

No. 12773

Supreme Court of Illinois

Hawthorne

vs.

Cooper & Reynolds

71641  7

~~278~~ = ~~218~~ 13

unpublished

^{vs}
Jonathan M. Cooper

278 = 133

278

Hawthorne

^{vs}
Cooper
1859

Paper

12773

Abraham Hawthorn
Plaintiff in error

Jonathan R Cooper
Hugh W Reynolds
et al
Defendants in error

In the Supreme
Court
April Term
1858

And the said Plaintiff
in error comes and says that in the
afore proceedings and in the execution
of Judgment in this cause manifest
error hath intervened to the injury of
the Plaintiff and for assignment of
errors shows the following

1. The Court ^{below} erred in refusing to con-
tinue the cause,
2. The Court ^{below} erred in permitting the
Defendants to amend ~~their~~
3. The Court ^{below} erred in refusing to continue
the cause after the amendment
was made
4. The Court ^{below} erred in allowing
and receiving the note in evidence
5. The Court ^{below} erred in rendering
Judgment for the Defendants
6. The ~~correct~~ Judgment should have
been for the P^{ty}.

The plaintiff prays that
said Judgment may be reversed set
aside wholly for new trial
{ Given his attorney

7 The Court ^{below} erred in refusing to continue the
cause for trial while the Pleas were unanswered

And the Defendants herein come
and say there is no such error in the
judgment and proceedings herein as is
alleged by the said appellant - Wherefore
etc =

Cooper & Reynolds
for Defendants
in Error =

Know all men by these presents that we
Alexander Hawthorn, Edward Shelley and
John Dredge are held and stand firmly
bound unto Johnathan K. Cooper, and Hugh W.
Reynolds for the use of Throop Larned & Chase in
the penal sum of nine hundred dollars to the pay-
ment of, which well and truly to be made we bind
ourselves, our heirs, administrators, executors and
assigns jointly & severally firmly by these pres-
ents sealed with our seals and dated at Ponia
this thirty first day of December A.D. 1857.

The condition of the above obligation
is such that whereas the above named John-
athan K. Cooper and Hugh W. Reynolds for
the use of Throop Larned & Chase at the Decem-
ber Term A.D. 1857 of the County Court of Ponia
in the State of Illinois recovered judgment in
said Court against the above bounden Alexander
Hawthorn for the sum of four hundred and
eighty four dollars seven cents and costs from
which judgment the said Alexander Hawthorn
sprayed an appeal to the Supreme Court of the
State of Illinois which was allowed.

Now if the said Alexander Hawthorn
shall duly prosecute his appeal, and shall
pay the judgment costs interest and damages in
case the judgment shall be affirmed then this
obligation to be void otherwise to remain in full
force and virtue.

A. Hawthorn Deed
Edward Shelley Deed
John Dredge Deed
Approved by me
Dec. 31st 1857,
Chas Kettelle Clk.
per Geo H. Kettelle Dpty.

State of Illinois
Pena County Ill.

Charles Kettle Clerk of the County Court in and
for said County do hereby certify that the foregoing is a true copy of Appeal Bond
filed and approved in suit of Cooper & Reynolds for use of H. S. Hawthorne
& Hawthorne.

Witness my hand & official Seal at Pena
this 3^d day of February A.D. 1858.

Charles Kettle Clerk
per Geo. H. Kettle Clerk

Cooper & al
vs
Hawthorne
Appeal Bond

Clerk before the County Court of Peoria County
State of Illinois on the 16th day of December A.D. 1857.

Be it Remembered that heretofore to wit
on the 26th day of November A.D. 1857 Jonathan K. Cooper & Hugh
W. Reynolds for the use of Throop, Larned & Chase filed in the Clerk's
office of the Court aforesaid the following Precept To Wit;

" Jonathan K. Cooper	County Court
" Hugh W. Reynolds	Peoria County, Ills.
" use Throop, Larned & Chase	To December Term 1857
" vs	In assumpsit
" Alexander Hawthorne	Damages—
"	\$400=

The Clerk of said Court will please
issue summons in in the above entitled
case returnable as the law directs —

Cooper & Reynolds
Peoria, Nov. 26/57= pro-se-

And afterwards on the same day there issued from
the Clerk's office aforesaid Summons against the said
defendant, which in words and figures is as follows,
To wit;

" State of Illinois, } ss.
" Peoria County, }

" The People of the State of Illinois to the Sheriff of said
" County— Greeting: He command you that you
" summon Alexander Hawthorne if he shall be found
" in your County, personally to be and appear before
" the County Court of said Peoria County, on the first
" day of the next Term thereof, to be holden at the
" Court House in Peoria, in said Peoria County, on the
" first Monday of December 1857, to answer unto Jonathan
" K. Cooper and Hugh W. Reynolds for use of

2
" Throp. Larnard and Chase, ^{in a plea of} to the damage of the said
" plaintiff as he say in the sum of six Hundred Dollars,
" And have, ^{you} then and there this Writ with an endorsement
" thereon, in what manner you shall have executed the
" same. Witness Charles Kettelle, Clerk of our said
" Court, and the Seal thereof at Peoria, aforesaid, this 26th
" day of November A.D. 1857 Charles Kettelle Clerk
" Seal per Geo. H. Kettelle Sply. etc.

