

No. 12011

Supreme Court of Illinois

Maslors & Weed.

vs.

Root & Ambrose.

71641  7

50
Anden Root wife
vs
Chas. H. Weed et al.

12011

1850

Prepared
by
W.

Be it remembered that on the 8th
day of January AD 1848. there was filed in
the Clerk's Office of Hann County Circuit Court a
Receipt of which the following is a copy to wit

State of Illinois }
Hann County ss

Hann County Circuit Court
Do the Jan Term AD 1848

Charles W Weed
Augustus E Masters
Marcus W Weed

Debt on Bond
Debt & Dam \$1300.00

Paul Ambrose
Aurion Root

The Clerk will issue Summons
in the above entitled Cause

Attestable as above &c And also a Summons directed
to the County of Cook
January 6th AD 1848
Bram & Wright
for Plaintiffs

State of Illinois And afterwards to wit on the 10th
day of January AD 1848 there issued out of the
Clerk's Office of said Court a Summons of which
the following is a copy to wit

State of Illinois }
Hann County ss

The People of the State of
Illinois to the Sheriff of said
County. Greeting

We command you to summon Aurion
Root and Paul Ambrose if to be found in Hann
County. personally to be and appear before the Circuit
Court of said County on the first day of the next
Term thereof, to be holden at the Court house in Geneva
on the fourth Monday of January instant to answer
unto Charles W Weed, Augustus E Masters, Marcus
W Weed of a plea of Thirteen Thousand dollars
which they owe and unjustly detain, they tender
to them damages as they say in the sum of Thirteen
hundred dollars and make due return of this writ

Dear Sir

Witness Mark W. Hitchcock
of said Court and the Seal thereof
at Geneva this 10th day of
January AD 1848.

Attest Mark W. Hitchcock Clerk
which writ is endorsed "Executed this writ Jan^y
11th 1848 by Aluding to Union Root, Paul Ambrose
Not^{to be} served in the County
A. P. Spalding Shff
by L. S. Eaton Dep.

And Afterward, to wit in the 14th day of
January AD 1848 the plaintiffs filed in said
Clerk's Office, a Declaration of which the following
is a true Copy to wit.

State of Illinois }
Kane County } ss

Kane County Circuit Court
January Term AD 1848

Charles W. Weed Augustus E. Masters and Marcus
W. Weed Plaintiffs in this suit, by Brown and Wright
their Attorneys, Complain of Paul Ambrose & Union
Root Defendants in this suit who have been
summoned &c of a plea that they render to the
said plaintiffs the sum of thirteen hundred dollars
which they owe and from them unjustly detain; For
that whereas the said Defendants heretofore to wit on
the Twenty Fifth day of April AD 1845 at Geneva
in the County of Kane aforesaid, by their Certain
Writing Obligations, sealed with their seals and now
shown to the Court here, the date whereof is the day
and Year aforesaid, acknowledged themselves to
be held and jointly bound unto said plaintiffs
in the sum of thirteen hundred dollars above
demanded to be paid to the said plaintiffs, and
the said plaintiffs, according to the form of the

Statute in such Case made and provided say
that the said Writing obligatory, was and is subject
to a certain Condition therein written, whereby
after reciting to the effect following to wit. That the
said ^{party} had before the Circuit Court of Kane County
and State of Illinois recovered a judgment in a
certain Plea of trespass on the case on promises
against the said Paul Ambrose for the sum of
Eight hundred and Thirty Three dollars & Seventy
Two Cents and Costs of Suit. and that the said
Ambrose had prayed and obtained an appeal
from the said judgment to the Supreme Court of
this State, it is provided that if the said Paul
Ambrose shall prosecute his said appeal, with all
due diligence, and shall pay the judgment
Costs, interest and Damages in case the said judg-
ment shall be affirmed, then this bond to be
void, otherwise in full force and effect. Now the
said Plaintiffs in fact say that the said Paul
Ambrose, did not and has not prosecuted his said
appeal with all due diligence, but on the contrary
the said Plaintiffs say that at the December Term of the
Supreme Court of this State held at Springfield A.D. 1845
the said Appeal was dismissed by said Court for
want of prosecution, and that the said Paul Ambrose
has not as yet paid to the said Plaintiffs the said
judgment, Costs, interest and Damages nor any part thereof.
By means of which said several premises the said
Plaintiffs have sustained damages to a large amount
to wit the amount of Thirteen hundred dollars.
Whereby an Action hath accrued to them the said
Plaintiffs to demand and have of and from
the said Defendants the sum of Thirteen hundred
dollars above demanded; And the said Plaintiffs

