

12534

No. _____

Supreme Court of Illinois

Kronis *E*

vs.

Kellog *G*

LaSalle County Court, December Term 1857
State of Illinois
LaSalle County
Plas. Proceedings and Judgements held and taken in and before the LaSalle County Court in the State of Illinois at the Court House in Ottawa in the County of LaSalle of December Term thereof ^{11th} ~~11th~~ ^{11th} of the ninth day of December A.D. 1857 and of the Independence of the United States of America, the Eighty Second.

Be it remembered at heretofore to us on the Eleventh day of November 1857 a summons was issued out of the Clerk Office of said Court words and figures following.

The People of the State of Illinois. To our Sheriff of our County of LaSalle greeting
We command you that you summon Henry G. W. Cronire if he shall be found in your County personally to be and appear in our LaSalle County Court before our Judge thereof on the first day of the next Term of said Court to be held at the Court House in Ottawa on the first Monday in December next at ten O'clock in the forenoon then and there to answer unto John Kellogg in a plea of assumpsit to his damages of Eight Hundred dollars. And have you then there this writ and the manner in which you shall have executed the same.

In Witness whereof, We have cause the Seal of our said Court to be hereto affixed and attested by Samuel W. Raymond, our Clerk thereof at Ottawa 11th day of November 1857

Seal

[2584-1]

Samuel W. Raymond Clerk
E. W. Herrick Deputy,

~~And on the~~
Which summons was returned & filed
with the Clerk of said Court on the second
day of December 1857 with the following
endorsement thereon to wit
Served by reading to the within named
Henry W. Cronise November 21st 1857
E. L. Waterman Shff

And on the said Eleventh day of
November 1857 a Decoloration was filed
the Clerk of said Court in the words
and figures following to wit.

State of Illinois } County Court thereof
LaSalle County } 3rd December Term A.D. 1857

John Kellogg plaintiff in this suit vs
Charles Blanchard his attorney complains
of Henry W. Cronise defendant in this
suit for a plea of Assumpsit. For that
whereas one Thomas M. Hobbs by the name
of T. M. Hobbs on to wit the eighteenth
day of October in the year of our Lord one
thousand eight hundred and fifty six
at the with the city of Peru in the County
of LaSalle and State of Illinois made this
certain bill in writing and directed the
same to the defendant by the name of H.
W. Cronise & Co, and thereby required
the defendant to pay to the plaintiff an
order by the name of J. Kellogg the sum
of Five Hundred Dollars, thirty days after
the date thereof. Value received which period

has now elapsed and then and there
delivered the said bill to the plaintiff
and the defendant, then and there accepted
the said bill by the name of H. G. W. Cornice
and promised the plaintiff to pay the same
according to the tenor and effect of the said
bill and the said acceptance thereof.
And whereas also, the defendant, on the
25th day of August, A. D. 1834 was indebted
to the plaintiff in the sum of Eight Hundred
Dollars for the price and value of goods
chattels wares and merchandise before
that time bargained sold and delivered
by the plaintiff to the defendant at his
request.

And in Eight Hundred Dollars
for money then and there lent by the
plaintiff to the defendant at his request.
And in Eight Hundred Dollars for
money then and there paid by the plaintiff
for the use of the defendant at his request.
And the defendant after words on the day
and year last aforesaid at the county
aforesaid in consideration of the premises
respectively promised the plaintiff to pay
him the several moneys herein above
mentioned on request, yet the defendant
hath disregarded his last mentioned promi-
ses and hath not paid any of the said
moneys or any part thereof. To the damage
of plaintiff Eight Hundred Dollars and
therefore he brings his suit.

By Charles Blanchard
Plffs Atty

(Copy of Bill of Exchange sued on)
Oct 18th 1836

\$500.. Thirty days after date, pay to the
order of J. Kellogg, Five Hundred Dollars
Value Received ~~Warrant~~ charge the same to
account of
J. H. W. Cromie & T. M. Hobbs
Peru

To goods chattels ware & More \$300..
To Money loaned \$800..
To Money paid \$800..

81st day of December 1857
Afterword to wit, Pleas was filed with
the Clerk of said Court in word and
figures following.

State of Illinois

LaSalle County & County Court thereof.