Endorsed

" County Court Summons,
" Peoria County Court.
" J. Cooper and et al

" Alex. Hawthorne
" State of Illinois }
" County of Peoria }

" I have duly served the within
" by reading the same to the
" within named Alex^r

" Hawthorne Nov^r 27th 1857
" as and therein commanded,

" J. H. Smith Sheriff
" E. Smith Jr. Sply.

" Fees Service 50
" Mileage 10
" Return 10

" Filed in County Court this 7th day of December 1857.

" Cooper and Reynolds Attorneys

And afterwards, to wit, on the 27th day of November
A.D. 1857, there was filed in the Clerk's office of the
said Court, a declaration, in words and figures,
following, to wit

" State of Illinois } In the County Court of Peoria
" Peoria County } County Illinois

" To December Term A.D. 1857

" Jonathan K. Cooper & Hugh W. Reynolds for the use
" of Throp. Larnard & Chase complain of Alexander
" Hawthorne of a plea of trespass on the case on promises.
" For that whereas the said defendant, heretofore to wit, on
" the nineteenth day of September A.D. 1857, at Peoria,
" that is to say, at the County aforesaid made his certain
" promissory note in writing bearing date a certain
" day and year therein mentioned, to wit, the day and

" year aforesaid, and then and there promised to pay
" thirty days after the date thereof, at the Bank of A.
" B. Curtiss & Co. Peoria, to one R. W. Jordan or order the
" sum of four hundred and seventy eight dollars for
" value received, and then and there delivered the said
" promissory note to the said R. W. Jordan; and the said
" R. W. Jordan to whom or to whose order the payment of
" the said sum of money therein specified, to wit, on the
" day and year aforesaid, at the County aforesaid en-
" dorsed the said promissory note, by which said indorse-
" ment, he the said R. W. Jordan then and there ordered and
" appointed the said sum of money in the said promissory
" note to be paid to the said plaintiffs and then and there
" delivered the said promissory note so indorsed as aforesaid
" to the said plaintiffs, and the said plaintiffs
" aver that afterwards, & when the said note became due
" and payable according to the tenor and effect thereof
" to wit on the said twenty second day of October in the
" year aforesaid, at the said Bank of A. B. Curtiss & Co.
" to wit, at the County aforesaid the said promissory note
" was duly presented & shown for payment thereof, and pay-
" ment of the said sum of money therein specified was
" then and there duly required, according to the tenor
" and effect of the said promissory note, but that nei-
" ther the said A. B. Curtiss & Co. nor the said defendant,
" nor any other person or persons on behalf of the said
" defendant, did or would, at the said time when the
" said promissory note was so presented and shown
" for payment thereof as aforesaid, or at any other
" time before or afterwards pay the said sum of money
" therein specified, or any part thereof, but wholly neg-
" lected and refused so to do, of all which said several
" promises the said defendant afterwards to wit, on the

" day and year last aforesaid, at the county aforesaid,
" had notice, by means whereof, and by force of the
" statute in such case made and provided, the said
" defendant then and there became liable to pay to the
" said plaintiffs the said sum of money in the said prom-
" issory note specified, when he the said defendant should
" be thereunto afterwards requested; & being so liable, he
" the said defendant, in consideration thereof afterwards, to wit,
" on the day and year last aforesaid, at the county aforesaid,
" undertook and then and there faithfully prom-
" ised the said plaintiffs to pay them in said sum of
" money in the said promissory note specified when he,
" the said defendant should be thereunto afterwards re-
" quested.

" Q. And whereas also the said defendant afterwards,
" to wit, on the day and year last aforesaid, at Peoria,
" that is to say at the County aforesaid, was indebted
" to the said plaintiffs in the further sum of six
" hundred dollars of like lawful money, for the work and
" labour, care and diligence of the said plaintiffs by
" the said plaintiffs before that time done, performed
" and bestowed in and about the business of the said
" defendant, and for the said defendant and at his
" special instance and request, and also in the sum of
" six hundred dollars of like lawful money for divers
" goods, wares and merchandise, by the said plaintiffs,
" before that time sold and delivered to the said defen-
" dant and at his special instance and request, and
" also in the further sum of six hundred dollars of
" like lawful money, for money by the said plaintiffs
" before that time lent and advanced to and paid,
" laid out and expended for the said defendant and
" at his like special instance and request, and

also in the further sum of six hundred dollars of
like lawful money, for other money by the said de-
fendant, before that time had and received to and
for the use of the said plaintiffs, and being so
indebted, he the said defendant in consideration
thereof afterwards, to wit, on the day and year aforesaid
at the county aforesaid undertook & then and there
faithfully promised the said plaintiffs, to pay them the
said several sums of money in this count mention-
ed when he the said defendant should be thereunto
afterwards requested,

