

12201

No. _____

Supreme Court of Illinois

Bushel

vs.

Hover, et al

71641  7

Be it remembered, that heretofore, to wit, on the seventh day of July in the year of our Lord one thousand eight hundred and fifty four, there was filed in the office of the clerk of the Circuit Court in and for the County of Peoria in the State of Illinois, a transcript from Justice of Peace & account, affidavit, capias and appeal Bond accompanying the Transcript which are in the words and figures following, to wit,

J. P. Transcript:-

Joseph Hoover and Benjamin Hooker partners } Action brought to recover a
doing business under the name of } balance due the Plaintiffs for beer
Joseph Hoover & Co } sold & delivered \$ 10.00 May 7th
vs. } 1854 on the oath of Joseph Hoover
August Buschel } that August Buschel is justly in-
debted to him in the sum of ten
dollars & that there is danger that the plaintiffs claim will be lost
as he understands the defendant is about to leave, May 7th 1854.
Capias issued & delivered to Samuel Crouse Constable returned
the same day, served by reading the within to the deft. & Hoover
him before the Court, my fees 50 cts. Saml. Crouse Constable,
At the request of the plaintiffs a subpoena issued for Samuel Ben-
sail, William Gleuser & Robert Kellerstroth, returned the same day,
Served on the within named witnesses by reading, my fees 52 cts.
Saml. Crouse Const. the deft gave Samuel Bensail for his appearance
on the 13th day of May 1854 at one o'clock P. M. May 11th 1854
at the request of the plaintiffs subpoenas issued, Samuel H. Bensail
William Gleuser, Robert Kellerstroth, Frederick W. Miller & Joseph
Arnholtz & for Defts, Gottfred Smith, Anderson Hoopfer & John C
Winch, the subpoenas returned, served by reading, the witnesses all
present, my fees \$ 2.27 Saml. Crouse Const. May 13th 1854 one
o'clock P. M. the parties present Mc Coy for plaintiffs Bonney
for defendants and went into trial, I swore the plaintiffs wit-
nesses & examined them & swore the defts, witnesses and examin-
ed them and the examination of the witnesses it is adjudged by

me that the plaintiffs recover a judgment against the defendant
 defendant and in favor of the plaintiffs for the sum of \$10.00 debt
 and the costs of this suit, therefore judgment rendered for the same
 May 13th 1854, May 13, 1854 the plaintiffs in the above judgment
 makes oath that he believes that the debt will be lost unless execution
 be issued forthwith, at which time execution issued & delivered to
 Paul Croise at May 15th 1854. Execution returned by order of
 the Justice by the def^t entering into a bond for his appeal with
 M. E. Colver.

The State of Illinois } I, Thos. Daugherty a Justice of the
 Peoria County } Peace in and for said County do certify
 the above to be a full and perfect copy of the proceedings and
 judgment from my docket in the above entitled case. Dated this
 27th day of May A. D. 1854 Thos. Daugherty Esq^r J. P.

(H) Peoria May 8th 1854
 Mer. A. Bischof

owes to J. Huber & Camp.

1853

October	19 th	1/4	Barrel	Beer	\$ 1.25
"	21 st	1/4	do	do	1.25
"	25 th	1/2	do	do	2.50
"	29 th	1/2	do	do	2.50
Novem.	7 th	1/4	do	do	1.25
"	10 th	1/2	do	do	2.50
"	15 th	1/2	do	do	2.50
"	29 th	1/2	do	do	2.50
Decem.	6 th	1/4	do	do	1.25
"	15 th	1/2	do	do	2.50
"	31 st	1/2	do	do	2.50
					\$22.50
1853					
October	21 st		Cash	Received	\$ 1.25
"	25 th		do	do	1.25

account -

"	29 th	do	do	2.50
Novem.	9 th	do	do	2.50
Decem.	22	- do	do	5.00
				\$12.50

leaves a ballance of \$ 10.00

affidavit - The People of the State of Illinois, Peoria County ss.

