No. 14375

# Supreme Court of Illinois

Anderson

vs.

Curtis.

71641

STATE OF ILLINOIS,

SUPREME COURT,

Third Grand Division

1865

No. 7

Addison
vs
Curtis

1863

Chicago March 30 1863

L Leland Esq

Please send the writ of Error & Sci fa to us and we will stamp them Enclosed is the dip dollars judges fee, and the other fees will pay on filing the Record &c

Yours &c

Mc Allister Swartt & Jackson

Supreme Court

Hans H Andresen
vs Pl. off in Error
Charles H Curtis
Dept in Error

I do enter myself security for Costs in this Cause and acknowledge myself bound to pay or cause to be paid all Costs which may accrue in this suit either to the opposite party or to any of the officers of this Court in pursuance of the laws of this suit

Dated this 30th day of March A D 1863

Franklin H. Curtis

Hans H. Anderson
v
Charles H. Curtis

Bond for costs

Filed Oct. 31. 1863.
L. Leland
Clk.

Supreme Court

Hans H Andresen
Pltff in Error

vs

Charles H Curtis
Defdt in Error

Please issue a writ of Error to the Cook County Circuit Court to bring up the Record in the case of a Judgment lately rendered in said Court wherein Charles H Curtis was plaintiff and Hans H Andresen was defendant and issue Scire facias to Sheriff of Adams County returnable to the next Term of the Supreme Court at Ottawa.

McAllister Jewett & Jackson
Attys for Pltff in Error

To L Leland Clerk
March 30th 1863

Hans H. Anderson

v

Charles A. Curtis

Precipe

Filed Mch. 31. 1863.

L. Leland

Clk.

STATE OF ILLINOIS, } ss. The People of the State of Illinois,
SUPREME COURT,

To the Clerk of the Circuit Court for the County of Cook — Greeting:

Because, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of Cook County, before the Judge thereof, between

Charles A. Curtis

plaintiff, and

Hans A. Anderson

defendant, it is said manifest error hath intervened, to the injury of the aforesaid

Hans A. Anderson

as we are informed by his complaint and we being willing that error should be corrected, if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the first Tuesday after the third Monday in April next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

Witness, The Hon. JOHN D. CATON, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 31st day of March in the Year of Our Lord One Thousand Eight Hundred and Sixty three.

L. Leland
Clerk of the Supreme Court.

127

Hans H. Anderson

No. vs.

Charles H. Curtis

**WRIT OF ERROR.**

FILED ..... A D. 186

..... Clerk.

STATE OF ILLINOIS,
SUPREME COURT. } ss. The People of the State of Illinois,

To the Sheriff of Adams — County, GREETING:

Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Circuit — Court of Cook — County, before the Judge thereof, between

Charles A. Curtis

plaintiff, and

Hans A. Anderson

defendant, it is said that manifest error hath intervened, to the injury of the said

Hans A. Anderson

as we are informed by his — complaint — the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law: Therefore, We Command You, That by good and lawful men of your County, you give notice to the said

Charles A. Curtis

that he — be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, to hear the record and proceedings aforesaid, and the errors assigned, if he — shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said

Charles A. Curtis

notice, together with this writ.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 31st day of March in the year of our Lord One Thousand Eight Hundred and Sixty-three.

L. Leland

Clerk of the Supreme Court.

127.

Hans H. Anderson

No. vs.

Charles H. Cutler

SCIRE FACIAS.

FILED ..... A. D. 186

..... Clerk.

Fees Received $ 1,00

I have served the within Scire Facias by reading the same to the within named Charles H. Cutler this 10th day of April A.D. 1865

John S. Ferris

Sheriff Calumet County

Per D. Blanchard Deputy

Printed By Beach & Barnard, 14 South Clark St.

# SUPREME COURT OF ILLINOIS,

**THIRD GRAND DIVISION,**
*APRIL TERM, A. D.* 1863.

Error to Cook Circuit Court

HANS H. ANDRESON, Plaintiff in Error,
*vs.*
CHARLES H. CURTIS, Defendant in Error.

## ABSTRACT OF RECORD.

Rec. p. 1–6, 2, 3 4 5 This was a judgment entered by confession, in the Circuit Court of Cook county, on the 13th day of January, 1863, against the plaintiff in error, in favor of the defendant in error. The narr and cognovit are in the usual form; the note and warrant of attorney, which are attached thereto, and upon which the judgment is based, both bear date January 4th, 1853.

5 Attached to the warrant of attorney is a certificate of acknowledgment before W. W. Stewart, notary public, which is also dated January 4th, 1853.