And whereas also the said defendant afterwards to wit,
on the day and year last aforesaid, at the county aforesaid
accounted with the said plaintiff of and concern-
ing divers other sums of money from the said defend-
ant to the said plaintiffs, before that time due and
owing and then in arrear and unpaid and upon
such accounting the said defendant was then and there
found to be in arrear and indebted to the said plain-
tiffs in the further sum of six hundred dollars of like
lawful money, and being so found in arrear and in-
debted he the said defendant undertook, and then
and there faithfully promised the said plaintiffs to
pay him, the said several sums of money in this
count mentioned, when he, the said defendant, should
be thereunto afterwards requested, Nevertheless the said
defendant not regarding his said several promises
and undertakings hath not as yet paid the said sev-
eral sums of money, or any or either of them, or any
part thereof, to the said plaintiffs (although often re-
quested so to do) but the said defendant to pay
them the same hath hitherto wholly neglected and re-
fused, and still doth neglect & refuse, To the damage

" of the said plaintiff of six hundred dollars and
 " therefore they bring their suit

Cooper & Reynolds for Plffs.

Note sued on

" 478,

Peoria Sept. 19/57

" Thirty days after date I promise to pay to R.
 " W. Jordan or order Four hundred & seventy eight
 " Dollars for value received

" at the Bank of R. A. Hawthorne

" A. B. Curtiss & Co 3

" Peoria 3

" Dec 9th 1857 The Court allows the above to be amended
 " as follows: The note of which the above is a
 " copy contains the name of "R. W. Jordan" upon
 " the back of it as endorser

Endorsed

" Cooper & Reynolds
 " use of Throop, Larned
 " & Chase vs

A. Hawthorne

Declaration
 in assumpsit

Filed Nov. 27th 1857

Chas. H. Helle

per Geo. H. Helle

Appl.

" And afterwards, to wit, on the 8th day of December
 " A.D. 1857, there was filed in the clerk's office of the said
 " Court, a motion, in words and figures following to wit:

" State of Illinois } In Peoria County

" Peoria County } Court

" To Dec Term 1857

" Jonathan R. Cooper }

" Hugh W. Reynolds }

" vs

" Alexander Hawthorne }

" The defendant enters a
" motion to continue this cause at plaintiff's costs
" for the following reasons

" 1. There is no copy of account filed with declaration

" 2. There is no copy of any endorsement of the note
" sued on, filed with said declaration.

" 3 Other reasons

Grove & McCoy
for deft "

Endorsed

Charles Kettle etc.
per Geo. H. Kettle
Dputy

Grove & McCoy
for deft

Cooper et al

vs
Hawthorne

Motion

Filed Dec 8. 1857

And afterwards, to wit, on the 10th day of December
A.D. 1857, there was filed in the Clerk's office of the
said Court, Pleas., in words and figures following to

" State of Illinois } In the County Court of
" Peoria County vs } Peoria County
" Dec. Term A.D. 1857

" Alexander Hawthorne }
" At }
" Johnathan K. Cooper }
" Hugh N. Reynolds }

" And the defendant comes
" & defends and for plea says he did not undertake
" & promise as the said plaintiff hath thereof com-
" plained against him & of this he puts himself upon
" the County by

Grove & McCoy

8 " And for further plea the defendant says
 " actio non because he says that ^{the} from the commen-
 " cement of this suit and after the making of the
 " promises in Plffs declaration mentioned the
 " debt fully settled with Plffs & Paid them in
 " full of & for all the promises in said declaration
 " mentioned & this he is ready to verify wherefore
 " he prays judget by

Grove & Muleay

Endorsed

Cooper vs Hawthorne
 Pleas.
 Filed Dec. 10. 1857
 Charles H. Wells Clerk.
 per Geo. H. Nettelle
 Sptg.

And afterwards, to wit, on the 10th day of December
 A.D. 1857, there was filed in the Clerk's office of the said Court
 a Note and Protest, in words and figures following, to wit.

" 478 00

Peoria Sept. 19/57

Thirty days after date I promise to pay to
 R. W. Jordan or order Four Hundred & seventy
 Eight dollars for value received -

At the Bank of } A. Hawthorne
 A. B. Curtiss & Co }
 Peoria }

Endorsed

Oct 17/57
 R. W. Jordan
 A. B. Curtiss & Co
 Throop, Larned & Chase

" State of Illinois, } ss
" Peoria County. }

" Be it known, that on this twenty second day of
" October in the year of our Lord one thousand eight
" hundred and fifty seven I. Thaddius S. Ely, a
" Notary Public, for the City of Peoria, duly commissioned
" and sworn, and residing in the City of Peoria, in
" said County and state, at the request of A. B. Curtiss
" He went with the original Note which is hereto at-
" tached to the office of A. B. Curtiss & Co and demanded
" payment thereof which was refused. Whereupon, I,
" the said Notary, at the request aforesaid, have protested
" and do hereby solemnly protest against all persons,
" and every party concerned therein, whether as Maker,
" Drawer, Drawee, Acceptor, Payer, Endorser, Guarantee,
" surety, or otherwise howsoever, against whom it is proper
" to protest, for all Exchange, Re-Exchange, Damages, In-
" terest and Costs, accrued and to accrue by reason of the
" non-payment thereof. And I, the said Notary, do
" hereby certify that on the same day and year above
" written, due notices of the foregoing Protest were put in
" the Post Office at Peoria, as follows:

