No. 13374

Supreme Court of Illinois

Buel

vs.

Johnson

71641 7

STATE OF ILLINOIS,

SUPREME COURT,

Third Grand Division.

No. 258.

1861

1334

Supreme Court
Willard B Johnson
vs Mfl^d vs
Henry H Buell
et al

It is stipulated that upon the regular call of the Calendar the above cause shall be submitted by both parties one for the other on printed brief & argument to be filed - either party present may argue orally if he chose - but must submit for the other

April 29, 1861

Garrison & Henderson
for Appellant
W. Corbett
for Appellees -

2548

Stipler

Filed May 3 1861

L. Leland
Clerk

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Garrison & Anderson
for Appellants
[illegible]
for Appellees –

258

Bue[illegible]

adv

Johnson

Abated

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AT OTTAWA.

H. K. BUEL, ET AL,
APPELLEES.
ADS
W. B. JOHNSON,
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Yet in them there is no error. The original writ of attachment was against Johnson, (*a non-resident,*) with a summons clause for Garrison (*a resident,*) and co-defendant. It was amended by making the summons part of the writ; also, contain the name of *Johnson.* The Court had enough to amend by in prior pleadings, (affidavits, &c.,) and besides was authorized by statutes (Purp. st 98, sec. 8,) to amend. It was simply an amendment to bring John-

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These proceedings, therefore, *prior to trial*, as to the writ, cannot be enquired into, for the reason first stated, and if enquired into *are correct*. So are disposed of the *first, second and third errors assigned.*

The pleadings in the case were in effect:

The First Plea, is equivalent to general issue. In it, there is an attempt to deny the signature of the note; but the words of the plea are simply: "that said defendants did not *as partners*, by the name, style and description of 'W. B. Johnson & A. Garrison," make and deliver said Promissory Note in writing, nor as such did not undertake, nor promise in manner and form," &c.

That is simply a denial that it was signed by them *as partners*—not a denial of their signatures. It is an issue not raised by us at all; though in the first part of the declaration we describe them *as partners*. We do not in the count on the note, or the common counts, allege that they signed it *as partners*, or were such. Their whole plea, is a plea, *admitting that they signed the note*, but *not as partners*. It does not put us to the proof of the *note*, or *signatures*, or *partnersnip* of either plaintiffs or defendants.

The second plea is equivalent to the general issue. It states, that plaintiffs levied on a lot of *tan bark* of defendant Johnson, as one Bell's—and threatened to sell the same, and so got the note. It is a plea of *duress*. The same facts could be shown under general issue—under first plea. This answers 10th assignment of errors.

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The trial was had then on the first and second pleas. The record shows, that the *issues* (*plural*) as to "*W. B. Johnson only*," were tried. The words are in substance, that there was a trial of the *issues*, *by agreement* of the parties, *as to Johnson only*, by a jury of right men, "who, being duly *selected*, *tried and sworn*, by agreement of the parties, to try the issues joined here in our plea of W. B. Johnson *only*, after hearing evidence, arguments of counsel, and instructions of Court, retired to consider their verdict," &c. It therefore appears that the *issues* (*plural*) were tried as to Johnson only, and the jury so sworn, and that too *by consent.* It would be nonsense to say that they were sworn only to try one issue, when the word *issues* is used. In the phrase "issues as to plea of Johnson," plea is to be interpreted not in its *technical* sense, but as *defence* or pleading, and so as not to mean *one plea.* Besides this, it appears, that the jury were sworn to try the issues *by consent*, and no objection can be made. Also, the only plea on which issue was joined actually, was the first, (to that only there being a *similiter*,) and the second was equivalent to it; the first being only the general issue, (though it pretends to be a *special plea*,) under which all the facts stated in the record here could be shown. The second plea was specially replied to and *no similiter.*

The Bill of Exceptions *absurdly* attempts to show that the jury were sworn to try the issues as to defendants—*both of them.* The Bill of Exceptions cannot contradict the record of the judgment. It is only to preserve things *not of record.* The record is the only guide as to the facts stated in it as to swearing of jury and rendering of their verdict. But the bill does not contradict the record. The *only* issues there were, were between plaintiffs and defendant, Johnson and Garrison, *was not served.* If served, then if he did not plead, they would be sworn to *assess damages.* If he did plead, then and not till then, would there as issue *as to him.* It would be absurd to suppose in this Court that the jury were sworn to try issues as to both defendants, when there were issues only as to *one* of them. If they were sworn to try issues *as to both*, still the effect of the oath would be that they were sworn only as to the issues *which were*, which were *with Johnson only.* The swearing of jury was therefore right, both by record, and even by bill of exceptions.

