

14586

No. _____

Supreme Court of Illinois

Frisbie

vs.

SLY

Van ~~X~~ke

STATE OF ILLINOIS,
SUPREME COURT,
THIRD GRAND DIVISION.

No. 77

J. W. Middleton & Co., Stationers, 196 Lake St.

Freshie

Van Dyke

14586

864

State of Illinois } Third Grand Division
Supreme Court } thereof in vacation after
April Term 1871/3

Augustus Frisbe & } Plffs in Error.
William Jay }

vs }
Napoleon B. Sanbly } Deft in Error.
} Error from Superior Court
} of Chicago.
Abstract of Record

Page 1st

The Deft in Error on the 6th day
of Decr 1870 then was filed
in the office of the Clerk of the
said Court a Bond for costs, three
promissory notes, and three several
powers of Atty. & Declaration & Cognovit

Page 2nd Bond set out in words & figures
in verbal form =

2nd Notes set out & under power of Atty
3rd & 4th in verbal form

Page 5th Declaration in verbal form filed by
Clarkson & Dine Deft attys.
9th & 10

Page Plea confessing judgment on each
of said notes on part of Deft in
11812 Error in verbal form.

13 & 14
Shows rendering of judgment on
each of said notes in several
form in said Superior Court
to the amount of ten thousand
five hundred twenty seven dollars
of fifty cents, against C. H. in error

Each of said notes were given
on 26th of Aug^r 1859. for the
sums as follows one for \$2000
one other for a like sum, and
one for \$3000.

The 1st note payable on
1st of June 1861, 2nd payable same
date. 3rd on 1st Sept 1861.

The said notes were dated as also
the papers of title on the 26th
of Aug 1859 - and judgments
rendered on Dec 6th 1861, - in
said Court. -

State of Illinois } Third Grant Division
Supreme Court } thereof in vacation
after April Term
A.D. 1843.

Augustus Friesbee } Plt in Error
as
Napoleon B Van Slyke } Deft in Error

Assignment of Errors by
Plt in Error. Note above. -

1st The said Court are informed
I am appellant in Error. -

2nd

The said Court had no jurisdiction
of the subject matter of said record

3rd

The said Court had no jurisdiction
of the person of said Plt in Error.

4th

The Powers of the said Court were given
them a year & day before judgment

5th

There was no sufficient Plea of
Confession filed in said Error.

6th

There was no affidavit filed that the
debt was not paid, or that the makers
of the same were not solvent.

Brief of Authorities relied upon by PGP
in error.

See 28 Ill 344 and
Authorities therein referred to

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Plas, before the Honorable, the Judges of the Superior Court of Chicago, within and for the County of Cook and State of Illinois, at a regular Term of said Superior Court of Chicago, begun and holden at the Court House, in the City of Chicago, in said County and State, on the first Monday, being the third day of December in the year of our Lord One Thousand Eight Hundred and Sixty-and of the Independence of the United States of America the eighty-fifth.

Present, The Honorable John M. Wilson Chief Justice of the }
Superior Court of Chicago. }

Van W. Higgins }
Grant Goodrich } Judges.

Carlos Haven Prosecuting Attorney

A. C. Mesing Sheriff of Cook County.

Attest, Samuel J. Smith Clerk.

Be it remembered, that on the sixth day of December A.D. 1860 there were filed in the Office of the Clerk of our said Court a certain Bond for costs, three promissory notes and ^{three} powers of Attorney and a Declaration and Cognovit, which are respectively in the words and figures following to wit:

State of Illinois
County of Cook } p.

The Superior Court of
the City of Chicago in
the County of Cook.