" Notice for A. Hawthorne Peoria
" " for R. W. Jordan "
" " for Throop, Larned & Chase Chicago
" " for

" Each of the above named places being the reputed
" place of residence of the persons to whom this notice
" was directed,

" In Testimony whereof, I, the said Notary,
" have hereunto set my hand and affixed my Notarial seal,
" the day and year above written,

" (Seal)

" Thaddius S. Ely Notary Public

10 Fees. - Noting 25 cents; Protest and Record, 50 cents;
" Notices, 15; Seal, 25 cents; Certificate 25 cents. \$ 2.00

Endorsed

A. Hawthorne

\$478

Oct. 19/52

Thos. James & Son

Filed Dec. 10. 1857

Charles Kettelle clk

per Geo. H. Kettelle

Applg

And also, afterwards, on the 10th day of December A.D., 1857, there was filed in the Clerk's office of the said Court, a "Bill of Exceptions" in words and figures as follows, to wit;

"Bill of Exceptions

" Johnathan K. Cooper } In Pionia County Court
" Hugh W. Reynolds } Dec. Term 1857
" vs } December 10th 1857,

" Alexander Hawthorne

Be it remembered that

" on this day this cause came on to be heard upon the
" motion of the defendants to continue this cause at
" Plaintiffs costs for reasons set forth in his motion
" on file

" State of Illinois } In Pionia County
" Pionia County } Court
" To Dec Term 1857

" Johnathan K. Cooper
" Hugh W. Reynolds
" vs
" Alexander Hawthorne

" The defendant enters a
" motion to continue this cause at plaintiffs costs
" for the following reasons

" 1. There is no copy of account filed with declaration

2. There is no copy of any endorsement of the note
sued on, filed with said declaration

3 Other reasons

Grove McCloy
for deft "

The Court thereupon gave the Plaintiffs leave to
amend, to which the defendant objected & excepted
at the time. The Plaintiff then filed the following
amendment, ^{Dec 9th 1857} " The Court allows the above to be
amended as follows:

The note of which the above is a copy contains the
name of "R. W. Jordan" upon the back of it as
endorser, to which the defendant objected and ex-
cepted. The defendant then renewed the motion
to continue to continue this cause for the same rea-
sons set forth in the motion on file. But the Court
overruled said motion & refused to continue said cause.
To which decision of the Court overruling said motion
to continue said cause the defendant then and there
at the time objected and excepted. The Court
then called the cause for trial & the Plffs offered
the following note in evidence,

"478 00 Peoria Sept. 19/57

Thirty days after date I promise to pay
R. W. Jordan or order. Four Hundred & seventy
eight Dollars for value received -
At the Bank of ³ A. Hawthorne
A. B. Curtiss & Co.
Peoria) "

~~Endorsed on the back~~
"R. W. Jordan, Pay to the order of A. B. Curtiss & Co.
Peoria

" To which the defendant objected but the
 " Court overruled said objection and permitted
 " the note to be given in evidence. To which, de-
 " cision of the Court overruling said objection & per-
 " mitting said note to be given in evidence the
 " defendant then and there at the time object-
 " ed & excepted This was all the evidence the
 " evidence in the cause

" The deft prays the Court to sign his bill of
 " exceptions (which is done)

Wellington Loucks Scatt
 County Judge

Bill of Exceptions

Cooper et al

vs

Hawthorne.

Endorsed

Filed Dec. 10 1885

Charles H. Hittelle Clerk

per Geo. H. Hittelle

Proceedings of the County Court
Peoria County State of Illinois, begun and
held at the Court House in the City of Peoria on
Monday December 7th A.D. 1857, for judicial and
other business. Present Hon. Wellington Lusk
Judge, and Charles Kettelle Clerk and Francis
W. Smith Sheriff.

Thursday, December 10th 1857

Jonathan K. Cooper
Hugh W. Reynolds
for use of Throop, Larned & Chase
vs
Alexander Hawthorne