December Term A.D. 1857

Henry B. W. Cromie }

at,

John Kellogg }

Assumpsit

And now comes the said
defendant by W. H. S. Wallace his attorney
& defends the wrong and injury where to
and says that he did not assume and promise
in manner and form as the said plaintiff
hath thereof in his said declaration alleged
and of this he puts himself upon the country
&c And Plaintiff doth W. H. S. Wallace
the like. C. Blanchard atty for Plff. for defendant.
And for a further plea to the first Court
of said declaration said defendant saith
actio non &c because he says that he accep-
ted said bill of exchange in said court
mentioned for the accomodation of the said

Thomas M. Hobbs and for no other consid-
 eration whatever and without paying funds
 of the said Hobbs then in his hands, and
 that the said plaintiff had notice thereof
 at the time he received said bill and at the
^{time} of said acceptance thereof and that the said
 plaintiff afterwards to wit on the 18th day of
 November A.D. 1836 when said bill fell due
 by its terms at Ben to wit at the County of
 said accepted and receive from said Hobbs
 to wit ^{in sum} twenty five dollars in part payment
 of said bill and then and there without
 the knowledge or ^{consent of said defendant} in consideration of the sum
 of one dollar then & there paid by said
 Hobbs to plaintiff ~~consent of said defendant~~
 agreed with said Hobbs to extend the time
 of payment of said bill for the space of
 thirty days from and after the said 18th
 day of November A.D. 1836 By means whereof
 said defendant was wholly discharged and
 released from the payment of the sum of money
 in said Bill mentioned and thus the said
 defendant is ready to verify wherefore he
 prays judgement &c. W. H. L. Wallace
 for Defendant

Afterwards on the same day a demurrer was
 filed with the Clerk the following writ:

State of Illinois
 LaSalle County County Court Thereof
 December Term 1837

John Kellogg }
 v }
 Henry G. W. Cronise }

And the said Plaintiff
 as to the said plea of the said defendant
 by him secondly above pleaded, says that
 the same and the matter therein contained

in manner and form as the same are
above pleded and set forth. are not
sufficient in law to bar or preclude
him the said plaintiff from having or
maintaining his aforesaid action thereof
against the said defendant and said
plaintiff is not bound by law to answer
the same. and this he is ready to verify whe-
reof the said Plaintiff says judgment &c

Charles Blanchard
Plaintiff Attorney

Afterwards to wit on the 9th day of December
1857 these same being one of the days of
the December Term of said Court for 1857
the proceedings were had and entered of
record to wit.

John Kellogg

Henry G. W. Cronies

} Assumpsit

This day comes the
plaintiff of ~~Charles~~ Blanchard his attor-
ney and files a demand to the defendant
second plea filed herein whereupon comes
the defendant by W. H. L. Wallace his attorney
and after hearing the arguments of counsel
the said ~~demands~~ is sustained to defendant's
second plea herein to which ~~the court~~ sitting
of the Court in sustaining said demand
the defendant then and there excepted.

Afterwards to wit on the 11th day of December
1857 the same being one of the days of the
December Term of said Court for 1857 the
proceedings were had and entered of rec-
ord to wit.

John Kellogg & Assumpsit
vs
Wm. C. W. Cronin
This day came
the plaintiff by Charles
Blanchard his attorneys and the defendants
by W. H. S. Wallace his attorney, and by agreement
of parties ^{was} varied and cause submitted
to the Court for trial and after hearing
the evidence and arguments of counsel and
due deliberation the Court finds the issues herein for the plaintiff
and assess his damage at Five hundred
and twenty nine dollars and ninety
cents.

Whereupon the defendant's ^{enters his} motion for a
new trial, which motion after hearing the
arguments of counsel is annulled by the Court
by which ruling of the Court the defendants
then and there excepted.

It is therefore considered by the Court that
said plaintiff have and recover of said
defendants said sum of Five hundred and
and twenty nine dollars and ninety cents
for his damage and also his costs and
charges by him herein expended and that
he have execution therefor.

Whereupon the defendant says and appeal
herein which is allowed ^{on his} filing
an appeal bond in the penal sum of
seven hundred dollars with Walter Cron-
in as surety said bond to be filed
within thirty days from last day of this
term of this Court.