Of the December Term A.D. 1860

Napoleon B Van Slyke

Augustus Tristie and
Hiram Soy

In Confession

We enter ourselves security
for costs in this case and promise to pay all

costs, which may be awarded to the opposite party in
this action or to any of the officers of this Court
and in default of payment by the plaintiff of
any costs ordered or adjudged to be paid by
the plaintiff we hereby agree and stipulate
that execution may issue against our property
for any costs taxed against the said plaintiff.
Dated this 6th day of December A D 1860
Clarkson & Tree

\$2000 ¹⁰⁰/₁₀₀ Chicago August 26. 1859
On the first day of June 1860 we
the subscribers of Chicago, County of Cook,
State of Illinois promise to pay to St B
Van Slyke Adm^r or order Two Thousand
dollars at the Marine Bank for value
received, with interest, with interest at rate
of ten per. ct. per annum till paid.
A Frisbie
Miriam Soy

Know all men by these presents, that we the
subscribers are justly indebted to St B Van Slyke
upon a certain promissory Note bearing even date
herewith for the sum of Two Thousand dollars
with interest at the rate of ten per. ct. per annum
and due June 1. 1860 after date.
Now therefore in consideration of the premises
we do hereby make, constitute and appoint
— or any Attorney of any Court of Record,
to be our true and lawful Attorney, irrevocably
for us and in our name, place and stead, to

appear in any Court of Record in term time or in vacation, in any of the States or Territories of the United States, at any time after said Note becomes due, to waive the service of process and confess a judgment in favor of the said Van Slyke or his assigns or assignees upon the said Note for the above sum or for as much as appears to be due according to the tenor and effect of said Note and interest thereon to the day of the entry of said judgment, together with costs & all attorneys fees; And also to file a cognovit for the amount, that may be so due with an agreement therein, that no writ of error or appeal shall be prosecuted upon the judgment entered by virtue hereof, nor any bill in equity filed to interfere in any manner with the operation of said judgment and to release all errors that may intervene in the entering up said judgment, or issuing the execution thereon and also to waive all benefit of or advantage to which we may be entitled by virtue of any Homestead, stay or other exemption law, now or hereafter in force in this or any State or Territory, where judgment may be entered by virtue hereof. Hereby ratifying and confirming all that our said Attorney may do by virtue hereof.

Witness our hands and seals this

twenty sixth day of August A D 1859
A Frisbie *seal*
Niram Jory *seal*

Int. paid on within note

26th August/60

Clarkson & Tree
Atty for N B Van Slyke

\$2000 ⁰⁰/₁₀₀ Chicago August 26. 1859

On the first day of July 1860 after date
we the subscribers of Chicago County of Cook
State of Illinois promise to pay to N B Van
Slyke Adm^r or order Two Thousand dollars

at ~~Maine Bank~~ *for value received at Maine Bank, with interest*
at rate of ten per cent per annum until paid

A Frisbie

Niram Jory

Know all men by these Presents, that we
the subscribers are justly indebted to N B
Van Slyke upon a certain promisory Note,
bearing even date herewith for the sum of Two
Thousand dollars with interest at rate of ten
per cent. per annum and due July first after date
Now therefore in consideration of the promises
we do hereby make constitute and appoint
— or any Attorney of any Court of Record, to
be our true and lawful Attorney invocably for us

3
and in our name, place and stead, to appear in
any Court of Record in term time or in vacation
in any of the States or Territories of the United
States at any time after said Note becomes due
to waive the service of process and confess a
judgment in favor of the paid Van Slyke or
his assigns or assignees upon the paid Note for the
above sum or for as much as appears to be due
according to the tenor and effect of said Note and
interest thereon to the day of the entry of said
judgment together with costs and all Attorneys
fees and also to file a cognovit for the amount
that may be so due with an agreement therein,
that no writ of error or appeal shall be prosecuted
upon the judgment entered by virtue hereof, nor
any Bill in Equity filed to interfere in any manner
with the operation of said judgment and to release
all errors that may intervene in the entering up
said judgment or issuing the execution thereon
and also to waive all benefit or advantage to
which we may be entitled by virtue of any
Homestead, Stay or other Exemption law, now or
hereafter in force in this or any State or Territory
where judgment may be entered by virtue hereof
Hereby ratifying and confirming all that our
said Attorney may do by virtue hereof.

