

No. 13211

Supreme Court of Illinois

Graves

vs.

Rossetter

71641  7

SUPREME COURT,
Third Grand Division.

No. 281.

Graves

at

1867

SUPREME COURT
OF THE STATE OF ILLINOIS,
THIRD DIVISION.

JOHN D. PAHLMAN, <i>Executor of Estate of</i> A. ROSSETTER, APPELLANT. <i>vs.</i> RILEY M. GRAVES, APPELLEE.	}	<i>Abstract.</i>
---	---	------------------

On the 6th of April 1857, Asher Rossetter, since deceased, J. D. Pahlman, Geo. C. Smith and John E. Smith were partners under the firm of Rossetter, Pahlman & Smiths, and on said day the firm executed to said Riley M. Graves, their two promissory notes, one for \$250.38, at six months, the other of \$255.37 at nine months.

October 5th, 1857, the firm made a general assignment for the benefit of creditors. The assignee has not yet closed up the business of said trust; has still in his hands the assets, which, however, are not sufficient to pay the liabilities of the firm.

February 25th, 1858, the said Rossetter died.

March 3rd, 1859, said Graves commenced suit on said notes, against the then surviving partners, and on the 13th day of April, 1859, recovered judgment upon the same, in the Circuit Court of Cook Co., for \$553.37 and costs of suit. Execution issued thereon on the 14th of said April, and on the same day, placed in the Sheriff's hands for collection. Sheriff demanded of defendants property to satisfy same; they replied that they had none to surrender. On the 12th of July, 1859, Sheriff returned execution in no part satisfied.

Sept. 19th, 1859, Graves filed his claim upon said notes in the County Court against Rossetter's estate, and on October 17th, 1859, the County Court allowed the claim, and ordered it paid as "Class No. four," amounting to \$568.70. The Executor appealed to the Circuit Court.

The estate of Rossetter was represented insolvent by said executor, and the usual order in such case entered in said County Court—claims of Rossetter's individual creditors to a large amount having been proved against the estate.

The foregoing comprises all the evidence produced upon the trial.

The Court found the issues for plaintiff; assessed damages at \$611.50, and entered judgment therefor, to all which the executor excepts, and prays an appeal. Appeal bond waived.

Exceptions signed.

Agreed that the above exceptions may be treated as an agreed case, as containing all the facts upon which the questions of law arise.

S. B. PERRY, *Att'y for Graves.*

RUCKER & PAGE, *Att'ys for Executor.*

ERRORS ASSIGNED.

The Court exercised jurisdiction in the case, whereas by law it had no jurisdiction.

The Court rendered judgment for the said Riley M. Graves, whereas by the laws of the land, it ought to have been in favor of said J. D. Pahlman, executor.

The Court declined to dismiss the proceedings as it by law should have done.

281

J. D. Pahlman

Esq

~

R. M. Graves

Abstract

Filed Apr. 29 - 1861

L. Leland

Clark

Supreme Court of Illinois }
3^d Division - Apr. Term 1886

John D. Pahlman Exr. - Plf. in Error

v
Riley M. Graves - Def. in Error -

It is agreed to submit the above
cause for hearing upon written arguments
to be filed by the respective parties, and
that the Court be respectfully requested
to examine and decide the same at the
present term,

Sanford B. Peay, Atty. for Def.

Runkle & Page Atty. for Plf.

281-188

John D. Pahlman, Gov.
v.

Riley M. Graves

~~~~~  
Stipulation  
~~~~~

Filed May 7, 1861
L. Deland
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, at a term thereof
begun and held at the Court House, in the City of Chicago, in said County, on the

fourth Monday (being the *eighteenth* day) of

February in the year of our Lord one thousand eight hundred and

Sixty One, and of the Independence of the said United States the
eighty fifth

Present, Honorable

George Manierre Judge of the 7th Judicial
Circuit of the State of Illinois.