Personally appeared before me the subscribed one of the Justices of the Peace in and for said County Joseph Huber, and made oath and sayeth that one August Bishel is justly indebted to him in the sum of \$ 10.00 dollars and he is in fear and does fear that he the said August Bishel will leave without a speedy remedy to collect the same Joseph Huber

Sworn to and subscribed before me this 4th day of May 1854

Thos Daugherty J.P.

Capias -

State of Illinois } The People of the State of Illinois
Peoria County } To any Constable of said County Greeting:
You are hereby commanded to take the body of August Bishel and bring him forthwith before me, unless special bail be entered, and if such bail be entered, you will then command him to appear before me at my office on the 13th day of May at 1 o'clock P.M. to answer the complaint of Joseph Huber & Benjamin Hecker, partners doing business under the name of Joseph Huber & Co. for a failure to pay him a certain demand, not exceeding \$100, and hereof make due return as the law directs. Given under my hand and seal this 8th day of May 1854

Thos Daugherty (J.P.) J.P.

[Endorsed]

Served by reading the within to the defendant & bringing him before the Court. Peoria May 8th 1854

Emil Crouse Constable

Samuel H. Russell hereby acknowledges myself special bail for
the within named Augustus Buschel. Witness my hand and seal
8th day of May 1854. S. H. Russell.

Appeal Bond:

Know all men by these presents that we August Buschel and
M. E. Erler are held and firmly bound unto Joseph Hoover &
Benjamin Hickler in the penal sum of forty five dollars law
ful money of the United States for the payment of which, well
and truly to be made, we bind ourselves, our heirs and administ-
rators, jointly and severally, firmly by these presents. Witness
our hands and seals this 15th day of May 1854.

The condition of the above obligation is such, that whereas the said
Joseph Hoover & Benjamin Hickler did on the thirteenth
day of May 1854 before Thomas Daugherty, a Justice of the
Peace for the County of Peoria recover judgment against the above
bounden August Buschel for the sum of twenty & ³¹/₁₀₀ dollars
from which judgment the said August Buschel has taken an ap-
peal to the Circuit Court of the County of Peoria aforesaid, and
State of Illinois. Now if the said August Buschel shall prosecute
his appeal with effect, and shall pay whatever judgment may be
rendered by the Court upon dismissal or trial of said appeal
then the above obligation to be void, otherwise to remain in
full force and effect.

August Buschel (Said)

M. E. Erler (Said)

Approved before me, at my office, this 15th day of May 1854

Thomas Daugherty (J.P.)

Whereupon the Clerk of said Circuit Court issued a summons to
the plaintiffs under the seal of said Court, which with the return
of the Sheriff thereon endorsed is as follows, to wit:

Summons:

The People of the State of Illinois
To the Sheriff of Peoria County, Greeting

We command you to summon Joseph Huber and Benjamin
Heckler if they may be found in your County, to appear be-
fore our Circuit-Court on the first day of the next term there-
of to be held at Peoria, within and for said County of Peoria,
on the second Monday of September next then and there, in
our said Court to prosecute their suit against August Puschel
lately by him appeal to said Court from before Thomas Dugh-
erty one of the Justices of the Peace of said County of Peoria and
make return of this writ, with an endorsement of the time and
manner of serving the same on or before the first day of the term
of the said Court to be held as aforesaid. Witness Jacob Gale,
Clerk of our said Court, and the seal thereof, at Peoria
this eighth day of July in the year of our Lord one thousand
and eight hundred and fifty four
Jacob Gale, Clerk

[Endorsed]

I served this writ by reading to each of the within named Jo-
seph Huber and Benjamin Heckler July 29th 1854
L. B. Cornwell Sheriff P. Co. Ill.

Proceedings at a term of the Circuit Court began and held at the Court House in the City of Peoria in and for the County of Peoria in the State of Illinois on the first Monday of March in the year of our Lord one thousand eight hundred and fifty five it being the fifth day of said month. Present the Honorable Charles P. Cook Judge of the sixteenth Judicial Circuit in the State of Illinois to wit. Tuesday March 27th A.D. 1855

Joseph Huber

Benjamin Hooker

vs

August Puschel

} Appeal from J.P.