over that at the time of the Commencement of this
sunt the said Andon Root one of the defendants, residing
in the County of Kane Aforesaid and the said Emil
Ambrose residing in the County of Cook, State of
Illinois; Yet the said defendants, although
often requested so to do, have not as yet paid
the said sum of Thirteen hundred dollars above
demanded or any part thereof to the said
Plaintiff, but have hitherto wholly neglected
and refused, and still neglect and refuse
so to do to their damage of Thirteen hundred
dollars, and therefore they bring suit the
Brown & Wright
Atty for Plaintiff

Copy of Instrument declared upon
Know all men by these presents that we Emil Ambrose
and Andon Root are held and firmly bound unto
Charles H Weed, Augustus E Master and Marcus
H Weed in the penal sum of Thirteen hundred dollars
of good and lawful money of the United States for
which payment well and truly to be made we bind
ourselves our heirs executors and administrators jointly
and severally and jointly by these presents, sealed
with our seals and dated this 25th day of April
1845

The condition of this obligation is such
that whereas the said Obligor lately before the Circuit
Court of Kane County and State of Illinois recovered
a judgment on a certain plea of trespass in the
use of premises against the above bounden
Emil Ambrose for the sum of Eight hundred and
thirty three dollars and seventy two cents and
cost of suit, and the said Ambrose prayed and
obtained an appeal from the said judgment

to the Supreme Court of this State; Now if
the said Paul Ambrose shall prosecute his suit app[ro]pri-
ately with all due diligence and shall pay the judgment
Costs interest ~~interest~~ and damages in case the said
judgment shall be affirmed, then this bond to be
void otherwise in full force and effect

executed in presence of } Paul Ambrose *Test*
Anson Root *Test*

Brown & Wright Attys for Pl[aintiff]

And Afterward, to wit on the 2^d day of February
1848 the said Defendant Anson Root filed a plea
of which the following is a copy to wit

Anson Root (Paul Ambrose)
vs. Debt { And Special J. 1848.
Need Masters and Need

And the said Defendant
Anson Root replied to Come and defend, the
verge and injury when he, and say that the
said supposed writing obligatory in the said declaration
mentioned is not his deed and of this he the said Defendant
put himself upon the Country he

Wilson & Wilcox his Attys

And the Plaintiff doth the like by Wright & Morris their Attys

2 And for a further plea in this behalf
by leave of the Court the said Defendant Anson Root
impleaded he, says Action Now because he says that
after the making of the ^{supposed} writing obligatory
and before the commencement of this suit to wit on
the first day of December AD 1847 the said Defendant
fully paid and satisfied to the said Plaintiff,
the full amount of their debt, damages interest
& costs by them above in their declaration mentioned
and this he is ready to verify - Wherefore he

judgment whether the said Plaintiffs ought
further to have or maintain their action
thereof against this defendant.

Wilson Wilcox

Atty for Root

3^d And for a further plea in this behalf as to all
of said Plaintiffs declaration, except so much
thereof as alleges that the said defendant Paul
Ambrose therein mentioned did not prosecute his
appeal to the Supreme Court with due diligence
the said defendant Auden Root pleaded He
by leave of the Court He comes, and craves oyer
of the said Bond and Condition in said Plaintiffs
declaration mentioned, and it is read to him H. and
thereupon he says Actio Non because he says that after
the rendition of the said judgment in the said Plaintiffs
declaration mentioned and in the Condition of the Bond
therein agreed to descend in favor of the said Plaintiffs
against the now Codefendant Paul Ambrose and
prior to the commencement of this suit, to wit on the
23^d day of April AD 1845 the said Plaintiffs
sued out of the Office of the Clerk of Circuit Court of
said Kane County (the said Kane Circuit Court being
the Court in and by which the aforesaid judgment
was rendered) a Writ of Execution in due form
of Law on the aforesaid judgment against the goods
and Chattels, lands and tenements of the said
Paul Ambrose defendant therein, and now Co-
defendant in this suit, which said Execution
was afterwards on the same day last mentioned
delivered to the Sheriff of Kane County to execute.
And the said Sheriff afterwards and before the
commencement of this suit to wit on the same.

The second Plea which is a Plea of payment
was taken by the Plaintiff.