Charles Aaron States Attorney.

A. C. Hesing Sherriff of Cook County.

Attest :

W. S. Church Clerk.

Be it Remembered, that, heretofore, to wit: on the 13th day of April A.D. 1861, there was filed in the office of the Clerk of the Court aforesaid a certain Bill of Exceptions, with a stipulation of the parties thereunder written in the words and figures following to wit:

State of Illinois
Cook County

Circuit Court
February Term A.D. 1861

Riley M. Graves
vs
Estate of Asher Rosseter
John D. Pahlman Exor

} Appeal from the
County Court

This cause came on to be heard at the present term of said Court before the Hon. George Maniemes, Judge of said Court, upon the following facts proved and admitted,

On the 6th day of April A.D. 1857, the said Asher Rosseter, since deceased, John D. Pahlman, George C. Smith and John E. Smith, were co-partners in business under the firm name and style of Rosseter, Pahlman & Smiths; that as such partners on said day, they executed and delivered, for value received, to said Riley M. Graves, their two promissory notes of that date, whereby said firm promised, in and by one of said notes, to pay to the order of said Graves, six months after the date

thereof, at the Marine Bank, Chicago, the sum of two hundred fifty five & $\frac{38}{100}$ dollars; And in and by the other of said notes, to pay to the order of said Graves, nine months after the date thereof at the Marine Bank, Chicago, the sum of two hundred fifty five & $\frac{37}{100}$ dollars.

That on the fifth day of October A.D. 1857, the said firm of Rossiter Pahlman and Smiths made a general assignment for the benefit of creditors, to one Francis A. McIntyne; that said assignee has not yet closed up the business of said trust, has still in his hands the assets so assigned to him which however are not sufficient to pay the liabilities of said firm.

That on the twenty fifth day of February A.D. 1858 the said Asher Rossiter departed this life,

That on the third day of March A.D. 1859 the said Graves commenced a suit in the Circuit Court of Cook County against ^{the said} Pahlman, George C. and John E. Smiths, the surviving partners of said firm, upon the two promissory notes above mentioned, and that on the 13th day of April A.D. 1859 obtained a judgment against the said surviving partners for \$553³⁷ and costs of suit; that the said Graves caused Execution to be issued on said judgment on the 14th day of April A.D. 1859, and on the same day placed the same in the hands of the Sheriff of Cook County for collection; that the Sheriff demanded of the

defendants in said execution the payment thereof or the surrender of property in satisfaction thereof; but said defendants declined to pay the same and said they had no property to surrender in satisfaction thereof; and that said Sheriff being unable to find any property of said defendants wherewith to make the money returned said execution to the office of the Clerk of said Circuit Court, on the 12th day of July A.D. 1859 in no part satisfied.

That on the 19th day of September A.D. 1859, the said Graves filed his claim upon the notes aforesaid in the Cook County Court for allowance against the estate of said Asher Rossitter, deceased, and on the 17th day of October A.D. 1859, due notice thereof having been given to John W. Pahlman, who is the sole Executor of the will of said deceased, the Judge of said County Court, in accordance with the practice of said Court upon claims of this nature, and presented under the above state of facts. Ordered that the claim be allowed against the estate of the said Rossitter, and paid as follows, to wit:

Class Number four,
Riley M. Graves, two notes & interest \$568.75⁰⁰
from which order of the said County Court the said Executor took and perfected an Appeal to the Circuit Court of Cook County,

That said Estate of said Rossitter has been

by the said Executor, represented to the said County Court to be insolvent, & the same, in pursuance of the Statute in such case made and provided, was so entered of record in said County Court, and that claims of said Rossitte's individual creditors to a large amount have been proved against his estate.

The foregoing comprises all the evidence produced before the Circuit Court upon the trial of this cause, which was tried by the Court without the intervention of a Jury.