This day came the said
Plaintiffs in persons and the said defendant
by Grove & McCoy his atty and this cause came
on to be heard on the motion of the said defend-
ant to continue this cause at the cost of the
said Plaintiff - which motion was overruled by
the Court, Leave was given the said Plaintiff to
amend his declaration filed in this cause. On motion
of the said plaintiff it is ordered by the Court that
the defendant in this cause plead to this action by
Two o'clock P.M. this day. Thereupon afterwards
came the said defendant and renewed his motion
for the continuance of this cause at Plaintiffs costs,
for the ~~the~~ reasons 1st There is no copy of account
filed with declaration, 2^d There is no copy of any
endorsement of the note sued on file with said
declaration and for other reasons. The Court being
fully advised in the premises doth overule the

said motion, The issues being joined, both parties waive a trial by jury and agrees that all matters both of law and fact arising in this case should be tried by the Court, and the Court being fully advised in the premises and having heard the evidence in this case doth find for the Plaintiffs and do assess his damages by reason of the premises at the sum of Four Hundred and Eighty Four dollars and seven cents. Therefore it is considered by the Court that the said Jonathan K. Cooper and Hugh W. Reynolds for use of Throop, Larned and Chase do have and recover of and from the said Alexander Hawthorne the sum of Four Hundred and Eighty Four dollars and seven cents their damages in form aforesaid assessed and also their costs and charges by them about this suit in their behalf expended and that they have Execution therefor. Thereupon the said Defendant by his Attorney comes and asks an appeal of this cause to the Supreme Court of this State, which was ordered to be allowed on his entering into Bonds in the penal sum of Nine Hundred dollars, conditional according to law within Thirty days, security to be approved by the Clerk,

State of Illinois
 Seneca County SS  I Charles Kittle Clerk of the County Court in & for said County do hereby certify that the foregoing is a true transcript from the Records of the proceedings of said Court and also a true copy of the papers filed in the said cause as the same appear in my office, in suit Jonathan K. Cooper & Hugh W. Reynolds for use of Throop, Larned & Chase vs. Alexander Hawthorne, Witness my hand & official Seal at Seneca this 20th day of January A.D. 1858.

Charles Kittle Clerk

per Geo. H. Kittle Sply

Write for copy of rec of exceptions

145
Hankins
Cooker at 47

File 3 April 30. 1888
L. Leland
C. K.

I Charles Kittell as Clerk aforesaid do certify that the Erasure of
endorsement &c made at the bottom of page 11 and also the Erasure at the
top of page 14. The words being joined were made by me the same having
been entered by mistake.

Charles Kittell Clerk
per Geo H Kittell Deputy Clerk

\$5.00

" 1178. 00 "

Peoria Sept. 10. 57.

" Thirty days after date I promise to pay
" to R. W. Jordan on order, Four Hundred &
" Seventy Eight Dollars for Value Received
" At the Bank of
" W B Curtis & Co.
Peoria.

A. Hawthorne

Endorsed

" R W Jordan
Pay W B Curtis & Co.
Throop Seamed J Chase.

State of Illinois
Peoria County

SS

Charles Kettelle, Clerk of the

County Court of said County. Do. Hereby certify

that the Above is a True Copy of Note^{and}

^{Endorsment thereon} Filed in the office of said Court on the 10th
day of December 1857, in a Suit entitled

^{Mathew K. Cooper and Reynolds}

for the use of Throop, Seamed & Chase vs. A. Hawthorne. as appears from the files in said Court in said Cause.

In Witness Whereof. I have hereunto
Set my Hand and Seal of Court this 20th
day, May 1859 Charles Kettelle
CK

Alexander Hawthorne } In the Supreme
vs } Court.
Jonathan H. Cooper }
et. al. use &c. }

Plaintiffs Points

1 The cause should have been continued because no copy of the endorsement of the note had been filed, and no account.

See Purples Statutes Page, 821 = 22,

2 The only evidence offered was the note. The endorsement was not offered in evidence. The plaintiffs below showed no right to recover.

3 The only count in the declaration setting out the note is the first count. That count alleges the note was payable at the Bank. It also alleges the presentation of the note at the Bank. No proof was offered of such presentation. The plaintiff could not recover upon that count without such proof.

4 No evidence was offered to prove the execution of the note. It was therefore not evidence under the common counts.

5 The plea of payment was not answered.

A motion for a new trial was overruled. It is submitted, that each of the points are well taken. The points taken are questions of practice and have been well considered and settled.

Motion for pay
in Error

278.

Hawthorne

27

Cropper

Petty's argt.

Filed April 22. 1839

L. de la Cour
Clerk

Alexander Hawthorne, app^t In the Supreme Court =
vs. } On appeal from County
Jonathan K. Cooper & al. above } Court of Peoria County =

Brief & argument for the appellees =

The Errors assigned on this Record are -
substantially as follows -

- 1st In permitting the plaintiffs below to amend =
- 2nd In refusing to continue the cause on Sept Motion =
- 3rd In trying the cause while certain pleas were unanswered =
- 4th In receiving the note sued on in Evidence =
- 5th In rendering judgment for the plffs below =

The cause was tried at the December Term 1857, of said Court. And while, as the Record is made by, some irregularities are shown, it is submitted, that they are either waived by the defendant, or not such as to call for a reversal of the judgment, especially in a case where neither injury nor injustice has been done.