C. B. Wells. Clerk

this said defendant. Because they say, that after
the suing out of the writ of Execution as in that
Plea Mentioned, and after the levying, seizing
and taking of the goods, and Chattels, wares and
Merchandise of the said defendant Paul Ambrose
for the satisfaction of the said Execution as in
that Plea Mentioned, to wit on the 26th day of April
AD 1845 in Hancock County aforesaid, the said defendant
Paul Ambrose with the said Anson Root as his surety
executed to the Sheriff of said County a forth coming
bond or delivery bond, conditioned for the satisfaction
of the said debt and costs for the return of the said
goods and Chattels, wares and Merchandise in said
Plea Mentioned on the first day of June next after
the date thereof to wit the first day of June AD 1845
and thereupon the said Sheriff received and delivered
said goods and Chattels, wares and Merchandise to
the said Paul Ambrose by his request and by the
request of said Root; and the said Plaintiffs say
that the said Ambrose and the said Root did not
nor did either of them return to the said Sheriff
the said goods and Chattels, wares and Merchandise
on the first day of June AD 1845 according to the
condition of said forthcoming bond or delivery bond,
nor have they or either of them at any time returned
the same, nor paid or satisfied the said debt and
costs or any part thereof, but on the contrary, the
said goods and Chattels, wares and Merchandise
were afterwards, to wit on or about the 22^d day of
July, AD 1845 sold and exchanged by the said
Ambrose by the request and consent of the said Root
for certain lots and land; and the said Plaintiffs
further say, after the rendition of the said judgment

in favor of said Plaintiff, against said Defendant
Paul Ambrose as in said Third Plea mentioned, and
after the levy upon said Goods and Chattels, wares
and Merchandize in the said Third Plea mentioned
to wit at the April Term of the same County Circuit
Court AD 1845 (being the same term at which the
said judgment was rendered) the said ^{Def} Paul Ambrose
prayed an appeal from said judgment to the Supreme
Court which was granted on condition that he file
his Bond with Aaron Root as his security in the
penal sum of Thirteen hundred dollars, ^{conditioned}
as the Law directs, within Twenty days from the time
of granting said appeal, which Bond was filed
in the Office of the Clerk of said Circuit Court on the
28th day of April AD 1845 and within the time allowed
by said Court for filing the same: and the Pltfs
further say that the said appeal to the Supreme Court
was not determined and dismissed by the said Supreme
Court until the Month of December AD 1845 a long
time after the said Execution had expired, and that
the said Writ of Execution in said Plea mentioned has
been no further executed, then above stated but
has been returned by the said Sheriff and is now
upon the files of this Court, and this they the said
Plaintiffs are ready to verify, whereupon they pray
judgment and then do set aforesaid, together with
their Damages by them sustained on account
of the detention thereof to be adjudged to them
the
Brown and Wright
Attys for Pltfs

And afterwards to wit on the 26th day of January
AD 1849 the defendant filed his answer to the
plaintiffs application of which the following is

a copy to wit
Anson Root et al
ads

Kane Circuit Court
Said Special Term 1849
DEBT

Ward Master Ward

And the said defendant
Anson Root replied

to Comrs &c and says that the replication of the
said Plaintiff to the third plea of the said Root
by him above pleaded is not sufficient in law, and
he is not bound to answer &c

by Wilson & Wilcox his attys
and the said defendant Root demurred specially to said
replication and points out the following causes of
demurrer: that said Replication is double and
presents several distinct issues, whereupon &c

Wilson & Wilcox his attys

And afterwards to wit on the 26th day of April AD
1849 it being one of the days of the April Term of Kane
County Circuit Court AD 1849 the following among
other proceedings was had to wit

Marcus W Ward
Augustus E Masters
Charles W Ward

DEBT

20
Anson Root
Paul Ambrose

And now comes the
Plaintiff by Brown
and Wright, and the
defendant Root by Wilson

& Wilcox his Attorneys also come. And the Court having
heard the arguments of Counsel on the demurrer entered
filed to the Plaintiff's Replication to Third plea of
said defendant Root: it is therefore doth come the
said said defendant Root failing to answer within to said Replication
made at the Court of the said defendant Root: it is

therefore ordered that the Plaintiff have judgment
by default for the sum of Thirteen hundred dollars the amount of the penalty in said
appeal Bond to be discharged on the payment of Six hundred & two dollars &

147/100, together with their costs and charges herein
and an action against said Defendant Root for
their Costs and Charges in and about said ~~action~~
sufficiency,

And Afterward, to wit on the 4th day of January
AD 1850 it being one of the days of the December
Special Term of said County Circuit Court AD 1849.
the following proceeding was had to wit

Marion H Weed
Charles H Weed
Augustus E. Masters

Debt

Anton Root
Paul Ambrose

This day comes the Plaintiff
by Brown Wright & Morgan
their Attorneys, and the
defendant Root by Nelson.