The Bill of Exceptions shows that on the trial, the plaintiffs proved, by the attorney of defendant, the signatures of the note as to *both defendants*, and that the note was then and there read in evidence, *without exception being taken.* The exception that it was not sufficiently proved, cannot be taken here for the first time. It was not necessary though, to prove it at all, or that plaintiffs or defendants were partners. (See remarks on first plea above.) There was simply a denial that they signed the note, *as partners*, and *we never said they did*, any more than we said they did as *loafers*, *merchants* or *doctors.* There is *no denial of the note* in the plea, as required by the statute, to put us on the proof of the note. It proved itself. Our proof though, showed defendants to have been joint *promissors*, and their not excepting to the introduction of the note, sets all question as to the correctness of the trial at rest. They should have excepted to the introduction of the note *at the time* of offering it, not laid by to except to it *after verdict.* They should have objected when we could have remedied any formal error, if there was any, in proof. We declared in first count, under names, Buel, Hill, Granger & Co., averred the note so drawn to us, and signed just as the note introduced in evidence. All this is an answer to the 5th, 6th, 7th and 8th assignments of error.

The 11th assignment of error is that the case is not disposed of, as to Garrison, the co-defendant, *not served.* It was not necessary. Johnson could not except to it. The case without order, still remains pending as to Garrison. At any time a sci fa could be issued—*he not having appeared.*

J. W. WESTCOTT,
Attorney and Counsel for Appellees.

Since making above Brief, appellees have seen abstract of defendants. An amended abstract is filed by us.

It appears that the writ *was amended* March 12, 1860. The order of the Court was, "that the writ stand as returned, and *run* against *both defendants.*" This was enough without the formal amendmend which was endorsed on the writ. The writ, though *unamended*, it is submitted, would be good enough. It was in *the first place* just as prescribed by the statute. Our amendment in summons part of the writ, by also inserting Johnson's name, can not effect the *attachment* portion which was all right—or release the property.

A point is made by appellants, that the record shows that "Garrison appeared." That *he did appear at any time in the case, is utterly false, in point af fact.* The clerk, in making up his record, has made one or two *slips of the pen*, from which they attempt to show that he *did appear.* He put in no pleading, though in the case; nor was his appearance ever entered. The order made March 12, 1860, was, "defendants' came by J. R. Anderson, attorney, and submit motion to quash writ," &c. This could mean, of course, *only defendants* that *Anderson* appeared for, to wit, *Johnson*; besides this, the motion was by him as *attorney for Johnson alone.* The same reasoning applies to the orders of 10th and 23rd of April; where the record says, "defendants, by J. R. Anderson, their attorney," &c.

The motions and pleadings mentioned in all these orders, were *not* Garrison's *at all.* The Court will not take loose expressions, in a record, so evidently *erroneous* and *false*; and from them here adjudge—that Garrison *appeared.* It will presume, that an attorney appeared only for those he had made pleas or motion for; why should the record be saying that Garrison appeared on Johnson's motion? It meant only to say, that the parties interested in the motion or plea appeared—to wit, on part of defendants—*Johnson only.* The entry of the trial, by the jury, shows, that *the Court* and *parties* at that time understood Garrison had not appeared, and that there was no issue to be tried as to Garrison. It shows "that *no service* was had on Garrison," and that *no issue* was tried as to him. The Court will presume all things to sustain these proceedings.

But in addition to this, if the entries in the record are to be read literally, and the Court is to believe, on the loose expressions of the clerk, that *defendants* appeared, *both of them*, it appears from the record of the trial, that "by agreement of the *parties*," the jury were sworn to try the *issues* only as to Johnson, and that all parties consented to such a trial, and virtually to the verdict and judgment on such issue. This agreement would waive all errors *as to proceeding to trial as to only one defendant:* but there is none. The Court, in construing its record, will be governed by its ordinary rules of construction, and as to a *slip of the pen*—an *s* too much or little—if a record, and the whole proceedings, show it must be an error, it will be disregarded. The mere fact that Anderson *never filed a motion or plea for Garrison*, and never made a move for him in the case, and that *Garrison* was *not served*, are enough to show that there must be an error in the statement, that "*defendants*" appeared by him on the motions," and that "defendants" means *Johnson only.* It is submitted, also, that, where the record shows an appearance of a defendant *not served*, it should be entered of writing, signed by the attorney, and in such a way as to show that the defendant *not served*, came into Court, with the intention of submitting himself to its jurisdiction—and if he came into Court on the hearing of a motion, that it was on a motion made by him. On the loose expressions of the record, we know, and knew we could not act against Garrison, unless *newly served.*

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FOR APPELLEES.

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Johnson
vrs
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Argt for appellee

Filed May 3rd 1861
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For Appellees.

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H. K. Buel

vs

W. B. Johnson

" " " "

Appellee's Brief

Filed May 3rd 1861

L. Leland

Clark

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FOR APPELLEES.