The first error complained of, is understood to be this. ~~A copy of the note sued on was filed with the declaration.~~ The suit is brought on a note given by the defendant below to R. W. Gorden, and by him endorsed in blank. and as the note was filed with the declaration, more than ten days before the sitting of Court, and the name "R. W. Gorden", was written across the face of the copy = the defendant insisted that this did not show that Gorden had endorsed the

note, as alleged in the declaration - and moved
the court to continue the cause for the want of a
copy of the endorsement. The court overruled the mo-
tion & permitted the plaintiffs to amend, by writing be-
low the copy, as follows, "The note, of which the
"above is a copy contains the name of 'E. W. Jordan'
"upon the back, as enclosed". The defendant
thereupon renewed his motion to continue the
cause, which motion the court overruled =

This Court is here referred to page 6 of the
Record, to show the copy of said note, the manner in
which the name of the ^{name of} Endorser was written across
said copy, and the sort of amendment made =

On the action of the Court in permitting
this amendment there was certainly no error =
the plaintiffs had an undoubted right to amend,
by filing even an entire copy of the note & endorse-
ment, ^{even} if none had been before filed = But it
is unnecessary to dwell on this, or trouble the court
with authorities = Did the court err in overruling
the motion to continue the cause? We think
not. And for the reasons - that the amendment
was in fact unnecessary & immaterial, and the motion
itself, unfounded = If necessary to file a copy of the
endorsement, at all, this was well done = The name
of the payee was written across the face of
the copy, and could have been intended for no other
purpose than to show that he had endorsed

under the declaration,
it = And the opposite party must do have understood
it = I say. The object of the Statute was fully met. The
party was apprized of the nature of the claim upon which
he was called to answer. And no amendment in this
particular was needed. But whether necessary or not,
it could not take the opposite party by surprise or work
him any injury. And so, was no sufficient ground
for continuance of the Cause. It may be sub-
mitted moreover, whether the Name of a blank en-
dorse is any necessary part of the instrument sued
on, within the meaning of the Law. It is not within
the letter of the Statute, and it may well be doubted whether
it is covered by the spirit of the act. The object of the Law
in requiring a copy of the "written instrument" to be filed
"on which the action is brought", to be filed, we take it, to be
is, to apprise the defendant of the nature of the claim against
him, and to enable him to determine from an inspec-
tion of the copy, ~~itself~~, whether the instrument itself
is certainly his own deed, so that he may prepare
his defence. It is not perceived how these objects
would be materially advanced by copying the endorse-
ment. But, for reasons above given, we deem it
unnecessary further to discuss this question.

It is objected also that no copy of
account was filed with the declaration. The
answer to this is - that no account was, in fact,
sued on, and none offered in evidence. Only the
Note was given in evidence, and the recovery limited to

Objection, as it is plain that the objection was not prejudiced by the failure to file an except or Bill of Particulars, ~~where~~ in this case, it is submitted that it is not an error for which this court will now reverse the judgment below - it being apparent that no injustice was done -

that: Besides, no except or Bill of Particulars was called for; and had it been the court would not have required it to be filed, upon the plffs stipulating (as they would have done) that ~~that~~ they relied on the note alone, and desired to offer nothing else in Evidence = ~~It~~ ~~It~~

The error which we have set down under Number 3, for Commissioner is numbered 7, in the assignment of errors = And is this - That the court called the cause for trial while certain pleas appearing to be filed were unanswered. These pleas, are - 1st - The general issue - And 2nd a plea purporting to be a plea of payment = The neglect to take issue upon these pleas, or dispose of them in any way, it is admitted was an irregularity. ~~the~~ But it is submitted that the pleas are of that class that the irregularity is cured by the verdict & judgment of the court below & cannot be assigned for error here. Especially as the defendant made no objection at the time to the want of an issue on these pleas; = Had he done so, the issues might have been made up on the spot.

As to the first plea, this court has several times decided that the failure to add the similar, will not vitiate a judgment for plaintiff - on this subject the court is referred to 2 Gilman. 577 = 11 S.W. 237 = 1 Scam. 74 = ~~18~~ ¹⁸ Ill. 306 =

As to the second plea - In the case in 1 Scam. 74 = the court say - "If several pleas be pleaded, one of which is not answered, and particularly

"where the matter may be given in evidence under
"the general issue; and the parties go to trial without
"any objection on the part of the defendant. That such
"plea remains unanswered, it will be considered as
"waived, or the irregularity will be cured by the ver-
"dict of the jury." - It does not appear what the
plea was which was unanswered in this case; but
the doctrine laid down is broad enough to cover
the present case, and is consistent with the cur-
rent of authorities: - Here the plea referred to, tho'
defective - is, if anything, a plea of payment. And the
subject matter of the plea might have been pro-
ved under the general issue = See 1 Ch. 478 = 4 East
165 = 12 Ohio 120 = 7 Mass. 328 = 3 Burr. 1345 =

The defendant by these, signed
and affixed to the back of the note a receipt for the
same = There is no proof to show that they were given
to the bank or to the note, and it is to be presumed
it; nor any plea raised that it was = It is
it as if it had been entirely copied

It may be submitted moreover, in this connection,
that a rigid rule of practice ought not to be enforced
as against the proceedings of this county court,
which, prior to the first of January last, had no
system of written pleadings, but in a majority of
cases, up till that time, proceeded with little more
formality, than as to pleadings or otherwise, than
is practiced in suits before justices of the peace.