Witness our hands and seals this twenty sixth day of August AD 1859

A. Trisbie Secy
Hiram Joy Esq

Int. pd. on within Note to Aug 26. /60

Clarkson & Tree

Attys for N B Van Slyke

\$ 3000 ⁰⁰/₁₀₀

Chicago August 26. 1859

On the first day of September 1860
1860 the subscribers of Chicago County of Cook
State of Illinois promise to pay to N B Van Slyke
Adm^r. or order Three Thousand dollars at
Maine Bank for value received with interest
at rate of ten pr. ct. pr annum until paid.

A Frisbie

Wm Joz

Know all men by these Presents that we the
subscribers are justly indebted to N B Van Slyke
upon a certain promissory Note bearing even date
herewith for the sum of Three Thousand dollars
with interest at rate of ten pr. ct. pr. annum and
due September 1860 (1860).

Now therefore in consideration of the premises we
do hereby make, constitute and appoint — or any
Attorney of any Court of Record to be our true and
lawful Attorney irrevocably for us and in our name
place and stead to appear in any Court of Record
in Term time or in vacation in any of the States or
Territories of the United States at any time after
said Note becomes due to waive the service of process

17
and confess a judgment in favor of the said Van Slyke
or his Assigns or Assignees upon the said Note for
the above sum or for as much as appears to be due
according to the tenor and effect of said Note and
interest thereon to the day of the entry of said judg-
ment together with costs and all Attorneys fees
and also to file a cognovit for the amount, that
may be so due with an agreement therein, that no
writ of error or appeal shall be prosecuted upon
the judgment entered by virtue hereof nor any
Bill in Equity filed to interfere in any manner
with the operation of said judgment and to release
all errors, that may intervene in the entering up
said judgment or issuing the execution thereon
and also to waive all benefit of or advantage
to which we may be entitled by virtue of any
Homestead, stay or other exemption law, now or
hereafter in force in this or any State or Territory
where judgment may be entered by virtue hereof.
Hereby ratifying and confirming all that our
said Attorney may do by virtue hereof.
(Witness our hands and seals this twenty sixth
day of August A D 1859

A. Trisbie (seal)

Quam Joy (seal)

Int pd. on within Note to Aug 26/60

Clarkson & Tru, attys for W B Van Slyke

State of Illinois }
Cook County } P.

The Superior Court of the City
of Chicago in the County of
Cook.

Of the December Term AD 1860

Napoleon B Van Slyke, plaintiff in this suit
by Clarkson & Tree his Attorneys complains of
Augustus Friebie and William Joy defendants in
a plea of trespass on the case on promises: For
that whereas the said defendants heretofore to wit,
on the twenty sixth day of August in the year of
our Lord One Thousand Eight Hundred and fifty
nine at Chicago, to wit at said County of Cook
made their certain promissory Note in writing bearing
date the day and year last aforesaid and then
and there delivered the same to the said plaintiff
in and by which said note the said defendants
promised to pay to the order of the said plaintiff
by the name style and description of N B Van Slyke
Adm^r on the first day of June Eighteen Hundred
and Sixty (1860) the sum of Two Thousand
dollars at the Marine Bank with interest at
the rate of ten per cent per annum till paid
for value received. By means whereof and by
force of the Statute in such case made and
provided, the said defendants became liable to

pay said plaintiff the said sum of money mentioned in said Note and being so liable in consideration thereof then and there undertook & promised to pay the same to the said plaintiff according to the tenor and effect, true intent and meaning of the said Note, to wit: at the place aforesaid.