These are all the papers and all the evidence in the case. There is no affidavit of any kind showing that the defendant was *in esse*, or that the debt was unpaid at the time of the entry of said judgment; and no order or rule of Court appears to have been made allowing said judgment to be entered on the warrant of attorney.

## ASSIGNMENT OF ERRORS.

1st. That the Court erred in giving judgment for the plaintiff without requiring an affidavit to be filed, setting forth the fact that the defendant was then living and the debt unpaid.

2nd. That no rule or order was made by the Court before the entry of said judgment, allowing the same.

3d. That by the law of this State, there was no right or authority on the part of the plaintiff to enter a judgment on the warrant of attorney contained in this record.

McALLISTER, JEWETT & JACKSON,
*Attorneys for Plaintiff in Error.*

## PLAINTIFF'S POINTS.

127

Anderson
vs
Coates
Obst. of Record

Filed April 23. 1863
S. Secard
Clk

Printed By BEACH & BARNARD, 14 South Clark St.

# SUPREME COURT OF ILLINOIS,

**THIRD GRAND DIVISION,**
*APRIL TERM, A. D.* 1863.

ERROR TO COOK CIRCUIT COURT

HANS H. ANDRESON, PLAINTIFF IN ERROR,

*vs.*

CHARLES H. CURTIS, DEFENDANT IN ERROR.

## ABSTRACT OF RECORD.

Rec. p. 1–6 2 3 4 5 This was a judgment entered by confession, in the Circuit Court of Cook county, on the 13th day of January, 1863, against the plaintiff in error, in favor of the defendant in error. The narr and cognovit are in the usual form; the note and warrant of attorney, which are attached thereto, and upon which the judgment is based, both bear date January 4th, 1853.

5 Attached to the warrant of attorney is a certificate of acknowledgment before W. W. Stewart, notary public, which is also dated January 4th, 1853.

These are all the papers and all the evidence in the case. There is no affidavit of any kind showing that the defendant was *in esse*, or that the debt was unpaid at the time of the entry of said judgment; and no order or rule of Court appears to have been made allowing said judgment to be entered on the warrant of attorney.

## ASSIGNMENT OF ERRORS.

1st. That the Court erred in giving judgment for the plaintiff without requiring an affidavit to be filed, setting forth the fact that the defendant was then living and the debt unpaid.

2nd. That no rule or order was made by the Court before the entry of said judgment, allowing the same.

3d. That by the law of this State, there was no right or authority on the part of the plaintiff to enter a judgment on the warrant of attorney contained in this record.

McALLISTER, JEWETT & JACKSON,
*Attorneys for Plaintiff in Error.*

## PLAINTIFF'S POINTS.

127

Anderson
vs
Coates

Abstract of Record

Filed Apr 23 1863
S Leland
Clk

Printed By Beach & Barnard, 14 South Clark St.

# SUPREME COURT OF ILLINOIS,

**THIRD GRAND DIVISION,**
*APRIL TERM, A. D.* 1863.

Error to Cook Circuit Court

HANS H. ANDRESON, Plaintiff in Error,

*vs.*

CHARLES H. CURTIS, Defendant in Error.

## ABSTRACT OF RECORD.

Rec. p. 1–6 This was a judgment entered by confession, in the Circuit Court of Cook county, on the 13th day of January, 1863, against the plaintiff in error, in favor of the defendant in error. The narr and cognovit are in the usual form; the note and warrant of attorney, which are attached thereto, and upon which the judgment is based, both bear date January 4th, 1853.

2 3 4 5

5 Attached to the warrant of attorney is a certificate of acknowledgment before W. W. Stewart, notary public, which is also dated January 4th, 1853.

These are all the papers and all the evidence in the case. There is no affidavit of any kind showing that the defendant was *in esse*, or that the debt was unpaid at the time of the entry of said judgment; and no order or rule of Court appears to have been made allowing said judgment to be entered on the warrant of attorney.

## ASSIGNMENT OF ERRORS.

1st. That the Court erred in giving judgment for the plaintiff without requiring an affidavit to be filed, setting forth the fact that the defendant was then living and the debt unpaid.

2nd. That no rule or order was made by the Court before the entry of said judgment, allowing the same.

3d. That by the law of this State, there was no right or authority on the part of the plaintiff to enter a judgment on the warrant of attorney contained in this record.