Since January 1/58 a regular system of pleading has been attempted, as will appear by the rules of said Court, adopted at the December term 1857, a copy of which is filed with the papers herein — How well the attempt will be carried out before a tribunal constituted as that is, remains to be seen —

The only remaining error which we deem it important to notice is — The admission of the note introduced in evidence — To this the ~~appellant~~ ^{appellant} objects — 1st That there was no proof that the note was presented for payment at the place where it was made payable — This was unnecessary — In a suit against the acceptor of a Bill or Maker of a note payable at a particular place, presentment for payment there was neither he averred in the declaration nor proved — If the defendant was there at the time ready to pay, ^{that} ~~it~~ is purely matter of defence — and then can be set up only to stop interest & costs — 15 Cam. 440. 546. Pet. Rep. 13. 136. 11 B. & C. 478. See on Bills 365, note 3. But it is said that, being averred, it must be proved — This is not the law — ~~however~~ The authorities are all in the disjunctive — need neither be averred nor proved — and it is believed no authority can be found supporting the position except where it is also held, so it has been in some States

formerly in England, that presentment is necessary,
and must be both averred & proved. Ch. on Bills
652, is an authority, & says, that where presentment
is unnecessary, then it need not be proved, Thos' Moore
expressly avers in the declaration = Further - In case
presentment is improvidently averred, where it cannot
be proved - What then? Is the plaintiff to be non-suited,
or lose his debt? The objection is untenable, and
the note was admissible under the Special Count =

It is next objected that the note was not ad-
missible under the Common Counts without proof
of its execution & endorsement = This, it is contended,
is not law here - the execution not being denied under
oath, if any reason existed, whether for variance or other
wise, that the note could not be read in evidence
under the Special Count, it was admissible
under the Common Counts - But, if right in
my former position, it is unnecessary to discuss
this =

Objections 3 & 4 are - that there was no evidence
that the note was endorsed, or that the legal title
was in the plaintiffs. The Bill of exceptions, it is
true, does not say ^{expressly} ~~that~~ ^{terms} The endorsement was
read in evidence - But it does appear by the record
elsewhere that the note, which is ~~in~~ shown
to have been filed & copied into the record, was actual-
ly endorsed by ~~border~~ the paper - and as the
trial was by the Court, and the note, with the en-

indorsement on it, was given in evidence & he
for the Court for inspection. The objection seems
frivolous - particularly when the question of this very
indorsement had but a moment before been up
on the Motion to Continue ~~and~~ amend =

It is next objected that ~~there was~~ ^{there} was no
evidence tending to show that the legal title to the note was
in the plaintiffs - The answer, that the indorsement
in blank by Gordon, the payee, and the possession
of the note by the plaintiffs, was prima facie evi-
dence that they were the legal holders and entitled
to sue upon it = If it had been desired to raise
any question of this sort, it ought to have been
specially pleaded = see authorities cited below =

The indorsement by Wilson,
signed & placed on the note, cuts no figure - It
is not shown in any way that they were ever the legal
owners of the note & entitled to endorse it. Nor is
there any plea raised that if not - Besides, that
indorsement might have been struck out on
the trial, had the question been raised =

25 Can. 309 = and cases cited in note on p. 480 =
also 16 Ill. 454 =

Edgar Reynolds

Ottawa April 26/58 =

I have little to add upon the reargument of this Cause except to ask the attention of the Court to the Amended copy of the Bill of Exceptions recently certified up by the Clerk of the County Court; and which I take it, removes the difficulty, interposed by inspection of the Record, to the affirmance of the judgment below: I have also procured a certified copy of the note & endorsements, used on the trial of the Cause, which, I presume, really adds little to the force of the Clerk's certificate to the Amended Record, unless by showing that the Endorsements still exist on the note: It is perhaps due to candor & propriety I should say, that the original Bill of Exceptions, as signed by the Judge (and which I have recently inspected) does not set out either the note or endorsements; but leaves a blank, ~~for~~ in the usual form, with the ~~phrase~~ phrase "here insert it". And, without knowing certainly how the fact is, I presume the Clerk, upon some suggestion that only the note, without the endorsement, was called for, after he had made the Record, himself made the error now apparent on its face: That the note however, with the endorsement upon it, was before the Court when the Cause was tried, there can be no doubt. The trial being by the Court, that either the one or the other was formally read in evidence, is not very likely, the usual course in such cases being just to hand the note itself to the ~~Court~~ ^{Judge}, and let him pass upon it & ascertain the amount due - and that was doubtless done in this case: all the other points raised, are, I think, fully met by what I

have heretofore written?
Ottawa, ~~Apr~~ May 5/59

Jona. K. Cooper
for Spts in Enos

248
Alex. Hawthorne
as.
Cooper & Reynolds
agreement for
appellations =

Filed May 7, 1859
L. Leland
Clerk

"Bill of Exceptions"

Jonathan R. Cooper } In Peoria County
& Hugh W. Reynolds } Dec. Term
vs. } December 10th 1857
Alexander Hawthorn }

Be it remembered, that
this day this cause came on to be heard upon
motion of the defendant to continue this cause at
Plaintiffs costs for reasons set forth in his
petition on file.