And whereas also the said defendants heretofore to wit, on the twenty sixth day of August in the year of our Lord One thousand Eight Hundred and fifty nine at Chicago to wit, at said County of Cook made their certain other promissory Note in writing bearing date the day and year last aforesaid and then and there delivered the same to the said plaintiff, in and by which said last mentioned note the said defendants promised to pay to the order of the said plaintiff by the name, style and description of N B Van Slyke Admt. on the first day of July Eighteen Hundred and Sixty (1860) the sum of Two Thousand dollars at the Marine Bank with interest at the rate of ten per cent per annum until paid for value received. By means whereof and by force of the Statute in such case made and provided the said defendants became liable to pay the said plaintiff the said sum of money mentioned in said Note and being so liable in consideration thereof, then and there undertook and promised to pay

the same to the said plaintiff according to the tenor and effect, true intent and meaning of the said note, to wit, at the place aforesaid,

And whereas also the said defendants, here, before to wit, on the twenty sixth day of August in the year of our Lord One Thousand Eight Hundred and Fifty Nine, at Chicago, to wit at said County of Cook made their certain other promisory Note in writing bearing date the day and year last aforesaid and then and delivered the same to the said plaintiff in and by which said last mentioned note the said defendants promised to pay to the order of the said plaintiff by the name, style and description of N B Van Slyke Adm^r. on the first day of September Eighteen Hundred and Sixty (1860), the sum of Three Thousand dollars at the Maine Bank with interest at the rate of ten per cent per annum until paid for value received.

By means whereof and by force of the Statute in such case made and provided the said defendants became liable to pay the said plaintiff the said sum of money mentioned in said Note and being so liable in consideration thereof then and there undertook and promised to pay the same to the said plaintiff according to the tenor and effect, true intent and meaning of the said Note to wit at the place aforesaid

Yet the said defendants although often requested
ye have not yet paid the said sums of money
or any part thereof to the said Plaintiff, but
so to do have hitherto wholly refused and
still do refuse to the damage of the plaintiff
of twenty thousand dollars and therefore he
brings suit &c

Clarkson & Tree
Plffs Attys

In the Superior Court of the
City of Chicago in the County
of Cook of the December Term
A D 1860.

Augustus Frisbie and
Miami Jory
ads
Napoleon B Van Slyke

} Cognovit

And the said
Augustus Frisbie and Miami Jory defendants
in the above entitled suit by Perkins Baps
their Attorney come and defend the wrong
and injury when &c and waived service
of process and say, that they cannot deny
the action of the said Plaintiff, nor but
that the said plaintiff hath sustained
damages on occasion of the non performance
of the several promises and undertakings in

the said declaration mentioned including the sum of Thirty five dollars for his reasonable Attorney's fees for entering up this judgment over and above his other costs and charges by him about his suit in this behalf expended to the amount and sum of Seven Thousand Two Hundred and Twenty Seven dollars and fifty cents (\$7227.50) and the said defendants further agree, that no writ of error or appeal shall be prosecuted on the judgment entered by virtue hereof, nor any bills in equity filed to interfere in any manner with the operation of said judgment and that they hereby release all errors that may intervene in the entering up the same or issuing the execution thereon and consent to immediate execution upon such judgment

Perkins Bap
Defendants Attorney

And afterwards to wit: on the same day and year aforesaid, being ^{one of the days of the} ~~in~~ ^{December} ~~Vacation~~ after the ~~November~~ Term of said Court, the following among other proceedings were had in said Court and entered of record, to wit:

Napoleon B Van Dyke
vs
Augustus Friesbie and William Joy } Confession

This the 6th day
of December A D 1860 comes the said
plaintiff by Clarkson & Tree his Attorneys, who
file herein his certain declaration of a plea of
trespass on the case upon promises and there,
upon also comes the said defendants by
Perkins Pease their Attorney in fact, who
files herein his certain warrant of Attorney
the execution of which being duly proved
and also their Cognovit, confessing the action
of the said plaintiff against them and that
the said plaintiff hath sustained damages
herein to the sum of Seven Thousand
Two Hundred and Twenty Seven Dollars
and fifty cents.