McALLISTER, JEWETT & JACKSON,
*Attorneys for Plaintiff in Error.*

## PLAINTIFF'S POINTS.

127

Anderson
vs
Coulter

Abst. of Record

Filed March 23. 1863

L Leonard
Clk

# UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

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, and at a term thereof begun and held at the Court House in the City of Chicago, in said County, on the First Monday, (being the Sixth day) of January in the year of our Lord One Thousand Eight Hundred and Sixty three and of the Independence of the said United States the Eighty seventh

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

Joseph Knox States Attorney.

David S. Hammond Sheriff of Cook County.

Attest, William L Church Clerk.

(1) Be it remembered that heretofore to=wit: On the Thirteenth day of January in the year aforesaid. Charles M. Willets plaintiff by Wilson and Clark his attorneys filed in said Court his certain Declaration, together with the Note declared on, and the warrant of attorney thereto attached, and thereupon Come the ~~said~~ defendant Hans M. Andresen by Edwin S. Taylor his attorney in fact and filed in said Court on said 13th day of January. his Cognovit confessing the action of the said plaintiff against him, which said Declaration, Note, Warrant of attorney & Cognovit are respectively in the words and figures following to=wit;

Declaration

Narr and Cognovit

**State of Illinois,** } CIRCUIT COURT OF COOK COUNTY,
Cook County, ss } in January Term, A. D. 1863.

Charles W. Curtis

Plaintiff in this suit, by Wilson & Clark his Attorneys, complain of

Hans W. Andersen

Defendant in a plea of trespass on the case on promises: For that whereas the said Defendant, heretofore, to wit, on the fourth day of January in the year of our Lord one thousand eight hundred and sixty-three at Chicago to wit, at said County of Cook, made his certain promissory Note in writing, bearing date the day and year aforesaid, and then and there delivered the same to Robert Deneen in and by which said Note, said Defendant by the name, style and description of H. W. Andersen promised to pay to the order of the said (2) Robert Deneen, Four hundred sixty dollars, One year after date with interest at six per cent payable annually

for value received. And the said Robert Deneen to whom or to whose order said note was payable, afterwards, to wit, on the day and year aforesaid, ~~at~~ to wit, in the County of Cook aforesaid, endorsed said note in writing, by which said endorsement the said Robert Deneen then and there ordered and appointed the said sum of money in said note mentioned to be paid to said Plaintiff, and then and there delivered said note, so endorsed, to the said Plaintiff. By means whereof, and by force of the statute in such case made and provided, the said Defendant became liable to pay said Plaintiff 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, and of the endorsement aforesaid, to wit, at the place aforesaid.

Yet the said Defendant, although often requested, &c., hath not yet paid the said sum of money, or any part thereof to the Plaintiff, but so to do hath hitherto wholly refused, and still do refuse, to the damage of the Plaintiff of One Thousand dollars and therefore he brings suit, &c.

Wilson & Clark Plaintiffs Attorney.

---

## CIRCUIT COURT OF COOK COUNTY.

January Term, A. D. 1863.

Hans W. Andersen

Ads.

Charles W. Curtis

COGNOVIT.

And the said Hans W. Andersen Defendant in the above entitled suit, by Edwin S. Taylor his Attorney come and defend the wrong and injury, when, &c., and waived services of Process, and say that he cannot deny the action of the said Plaintiff, nor but that the said Plaintiff has sustained damages on occasion of the non-performance of the several promises and undertakings in the said declaration mentioned, including the sum of Ten 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 Seven hundred and fourteen dollars and Twenty nine cents; and the said Defendant further agree that no writ of error or appeal shall be prosecuted on the judgment entered by virtue hereof, nor any bill in equity filed to interfere in any manner with the operation of said judgment, and that he hereby release all errors that may intervene in entering up the same, or issuing the execution thereon, and consent to immediate execution upon such judgment.

E. S. Taylor Defendants Attorney.

Declaration

Narr and Cognovit

**State of Illinois,** } CIRCUIT COURT OF COOK COUNTY,
Cook County, ss } in January Term, A. D. 1863.

Charles W. Curtis

Plaintiff in this suit, by Wilson & Clark his Attorneys, complain of

Hans W. Andersen

Defendant in a plea of trespass on the case on promises: For that whereas the said Defendant, heretofore, to wit, on the fourth day of January in the year of our Lord one thousand eight hundred and sixty-three at Chicago to wit, at said County of Cook, made his certain promissory Note in writing, bearing date the day and year aforesaid, and then and there delivered the same to Robert Deneen in and by which said Note, said Defendant by the name, style and description of H. W. Andersen promised to pay to the order of the said (2) Robert Deneen, Four hundred sixty dollars, One year after date with interest at six per cent payable annually

for value received. And the said Robert Deneen to whom or to whose order said note was payable, afterwards, to wit, on the day and year aforesaid, ~~at~~ to wit, in the County of Cook aforesaid, endorsed said note in writing, by which said endorsement the said Robert Deneen then and there ordered and appointed the said sum of money in said note mentioned to be paid to said Plaintiff, and then and there delivered said note, so endorsed, to the said Plaintiff. By means whereof, and by force of the statute in such case made and provided, the said Defendant became liable to pay said Plaintiff 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, and of the endorsement aforesaid, to wit, at the place aforesaid.