Afterwards to wit on the 14th day of
December 1857 the same being one of the
days of the December term of said Court
for 1857 a bill of exceptions was filed
with the Clerk of said Court words
and figures following to wit

State of Illinois
In said County and County Court thereof
To December term A.D. 1857

John Kellogg
vs
Henry S. W. Cronise } Assumpsit

Be it remembered that
at the said term of said Court the
above entitled cause came on to be
tried before the Hon. John C. Champain Judge
of said Court (a jury therein being main-
tained by the parties) and to maintain the
issue on his part offered in evidence
the following instrument in writing in the
words and figures following

"\$500." Oct 18th 1856
"Thirty days after date pay to the order
"of J. Kellogg five hundred dollars value
"received and charge the same to account
of J. M. Hobbs
To H. S. W. Cronise & Co

Then
The defendant by his counsel objected
to the introduction of said writing and
~~the Court overruled the objection and admitted the said~~
~~which decision of the said Court in~~
~~overruling said objection the Court~~
in evidence the Court overruled the
objection and admitted the said writing
in evidence to which decision of Court

in overruling said objection and admitting
said writing in evidence the defendant
by his counsel there and then excepted. This
was all the evidence offered or given in
the cause. The Court found the issue for
the plaintiff. The defendant by his counsel
moved the Court for a new trial of the
cause the Court overruled the ^{motion} ~~motion~~ for
a new trial and rendered judgment
for the sum of \$529.90 ^{for the sum of the defendant's property} in which decisions
of the Court in overruling defendant's motion
for a new trial and ^{and} rendering the judgment
aforesaid the defendant by his counsel then
and there excepted and prays that these his
bill of exceptions may be signed sealed
and made a part of the record which
is done in open Court.

J. C. Champlin
Judge (Sd)

Afterwards on the 18th day of December 1857
an appeal bond was filed with the Clerk
of said Court with the words and figures
following to wit.

Know all men by these presents that we
Henry S. H. Cronise as principal and Walter
Cronise as surety both of Losalle County
Illinois are held and firmly bound unto
John Kellogg, in the penal sum of seven
hundred dollars, good and lawful money
of the United States to the payment of
which sum well and truly to be made we
do bind ourselves, our heirs, executors and
administrators jointly and severally firmly
by these presents. Witness our hands and seals
this 18th day of December A.D. 1857 -
The condition of the above obligation is
such that whereas the said John Kellogg

in favor of the plaintiff
against defendant

did at the December term. A D 1857 of the
county court of LaSalle county in the state
of Illinois, by the consideration and judgmen
t of said court, recover a judgment
in said court against the ~~above~~ ~~under~~
under Henry G. W. Cronise for the sum of
of five hundred and twenty nine dollars
and ninety cents besides costs of suit from
which judgment, the said Henry G. W. Cronise
then and there prayed an appeal to the
supreme Court of said state. Now therefore
if the said Henry G. W. Cronise shall well
and truly pay or cause to be paid the
said judgment, with costs interest and
damages in case the same shall be affir
med by the said Supreme Court and shall
duly prosecute his said appeal then this
obligation shall be null and void other
wise to be and remain of full force and
virtue.

H. G. W. Cronise *Seal*
W. A. Cronise *Seal*

State of Illinois
LaSalle County ss.

I, Philo Lindley clerk of said
Court the County Court of said county hereby
certify, the above and foregoing to be a full
true and complete copy of the order entered
of record and the pleadings in case
wherein John Kellogg is plaintiff and
Henry G. W. Cronise is defendant - as
appears from the records and files in
my office

Witness my hand and the seal
of said Court this 20 day of
April A.D. 1858

Philo Lindley cm
Edmund Elph

Ill. Jan. 3. 25. facie & W. H. L. Wallace

State of Illinois - Supreme court

Henry L. W. Crozier appellant
vs
John Kellogg appellee

} Appeal from
} LaSalle county court

And now comes the
said appellant by W. H. Wallace
his attorney & shows to the court
that in the record and proceedings
aforesaid there is manifest
error in this

1st The said county court erred
in sustaining plaintiffs (below)
demurrer to the second plea -

2nd The said court erred in admitting
said bill of exchange in evidence

3rd The court erred in overruling
the motion for a new trial

4th The court erred in rendering
the judgment aforesaid in
manner and form aforesaid
Wherefore for these & other errors
apparent on the face of said
record appellant prays that
said judgment may be reversed

W. H. Wallace
counsel for appellant.

And now comes the said appelle and
says there is no such error as aforesaid
and this he prays may be inquired of by the
court

Charles Blanchard
Counsel for appelle

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Henry G. W. Corwin
vs.
John Kellogg.