Wilcox his Attorney also came, and Waver a jury and submit this Cause to the Court for trial, after hearing the evidence and arguments of Counsel, the Court finds the issues joined in favor of the plaintiffs and assent their debt on the penal part of the bond sued on at the sum of One Thousand Three hundred dollars; and their damages on breaches assigned in their declaration at the sum of Six hundred and Two dollars and Forty Seven Cents; it is therefore considered by the Court that the plaintiffs have and recover of the defendant their debt of Thirteen hundred dollars, and their damages of Six hundred and Two dollars and Forty Seven Cents, and their costs in this suit expended and that they have execution therefor in conformity with the Statute, and that an appeal be allowed to Supreme Court by the defendant Anson Root entering into Bond in penal sum of ~~ten~~ ^{eight} hundred dollars, with S. P. Sheddick his surety, in forty days.

And afterwards to wit on the 23.^d day of March
AD 1850 it being one of the days of the March Term. ad

1850 of Klam County Circuit Court the following
proceeding was had to wit

Charles W Wood
Marcus H Wood
Augustus E Master

v
Aurora Root
Pine Ambrose

} Dist

This day comes the
Plaintiffs by Wright
their Attorney and
moves the Court to
Amend the Record

of the judgment entered in the above entitled cause
at the last term of this Court so that the Record
shall read as follows to wit; this day comes the
Plaintiffs by Brown and Wright their Attorneys and
the said defendant Root by Wilson & Wilson his Attorneys
also come, and move a jury and submit this cause
to the Court for trial; after hearing the evidence and
arguments of Counsel, the Court finds the issues
posed in favor of the Plaintiffs, and that said
defendants are indebted to the Plaintiffs in the
sum of Thirteen hundred dollars, and assess
the damages on breach assigned in the said
Plaintiffs declaration at the sum of Six hundred
and two hundred dollars and forty seven cents;
it is therefore considered by the Court, that the Plaintiffs
have and recover of the said defendant Root their
debt of Thirteen hundred dollars aforesaid and
their costs in this suit expended and have execution
therefor to be discharged upon the payment of the
sum of Six hundred and two dollars & Fifty
seven cents the damages aforesaid and the costs
of the suit aforesaid, and that an appeal be allowed
to Supreme Court by the said Aurora Root entering into Bond
in Penal sum of Eight hundred dollars with J. P. Wydict
his security in forty days

And interests and damages, in Case the said judg-
ment shall be affirmed, and shall duly prosecute
his said Appeal, then this obligation to be void
otherwise to remain in full force and virtue
Signed in Presence of } Anson Root Seal
S. P. Mordick Seal

State of Illinois }
Hann County ss }

I Charles B. Wells Clerk of
Hann County Circuit Court do hereby Certify
that the foregoing is a true and perfect copy of the
Receipt. Writ. Declaration Plea^{1st} Replication Answer
(to Replication) Appeal Bond on file in my Office
in the Case they for point to be, and also of the
Order of Court on the Demurrer to the Replication
and final order of judgment as appears of Record.

Witness my Hand and Seal of
said Court at Geneva in said
County this 27th day of May
AD 1856.

Charles B. Wells
Clerk.

Sup Court. Ottawa
June Term AD 1880

and now comes the said Appellant Anson Root and says that in the Record and proceedings aforesaid there is error in this Now it:

- 1st The Court erred in overruling the demures to the plaintiffs replication to third plea of deft. Root.
- 2 The judgment of the Court is contrary to Law.
3. The finding of the Court is erroneous.
4. Judgment ought to have been rendered in favor of the defendt —

Wilson & Wilson

Atty. for appellant.

and the said appellee says that in the said Record & proceedings there is no such error as ~~by~~ the said Root has above thereof alleged in Manner & form aforesaid and that he is ready to verify by the Record - wherefore he prays said Judgment may be affirmed with costs &c. by Motion his Atty.

55

Weed Mallow Stem

7

Root & Herbaceous

Record from Name

Filio June 11. 1850.
C. Keland Clk.

45. pr. Clk.