Yet the said Defendant, although often requested, &c., hath not yet paid the said sum of money, or any part thereof to the Plaintiff, but so to do hath hitherto wholly refused, and still do refuse, to the damage of the Plaintiff of One Thousand dollars and therefore he brings suit, &c.

Wilson & Clark Plaintiffs Attorney.

---

## CIRCUIT COURT OF COOK COUNTY.

January Term, A. D. 1863.

Hans W. Andersen

Ads.

Charles W. Curtis

COGNOVIT.

And the said Hans W. Andersen Defendant in the above entitled suit, by Edwin S. Taylor his Attorney come and defend the wrong and injury, when, &c., and waived services of Process, and say that he cannot deny the action of the said Plaintiff, nor but that the said Plaintiff has sustained damages on occasion of the non-performance of the several promises and undertakings in the said declaration mentioned, including the sum of Ten 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 Seven hundred and fourteen dollars and Twenty nine cents; and the said Defendant further agree that no writ of error or appeal shall be prosecuted on the judgment entered by virtue hereof, nor any bill in equity filed to interfere in any manner with the operation of said judgment, and that he hereby release all errors that may intervene in entering up the same, or issuing the execution thereon, and consent to immediate execution upon such judgment.

E. S. Taylor Defendants Attorney.

## Note.

$ 4440.00 Chicago January 4th 1853.

One year after date for value received I promise to pay Robert Dewes or order Four hundred and forty dollars. with interest at six per cent payable annually

N. B. Andrews

Internal 5 0/0 Revenue

(63)

On the back of said note appears the following Endorsements to wit:

"Pay N. P. Isbelstart & co or ord. Robert Dewes by W. H. Davis his atty in fact"

"Pay to order of Charles H. Curtis

N. P. Isbelstart & co

Dec 31. / 53.

## Warrant of Attorney

"Know all men by these presents That whereas the subscriber is justly indebted to Robert Dewes in the sum of Four hundred and forty dollars. for which sum the said subscriber hath Executed a promissory note of even date herewith bearing interest at the rate of six per cent. per annum payable One year from date to the order of said Robert Dewes. Now therefore in Consideration of the premises. I do hereby make Constitute and appoint Edward Martin or any attorney of any Court of Record. to be my true and lawful attorney irrevocably. for me and in my name

and plead to enter an appearance before any Justice of the Peace, or any Court of Record in the United States of America, or any of the Territories thereof, at any time from and after the date hereof, to waive the service of process and confess a judgment in favor of said Robert Dever 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 the said note, and interest thereon, to the day of the Entry of said judgment; together with costs and attorneys fees; and also to file a Cognovit for the amount that may be so due, and to release all errors that may intervene in the Entering of said judgment, or issuing the Execution thereon, hereby ratifying & Confirming all that my said attorney may do by virtue hereof. And I do hereby further stipulate and agree, in consideration of the sum of money mentioned in said promissory note, the receipt whereof is hereby acknowledged, that all right, title, claim, interest, benefit or advantage accruing or belonging to me from or by virtue of an act of the General Assembly of the State of Illinois "Entitled an act to exempt Homesteads from sale on Execution" passed on the 7th day of February A.D. 1851, is hereby waived & released, And any property which I now hold or may hereafter acquire, which would be exempt from

levy and sale on Execution by virtue of said act, is hereby made subject to such levy and sale by virtue of this agreement, the same as though said act had not been passed

Witness my hand and seal this Fourth day of January A.D. 1853.

Sealed & delivered in presence of } H.H. Andrews Seal

State of Illinois } ss
Cook County } ss
City of Chicago }

I W. W. Stewart a Notary Public in and for said County, do certify that H.H. Andrews whose signature appears to the foregoing instrument, and who is personally known to me to be the same person who subscribed & executed the same, did acknowledge the same to be his free act and deed. Given under my hand and seal notarial this fourth day of January A.D. 1853.