State of Illinois } In Peoria County
Peoria County } To Dec. Term 1857

Jonathan R. Cooper }
Hugh W. Reynolds }
vs. }
Alexander Hawthorn }

The defendant en-
ters a motion to continue this cause at plain-
tiffs costs for the following reasons.

1. There is no copy of account filed with
declaration
2. There is no copy of any endorsement
note sued on filed with said declaration
3. Other reasons.

Grove & McCoy
for def.

The court thereupon gave the Plaintiff
leave to amend, to which the defendant
admitted & excepted at the time. The Plaintiff
then filed the following amendment.

" Note sued on
4/78.

Peoria, Sept. 19, 57

Thirty days after date I promise to pay
R. W. Jordan or order Four Hundred
Seventy eight Dollars for value received
at the Bank of
A. B. Curtiss & Co. }
Peoria } A. Hawthorn

Decr 9th 1857. The Court allows the
above to be amended as follows:

The note of which the above is a copy
contains the name of "R. W. Jordan" on
the back of it as endorser.

The defendant then renews the motion
to continue this cause for the same
reasons set forth in the motion on file.

But the Court overruled said motion &
refused to continue said cause, To which
decision of the Court overruling said motion
to continue said cause the defendant then
and there at the time objected and excepted.

The Court then called the cause for
trial & the Plffs. then offered the following
note in evidence,

" 4/78. 00

Peoria Sept. 19, 57

Thirty days after date I promise to
pay to R. W. Jordan or order Four Hundred
& Seventy eight Dollars for value received
at the Bank of }
A. B. Curtiss & Co. }
Peoria "3 A. Hawthorn

Endorsed on the back,
"R. W. Jordan". "Pay N. B. Curtis & Co."
"Through Larned & Co."

"State of Illinois } ss.
Peoria County }

Be it Known: That on the
Twenty second day of October in the year of our
Lord one thousand eight hundred and fifty
I, Thaddens S. Ely a Notary Public, for
City of Peoria, duly commissioned and sworn,
and residing in the City of Peoria, in said coun-
ty and State at the request of N. B. Curtis & Co.
went with the original Note which is hereto attach-
ed to the Office of N. B. Curtis & Co. and demanded
payment thereof which was refused.

Whereupon I, the said Notary, at the request
aforesaid, have protested and do hereby solemnly
protest against all persons, and every party concerned
therein, whether as Maker, Drawer, Drawee, Payee,
Payer, Endorser, Guarantor, surety, or otherwise, how-
soever, against whom it is proper to protest, for all
Exchange, Re-Exchange, Damages, Interest and
Costs, accrued and to accrue by reason of
non-payment thereof.

And I, the said Notary, do hereby certify
that on the same day and year above written,
due notices of the foregoing Protest were put in
the Post Office at Peoria, as follows:

Notice for A. Hawthorne Peoria
" for R. W. Jordan "
" for Throop, Larned & Co. Chicago

Each of the above named places being the
reputed place of residence of the persons to whom

this notice was directed.

In testimony whereof, I, the said Notary, have hereunto set my hand and affixed my notarial seal, the day and year above written.

Seal

Thaddeus S. Ely.

Notary Public.

For Noting, 25 cents. Protest and Record 50 cents. Notice 75. 3

Seal 25 cents: Certificate, 25 cents. 7 1/2 \$ 20.00

To which the defendant objected, but the Court overruled said objection and permitted the note to be given in evidence. To which decision the Court overruling said objection & permitting the note to be given in evidence the defendant and there at the time objected & excepted.

This was all the evidence the evidence in this cause.

The deft. prays the Court to sign his bill of Exceptions, which is done.

Wellington Loucks Seal
County Judge.

Endorsed on the back

"Bill of Exceptions

Cooper Et. al

vs.

W. Hawthorne

Filed Dec. 10th 1857.

Charles K. Kellewell cly.

per Geo. H. Kellewell.

State of Illinois. *J. Ad.*
Peoria County.

I Charles Kettelle, Clerk
of the County Court of Peoria County,
State of Illinois, do hereby certify that the
foregoing is a full, true and correct copy
of a Bill of Exceptions filed in my
office in a certain ^{in said Court.} cause, wherein John
than H. Cooper and Hugh W. Reynolds,
Plffs. and Alexander Hawthorne is def.

In witness whereof, I have hereunto
set my hand and ^{the} seal of said
Court, at Peoria, this 14th day
of February A.D., 1839.

Chas Kettelle Clerk
per Geo. H. Kettelle

J. H. [unclear]

vs

A. Hawthorn

Bill of exceptions.