And the Court, upon the foregoing evidence, found the issues for the plaintiff and assessed the damages at \$611 ⁵⁰ ^{& entered Judgment, therefore}, to which finding and Judgment of the Court the said John W. Pahlman, Executor, excepts, and prays an appeal, which is allowed, the bond being waived by Plaintiff.

And in as much as the matters aforesaid do not appear by the record, the attorney on behalf of the defendant prayed that the said Judge would set his hand and seal to this bill of exceptions containing the several matters upon which this cause was tried, according to the form of the statute in such case made and provided, and thereupon the said Judge hath accordingly set his hand and seal hereto this fourteenth day of March, A.D. 1861.

George Manning DeaB
Judge of Judicial
Circuit. JMS

State of Illinois, }

S. S.

COUNTY OF COOK.

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 Verdict of Exceptions and Disputation in a certain cause, pending in said Court on the Common Law side thereof, wherein Riley M. Graves was Plaintiff and

John D. Pahlman Executor of the defendant

IN WITNESS WHEREOF, I have hereunto set my hand, and affixed the seal of our said Court at Chicago, this Fifteen day of April A. D. 1881

Wm L. Church
Clerk.

It is hereby agreed that the above bill of Ex-
ceptions shall be taken and treated as an agreed
case, the same containing all the facts upon
which the questions of law arising in the case
are based

Samford B. Perry, Off. atty.
Rucker Page Deft. atty.

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 Bill of Exceptions and Appellation
in a certain cause, Liberty pending in said Court on the
Common Law side thereof, wherein Riley M.
Graves was Plaintiff and

John D. Pahlman Executor of &c defendant

IN WITNESS WHEREOF, I have hereunto set my hand, and affixed the seal of our
said Court at Chicago, this Twelfth day of April A. D. 1861

Wm L. Church
Clerk.

And the said John D. Pahlmann
Executor of the estate of A. Rossiter, comes
and says that in the record and
proceedings aforesaid, there is man-
ifest error in this, to wit;

1st Because the Court assumed and
exercised jurisdiction in the cause
whereas by law it had no such
jurisdiction.

2nd Because the Court rendered
judgment for the said Riley M.
Groves, whereas by the laws of the
land it ought to have been given
in favor of said John D. Pahlmann,
Executor, of the estate of A. Rossiter.

By ~~Rucker & Ray~~
his attys

3^d Because the Court declined to dismiss
the proceedings as it by law should
have done

By ~~Rucker & Ray~~
his attys.

State of Illinois
Third Grand Division

Supreme Court
April Term A.D. 1861

Riley M. Graves, dep't. in Error
vs
John D. Pehlman, Exor. Hf. in Error

And now comes the said
Riley M. Graves, defendant in Error, by
Sanford J. Perry, his Attorney, and says
that there is no Error either in the record
and proceedings aforesaid, or in giving
the judgment aforesaid. And he prays
the said Court may proceed to
examine as well the record and
proceedings aforesaid, as the Matter
aforesaid above assigned for
Error, And that the judgment aforesaid
in favor aforesaid given, may be
in all things affirmed &c

Sanford J. Perry
Deft's atty

State of Illinois }
Cook County } ss

R M Graves }
" }
J D Robinson, Esq }
Superior Court
of Cook County

Jul S. Page being duly sworn
deposes and says that the mat-
ters presented by the record in said
case were litigated in good faith
about a matter in actual controversy
between the parties, and that the
opinion of the Supreme Court to which
the case has been taken is not sought
with any other design than to adju-
dicate and settle the law relative to
the matter in actual controversy
between the parties to the record

Subscribed & sworn }
to before me this 16th }
day of April A.D. 1861 }

Jul S. Page
J. L. Churchill

287
Circuit Court of Cook County

Riley M. Graves

vs.

Estate of Asher Russell

Copy Received

Filed Apr 18. 1861

J. Leland
Clerk

Russell & Papp
attys

\$200 paid by Russell & Papp