This day came the plaintiffs by Henry Grove their attorney and the defendant by Charles C. Bonney his attorney and waived a jury, and agreed that all matters both of law and fact arising in this cause shall be tried by the Court. The Court having heard the evidence of the parties and being fully advised in the premises found the issues for the plaintiffs and assessed their damages at the sum of ten dollars. Therefore it is considered that the said Joseph Huber and Benjamin Hooker have and recover of the said August Puschel the sum of ten dollars, their damages aforesaid by the Court in form aforesaid assessed and also their costs and charges by them about their suit in this behalf expended as well in this Court as in the Court below and that they have execution therefor. It is ordered by the Court that the bill of exceptions in this cause may be settled & filed in vacation.

And afterwards at said term of said Court the following bill of exceptions was filed in said cause. to wit.

Bill of exception

State of Illinois
County of Peoria

Joseph Huber &
Benjamin Beckler
Plaintiffs
versus

August Buschel
Defendant

In the Circuit Court for said County

In appeal by defendant from Justice
of the Peace.

Be it remembered that on the 4th day of
May Anno Domini 1854 the said plaintiffs commenced this suit
against the said defendants before Thomas Dougherty, a
Justice of the Peace for said County, to recover a balance due the
plaintiffs for beer sold & delivered \$10.00 upon the following
account to wit:

"H"

Peoria May 8th 1854

Mr A. Buschel

owes to J. Huber & Comp.

1853				
Octob.	19 th	1/4	Barrel Beer	\$ 1.25
"	21 "	1/4	do do	1.25
"	25 "	1/2	do do	2.50
"	29 "	1/2	do do	2.50
Novemb.	7 "	1/4	do do	1.25
"	10 "	1/2	do do	2.50
"	15 "	1/2	do do	2.50
"	29 "	1/2	do do	2.50
Decem.	6 "	1/4	do do	1.25
"	15 "	1/2	do do	2.50
"	31 "	1/2	do do	2.50
				\$ 22.50
1853				
Octob.	21 st		Cash Received	\$ 1.25
"	25 "	do	do	1.25
"	29 "	do	do	2.50
Nov.	9 "	do	do	2.50
Dec.	22 "	do	do	5.00
				\$ 12.50

leaves a balance due \$10.00

And that on the thirteenth day of the same month, the said Justice tried the said action, and rendered judgment thereon against the said defendants "for the sum of \$10.00 debt and costs of suit", and that on the fifteenth day of the month above said the said defendant filed his bond according to the statute, and appealed from said judgment to this Court, and that on the 27th day of March Anno Domini 1855 this cause came on to be tried by the Court aforesaid without a jury, and thereupon the said plaintiffs by their counsel read and gave in evidence the following deposition of Charles Browns to wit:

Deposition of Charles Browns taken by agreement of parties at the office of Austin & Bonney in the City of Peoria on the 31st day of July A. D. 1854 to be read in evidence on the trial of a certain cause now pending in the Circuit Court of Peoria County, wherein Joseph Huber and Benjamin Weekler are plaintiffs and August Ruschell is defendant; on the behalf of said plaintiffs.

Said witness Charles Browns having been first duly sworn by Henry Grove Esq. Notary Public, and his deposition reduced to writing by Charles L. Bonney.

Charles Browns deposes and says, I am acquainted with the parties to this suit, I worked for the plaintiffs from the first day of October 1853 until the 12th day of January 1854, said plaintiffs were then engaged in making beer and it was my business to deliver beer to their customers, I have examined the plaintiffs bill of particulars filed in this cause July 7th 1854 and know the same to be correct.

I delivered the beer charged in said bill to Charles Ruschell and August Ruschell at their shop on Water Street in Peoria and at the prices named in said bill, and at the times therein mentioned.

Cross Examination

The shop was kept by the brothers Ruschell, Charles Ruschell paid me for the beer, and both told me they were in partnership.