Record

appeal from
Saskatchewan county court

Filed April 22. 1858
L. Leland
clerk

Supreme Court--State of Illinois.
THIRD GRAND DIVISION.

HENRY G. W. CRONISE }
 ^{vs} } *Appeal from LaSalle County Court.*
JOHN KELLOGG. }

ABSTRACT OF RECORD.

This was an action of assumpsit, brought in the County Court aforesaid, at the December term, A. D. 1857, by appellee against appellant, on his acceptance of an inland bill of exchange, which purported to have been drawn at thirty days for \$500, by one Thomas M. Hobbs in favor of appellee, and directed to, and accepted by appellant.

The declaration contained a special count on the acceptance, and the common counts.

To which appellant (defendant below) plead,

1st. The general issue.

2nd. That appellant accepted said bill merely for the accommodation of said Hobbs, and for no other consideration whatever; that at the time of said acceptance, appellant had no effects of said Hobbs in his hands; of all which appellee had notice at the time of said acceptance, and at the time he received said bill. That afterwards, at, &c, on, &c., when said bill fell due, appellee received from said Hobbs, \$25, in part payment of said bill, and then and there, without the knowledge or consent of appellant, in consideration of one dollar paid by said Hobbs to appellee, extended the time of payment of said bill thirty days; by means whereof, appellant was wholly discharged from his liability as such acceptor.

Appellee demurred to said second plea; the Court below sustained his demurrer, and appellant then and there excepted to the decision of the Court in that behalf.

Appellee then read in evidence the said bill and acceptance thereof; to the reading of which in evidence, appellant then and there objected, the Court below overruled his objection, and appellant excepted.

This was all the evidence in the case.

The trial was by the Court; issues found for appellee, and damages assessed at \$529.90. Motion for new trial overruled: appellant excepted: judgment rendered for \$529 90 and costs; whereupon appellant prays for an appeal, which the Court allows upon filing an appeal bond, which is done and approved.

ERRORS ASSIGNED.

The Court erred,

1st. In sustaining plaintiff's (below) demurrer.

2nd. In admitting said bill of exchange in evidence.

3rd. In overruling motion for new trial.

4th. In rendering the judgment aforesaid in manner and form aforesaid.

W. H. L. WALLACE,
Counsel for Appellant.

Conceded for Appellant.
W. H. L. W. L. L. L.

and in ordering the judgment reversed in manner and form aforesaid.

and in granting motion for new trial.

and in sustaining plaintiff's (below) demurrer.

The Court says:

RECORDS VESTED.

and Appellant.

an appeal, which the Court affords upon filing an appeal bond, which is given in full, and the Court has no objection to the judgment being reversed for \$2500.00 and costs; whereupon appellant pays for

The trial was by the Court; issues found for appellee and damages as

This was all the evidence in the case.

Court below overruled his objection, and appellant excepted.

the finding of facts, in evidence, appellant then and there objected, the

Appellee then read in evidence the said bill and acceptance thereof; to

Court in that behalf.

Conceded and appellant excepted and there excepted to the decision of the

appellee demurred to said second plea; the Court below sustained his

appellee was wholly discharged from his liability as such acceptor.

and the Court's judgment of said bill thirty days; by means whereof,

but, in consideration of one dollar paid by said Hobbie to appellee, ex-

and bill, and thereby gave without the knowledge or consent of appel-

bill full due appellee received from said Hobbie \$1.00 in full payment of

and he received said bill. The acceptance of said bill, and the

and which appellee had notice at the time of said acceptance; and at the

said acceptance, appellee had no effects of said Hobbie in his hands; of

said Hobbie, and for no other consideration whatever; that at the time of

said. That appellee accepted said bill merely for the accommodation of

and The General note.

to which appellee (defendant below) binds,

conceded.

The defendant obtained a special count on the acceptance, and the

bill, and directed to, and accepted by appellee.

drawn at thirty days for \$2500.00 by one Thomas M. Hobbie in favor of ap-

appellee of an alleged bill of exchange, which purported to have been

at the December term, A. D. 1881, by appellee against appellant, on his

and was an action of assumpsit, brought in the County Court aforesaid.

ABSTRACT OF RECORD.

JOHN KEEBOCK.

as Agent from Nashville County Court.

HENRY G. W. CROVISE.

THIRD GRAND DIVISION.

Supreme Court--State of Illinois.

Crovise
vs
Kellogg

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Henry S. W. Cronin

vs
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Opinion

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Prepared