, A.D. 1858
E. J. Henry Ball, Notary Public for the City of Atlanta
And afterwards, to wit on the 24th day of November in the year last aforesaid, said Plaintiff by his said Attorney, filed in the Court aforesaid his

certain demurrer, to the plea of the said defendant Hamilton, which is in the words and figures following to-wit:

And now comes the plaintiff, and says, that
 matters in the plea of Deft Hamilton, herein filed
 is not sufficient in law, to bar this plaintiff from
 having and maintaining his action aforesaid, against
 said defendant, wherefore he prays judgment &c
 "Smith Warray, Atty for Plff.

And afterwards, to-wit, at the November
 term of said Court, to-wit on the 24th day of November
 in the year last aforesaid, the following, among
 other proceedings were had and entered of record
 therein, to-wit:

Edmund W Warray

Assumpsit

15841.
 Lorenzo Hamilton and

Jefferson S Dugger

This day comes the said plaintiff, and the said defendant Hamilton, by their
 respective Attorneys, And the Court having heard
 arguments of Counsel, on the Demurrer of the said
 plaintiff, to the said Defendant Hamiltons plea
 in abatement, and not being sufficiently advised
 on the premises, takes the same under advisement:

And afterwards, to-wit at
 the same term of said Court, to-wit on the 18th day
 of December in the year last aforesaid, the
 following, among other proceedings, were had
 and entered of record therein, to-wit,

This day comes as well the said plaintiff as the said Defendant. Hamilton, impleaded &c by their respective Attorneys, and the Court having heard arguments of Counsel, on the demurrer of the said plaintiff, to the said Defendants' plea herein pleaded, and being duly advised in the premises now sustains said demurrer. And thereupon on motion leave is given, the said Defendant to plead over;

And afterwards, to wit at the January special Term of said Court, to wit on the 6th day of January, AD 1859, the following, among other proceedings, were had and entered of record therein, to wit;

On motion it is ordered that the said Defendants' plead herein by Saturday morning next;

And afterwards, to wit at the same term of said Court, to wit on the 8th day of January in the year last aforesaid, the following, among other proceedings, were had and entered of record therein, to wit;

This day again comes the said plaintiff, by Smith and Dargatz his Attorneys, it appearing to the Court that due personal service of process of summons issued in this Cause has been had on the said defendant Jefferson D. Dugger, and that a copy of said plaintiffs declaration herein, together with a copy of a Rule

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to plead, entered in this cause, and notice thereto attached, has also been served on the said defendant Jefferson & Dugger, at least fifteen days prior to this day, and the said plaintiff having filed an affidavit herein, that the debt from the said Defendants to the said plaintiff, is bona fide, due, and that there is no just discount or set-off to the same, and the said Defendant Jefferson & Dugger, having failed to plead to said plaintiff's declaration, as required by said rule, and he being now three times solemnly called in open court comes not nor does any person for him, but herein he makes default, which on motion of said plaintiff's Attorney, is ordered to be taken and entered of record.

And the said Defendant Duran, O Hamilton, having failed to plead over to said plaintiff's declaration as required by a rule heretofore entered against him in this cause, and he being now three times solemnly called in open court, says nothing further, in bar or conclusion of the said action of the said plaintiff against him, Whereby the said Defendant Duran, O Hamilton remains therein wholly undefended against the said plaintiff.

Wherefore said plaintiff ought to have and recover of the said defendants, his damages herein sustained by occasion of the promises, and the court after hearing the allegations and

proofs submitted by said Plaintiff, and being
 now fully advised in the premises now assessed
 said Plaintiff's damages herein, to the sum of
 One Thousand and Twenty Nine Dollars and
 Seventy One Cents:

Therefore it is considered that said
 Plaintiff do have and recover of the said
 defendant his damages of, One Thousand and
 Twenty Nine Dollars and Seventy One Cents, in
 form as aforesaid assessed, together with his
 costs and charges by him about his suit in
 his behalf expended, and have Execution
 thereon.

State of Illinois, }
 COUNTY OF COOK. } s. s.

I, WILLIAM L. CHURCH, Clerk of the Circuit
 Court of Cook County, in the State aforesaid, do hereby
 certify the above and foregoing, to be a true, perfect and complete
 copy of the Writ, pleadings & papers & proceedings
~~that~~ ^{has and entered of record}
 in a certain cause Safety pending in said Court on the
Common law side thereof, wherein Edward M.
Newing was plaintiff vs and
George Hamilton Elal were defendants

IN WITNESS WHEREOF, I have hereunto set my hand, and affixed the seal of our
 said Court at Chicago, this Thirty First day of March A. D. 1859

Due for Record \$3.⁶⁵

Wm L. Church
 Clerk.

Supreme Court. 3rd Hand Division
April Term 1859.

Edward M Drury Deft in error

L. D. Hamilton and } Error from Circuit
J. L. Drayton } Court of Cook Co

And now comes the said Deft
L. D. Hamilton, and says that in the
proceedings of said cause and the record
thereof above filed, there is manifest
error in this to wit:

1. That the Court erred in sustaining
the demurrer to Deft Hamilton's plea
2. That the Court erred in rendering judgment
for Plff against Deft Hamilton
3. That the Court erred in not rendering
judgment for Deft Hamilton

By his Atty. Cameron & Fuller

And the said Plff Drury, (Deft in error) and
says that neither in the proceedings in said
cause, nor in the record thereof is there
any error.

Smith & Drury
Atty for Deft in error

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Edward M. Bailey

S. L. Hancock

Transcript of Record

Filed Apr. 26. 1889.
S. L. Hancock

W. D. L. by S. L. Hancock
Filed

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S. L. Hancock