Therefore it is considered,
that the said plaintiff do have and recover of
the said defendants his damages of
Seven Thousand Two Hundred and Twenty
seven dollars and fifty cents in form
aforesaid confessed and also his costs and
charges in this behalf expended and have
execution therefor.

STATE OF ILLINOIS, } ss.
COUNTY OF COOK.

I, THOMAS B. CARTER, Clerk of the Superior Court of Chicago within
and for the County and State aforesaid, do hereby certify the above and foregoing, to be a true,
perfect and complete copy of a certain the papers on file and proceedings
entered of record in a certain cause pending in said Court,
on the Common Law side thereof, wherein Napoleon B
Van Slyke was Plaintiff and Aristide
and J. M. Joy were Defendants

In Witness Whereof, I have hereunto set my hand,
and affixed the Seal of said Court, at Chicago, this
21st day of October
A. D. 1863.

Thomas B. Carter Clerk.

Let a supersedeas issue. Bore
B144675 W L C Church & C B Farwell
Attorneys J. B. Eaton

Record -

Filed Oct. 29. 1863.
L. J. Ireland
Clerk.

Know all Men by these Presents, That we, Augustus Friesbie
William L. Church and
Charles B. Farwell all of the City of
Chicago in _____ of the County of Cook and State of Illinois,
are held and firmly bound unto Napoleon B. Van Slyke of Madison
in the State of Wisconsin also of the same County and State,
in the penal sum of Forty-four thousand four hundred and sixty Seven Dollars,
lawful money of the United States, for the payment of which, well and truly to be made, we
bind ourselves, our heirs, executors and administrators, jointly, severally and firmly, by these
presents.

Witness our hands and seals, this 28th day of October A. D. 1863

The Condition of the above Obligation is such, That whereas, the said Napoleon
B. Van Slyke
did, on the Sixth day of December A. D. 1860 in the Superior Court
of Chicago, in and for the County of Cook, and State aforesaid, and of the December
Term thereof, A. D. 1860 recover a judgment against the above bounden Augustus
Friesbie, and Miriam Fay
for the sum of Seven thousand two hundred and twenty Seven Dollars
and fifty cents, besides costs of suit; from which said judgment of the said
Superior Court of Chicago, the said Augustus Friesbie
has prayed for, and obtained an appeal to the Supreme Court of said State.

Now, Therefore, if the said Augustus Friesbie
shall duly prosecute his said appeal with effect, and moreover, pay the amount of the judgment,
costs, interest and damages rendered, and to be rendered, against him in case the said
judgment shall be affirmed in said Supreme Court, then the above obligations to be void, otherwise
to remain in full force and virtue.

Taken and entered into before me, at my office,
in Chicago, this _____ day
of _____ A. D. 186

CLERK.

Augustus Friesbie SEAL.
Wm. L. Church SEAL.
C. B. Farwell SEAL.
X SEAL.

State of Illinois
County of Cook

This day personally appeared before me at my office in the City of Chicago in said County, the within named William L. Church and Charles B. Farwell, who, being first duly sworn according to law, doth, each for himself say, that he is worth the sum of Fifteen Thousand Dollars in real and personal estate located in said County of Cook estate aforesaid, subject to levy and sale under execution, ~~and over and above~~ all just debts and liabilities, and further say not—

x Wm L Church
x C B Farwell

Subscribed and sworn to before me at my office in the City of Chicago in the County and State aforesaid this 28th day of October A.D. 1863.

In witness whereof I have hereunto set my hand and affixed the seal of the Superior Court of Chicago the day and year last aforesaid—

Thomas. Plunkett Clerk

77

G. D. No.

SUPERIOR COURT OF CHICAGO.

Augustus Frosch

VS.

Chas. B. Van Slyke

~~APPEAL~~ BOND.

Supd.

Filed this 29th day of Oct.
A. D. 1863.

W. L. Leland

CLERK.