W. W. Stewart
Notary Public

Seal

Hans H. Andrews

And afterwards, to-wit: at the January Term of said Court, to-wit: on the 13th day of January in the year of Our Lord One thousand Eight hundred and fifty three, the following proceedings, among others, were had and entered of record. Do-wit-

4

22340

Charles W. Curtis
Wm. W. Andrews
} Confession

This day comes the said plaintiff by Helm and Clark his attorneys and files herein his certain declaration of a plea of trespass on the Case upon promises, and thereupon comes also the said defendant by E S. Taylor his attorney in fact who files herein his warrant of attorney the Execution of which being duly proved, and also his Cognovit Confessing the action of said plaintiff against him and that he has sustained damages herein to the sum of Seven hundred and fourteen dollars and twenty nine Cents.

(6)

Therefore it is Considered that said plaintiff do have and recover of the said defendant his damages of seven hundred & fourteen dollars and twenty nine Cents in form aforesaid Confessed, together with his Costs and charges by him about his suit in this behalf Expended and have execution therefor

$714.29

(7)

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 Papers & Proceedings in a certain cause lately pending in said Court, at the Common side thereof, wherein Charles H. Curtis was Plaintiff and Hans H. Andersen was Defendant

In Witness Whereof, I have hereunto set my hand, and affixed the Seal of said Court, at Chicago, this Thirty first day of March A. D. 1873.

Wm L Church Clerk.

Supreme Court of Illinois
Third grand Division
April Term A.D. 1863

Hans H. Andreson Plaintiff in Error
vs
Charles H. Curtis defendant in Error

And the said Plaintiff in error by his Attorneys, McAllister Lemett & Dawson comes and says that in the record and proceedings in this cause and also in the giving Judgment aforesaid there is manifest error in this

1st That the Court erred in giving judgment for the Plaintiff without requiring an affidavit to be filed setting forth the fact that the defendant was then living and the debt or ~~claim~~ some part thereof was unpaid

2nd That no rule or order was made by the Court before the entry of said judgment allowing the same—

3rd That by the law of this State there was no right or authority in the part of the Plaintiff to enter a judgment on the warrant of attorney contained in this record.

Wherefore for the errors aforesaid and other errors appearing in the record and proceedings aforesaid the said Plaintiff in error prays that said judgment be reversed &c.

McAllister Lemett & Dawson
attys for Plaintiff in Error

Supreme Court
Hans H. Andreson
vs
Charles H. Curtis
Record

Filed Oct. 23. 1863
Leland
Clk

# SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION.

APRIL TERM THEREOF, A. D. 1862.

---

DANIEL T. ELSTON,
ORIN J. ROSE, *et als.*, Plt'ffs in Error,
*vs.*
ROBERT DEWES, Def't in Error.
} *Error to Cook.*

---

POINTS OF PLAINTIFFS IN ERROR.

I.

The assessment of damages was erroneous, and the judgment too large. The interest on the $10,000 from 14th July, 1857, to 30th June, 1858, at ten per cent. per annum, was clearly less than $962, whereas $975 was included, making $10,975, the amount of the judgment rendered.

3 Gil 637-643
4 " 79-83
3 Scam 195-350

The case of *Boyle* vs. *Carter*, 24 Ill., 49–51, is directly in point to show that this Court, for that error, will reverse the judgment, with costs to plaintiffs in error.

Lee Written Brief filed

II.

The declaration did not show any existing right of action at the time the suit was commenced, the note not having matured, by the law merchant. The suit was commenced on the second day of grace.

Three days of grace apply equally, according to the custom of merchants, to bills of exchange and promissory notes, and

the maker has till the close of reasonable business hours of the third day of grace to pay. 3 Kent Com. 100.

This is the understanding of merchants, bankers, and the bar, in the United States. The Supreme Court of Massachusetts, in *Wood* vs. *Corl*, 4 Metcalf, 205, say: "We consider it well settled, that by the general law merchant, *which is part of the common law*, as prevailiing throughout the United States, three days of grace are allowed on bills of exchange and promissory notes," unless by special contract or special custom, a different rule prevails. In Illinois there had been no legislation upon the question prior to 1861. The commercial custom has generally regarded days of grace as applicable to both bills and promissory notes, and this Court have decided they are allowed on bills.

And in 25 Ill. 333–6, where the question of days of grace upon promissory notes was suggested, this Court declined to discuss it, as the record did not present the question.

BURNHAM & MARTIN,
*Atty's for Plt'ffs in Error.*

127

Elston et al

v

Deuss

Plff's Points

Statement Brief

Respts

Filed Apl. 25, 1862

L. Leland

Clk.

127