Charles Buschel paid ~~me~~ for the beer came out all the time and received the beer. I never delivered any to August Buschel but he was there many times when I delivered the beer.

Charles Brown

The above depositions taken & to be read on the trial, all except
those as to form & notice waived. Howe & McCoy
for Plffs.

Austin & Bonney for defendant,
and no other or further evidence was produced or given upon
the trial aforesaid of this cause by the said Circuit Court; and
that thereupon the said defendant by his counsel made his motion
before for judgment against the said plaintiffs, and the Court
on consideration of the said motion overruled the same and
rendered judgment against the said defendant for the sum of ten
dollars and costs of suit; whereupon the said defendant by his
counsel there and there excepted to the opinion and decision of the
Court in overruling his said motion for judgment against the said
plaintiffs, and rendering the said judgment against him the said
defendant and prayed the Court to sign and seal this bill of
exceptions which is accordingly done. Ouslow, Peter (Clerk)

State of Illinois
Peoria County

I, Jacob Gale clerk of the Circuit Court in
and for the County of Peoria in the State of Illinois do hereby certify
that the foregoing is a correct transcript from the Record of
all proceedings in said Court in a certain cause therein by
appeal from a Justice of Peace, wherein Joseph Huber and
Benjamin Glickler are plaintiffs and August Buschel is
defendant, as the same is of record & on file in my office -

In witness whereof I hereto set my hand
and affix the seal of said Circuit Court at
my office in Peoria this thirtieth day of
June A.D. 1855 -

Jacob Gale, Clerk.

clerk's fees: for transcript \$3.00 paid by Defendant
Jacob Gale

Augustus Buschel p^{tf} in Error

vs

Joseph Hoover and Benjamin Beckler
partners doing business under the name
of Joseph Hoover & Co. depts in Error

{ In the Supreme
Court June
T. 1855
Error to Peoria

And now comes the said plaintiff by Attestment
his attorney says that in the record & proceedings
aforesaid and in the judgment aforesaid there
is manifest error in this

1st Said Court erred in rendering judgment
against the plaintiff in Error

2^d Said Judgment is contrary to law and
the evidence heard in the cause

3^d The Court erred in not rendering judgment
for the plaintiff

And for these & other manifest
errors apparent in the record & proceedings
aforesaid the said plaintiff prays that said
judgment may be reversed annulled set aside
& for naught held & that he may be restored
to all rights lost by said judgment

By Attestment his Attorney

Hoover et al { Now comes the Defendants in error
at { and say that there is no error
Buschel { in the record & proceedings aforesaid
By John McCoy
their atty

Howe & Heckler vs. Buehler

Reed & Sons

Filed July 7, 1855.
L. Keland Clk.

Augustus Bushel }
vs } Error to Peoria
Joseph Hoyer & al

In this case there action was
brought against one. The proof shows
a sale & delivery to another & not to the
~~defendant~~ below. There was a
fatal variance. The case needs no
further argument.

L. C. Bonney & J. M. Wend for
Pty in Error

Wm
J. M. Purple

Rev Stat 43 Sec 3 Abatement
Sec 1 Scam R 579

~~12 Ills~~

11 Ills 23

Augustus Bushel

^{v2}
Joseph Hovestad

Brief for P.M. in error

Ch Boney &
H.M. Wend for P.M.

Joseph Hooner & als. }
 ats } Error to Revers
 Augustum Parker }

In this case the action
 was against one & the proof shows the property
 to have been sold & delivered to two; the plaintiffs
~~being~~ in error and another. There was no
 plea in abatement, no affidavit, no name
 mentioned as required by the Statute. Revers Not
 43.

The case needs no further argument.

Witness
 Grant Goodrich
 W. D. Gould

Thos. O. McCoy
 for Apt. in Error.

126
Horne & Co
at

Augustus Beck

Proof of debt & c.

Grove & McCay
for debt & c.

126

August Bushell

5

Joseph Hovey et al.

126

1855.

17701