258-

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Appellees Brief-

Filed May 3-1861

L. Leland

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But in addition to this, if the entries in the record are to be read literally, and the Court is to believe, on the loose expressions of the clerk, that *defendants* appeared, *both of them*, it appears from the record of the trial, that "by agreement of the *parties*," the jury were sworn to try the *issues* only as to Johnson, and that all parties consented to such a trial, and virtually to the verdict and judgment on such issue. This agreement would waive all errors *as to proceeding to trial as to only one defendant:* but there is none. The Court, in construing its record, will be governed by its ordinary rules of construction, and as to a *slip of the pen*—an *s* too much or little—if a record, and the whole proceedings, show it must be an error, it will be disregarded. The mere fact that Anderson *never filed a motion or plea for Garrison*, and never made a move for him in the case, and that *Garrison* was *not served*, are enough to show that there must be an error in the statement, that "*defendants*" appeared by him on the motions," and that "defendants" means *Johnson only.* It is submitted, also, that, where the record shows an appearance of a defendant *not served*, it should be entered of writing, signed by the attorney, and in such a way as to show that the defendant *not served*, came into Court, with the intention of submitting himself to its jurisdiction—and if he came into Court on the hearing of a motion, that it was on a motion made by him. On the loose expressions of the record, we know, and knew we could not act against Garrison, unless *newly served.*

J. W. WESTCOTT,

For Appellees.

NOTE.—No abstract has been furnished th us, but the facts set forth below appear all *of record.* On account of time having been given appellants to file abstract, it has been necessary to file our brief without seeing it.

SUPREME COURT OF ILLINOIS.

AT OTTAWA.

H. K. BUEL, ET AL,
APPELLEES.
ADS
W. B. JOHNSON,
APPELANT,

The Bill of Exceptions improperly contains much of the pleadings—in fact, almost all of them. They ought not to have been inserted. It runs back to the beginning of the suit, and embodies motions and rulings of the Court a dozen terms back. The Court has no right to sign bill of exceptions, containing proceedings in prior terms. All exceptions to rulings should be taken at the same term, and *preserved by bill* signed *then.* The Court is presumed to know nothing of the proceedings of prior terms, except the pleadings, orders entered, and exceptions actually taken. Therefore, all the decisions *and motions* in the case, prior to the term of trial, are to be taken as correct, and cannot now be enquired into—must be here presumed correct.

Yet in them there is no error. The original writ of attachment was against Johnson, (*a non-resident,*) with a summons clause for Garrison (*a resident,*) and co-defendant. It was amended by making the summons part of the writ; also, contain the name of *Johnson.* The Court had enough to amend by in prior pleadings, (affidavits, &c.,) and besides was authorized by statutes (Purp. st 98, sec. 8,) to amend. It was simply an amendment to bring John-

son *personally* into court, and as he had then actually appeared, and has since plead *personally* in the case, he cannot object to the amendment. Besides, the service of *the attachment part* of the writ, which was in the ordinary form, was as to him sufficient to bring him into Court. There is no *summons portion* in an ordinary writ of attachment, against a non-resident, yet if personally served, he is as much bound to appear as if served personally by a *summons*. There may be a question too, whether the original writ was not right. The statute seems to contemplate a summons only against *the non-resident*. (P. Statute, page 97, sec. 6.) But be that as it may, Johnson having *appeared*, cannot object to the way in which he was brought into court, to the writ or its amendment, or the return on the same; nor can any of the property be released.

These proceedings, therefore, *prior to trial*, as to the writ, cannot be enquired into, for the reason first stated, and if enquired into *are correct*. So are disposed of the *first, second and third errors assigned.*

The pleadings in the case were in effect:

The First Plea, is equivalent to general issue. In it, there is an attempt to deny the signature of the note; but the words of the plea are simply: "that said defendants did not *as partners*, by the name, style and description of 'W. B. Johnson & A. Garrison," make and deliver said Promissory Note in writing, nor as such did not undertake, nor promise in manner and form," &c.

That is simply a denial that it was signed by them *as partners*—not a denial of their signatures. It is an issue not raised by us at all; though in the first part of the declaration we describe them *as partners*. We do not in the count on the note, or the common counts, allege that they signed it *as partners*, or were such. Their whole plea, is a plea, *admitting that they signed the note*, but *not as partners*. It does not put us to the proof of the *note*, or *signatures*, or *partnersnip* of either plaintiffs or defendants.

The second plea is equivalent to the general issue. It states, that plaintiffs levied on a lot of *tan bark* of defendant Johnson, as one Bell's—and threatened to sell the same, and so got the note. It is a plea of *duress*. The same facts could be shown under general issue—under first plea. This answers 10th assignment of errors.

The third plea was, that Bell was, and is indebted to plaintiffs and defendants, undertook and promised to pay plaintiffs said indebtedness, which

are same promises in declaration mentioned. This is no defence; in fact shows *a good consideration* for our note—and as the plea is *stood* by, as to the appellant, we are entitled, on the admission contained in same, to judgment for at least the amount of the note; which is just the amount (with interest) of our judgment. This answers the 9th assignment of errors, and settles the whole matter. This plea also does not state that the promises were *not in writing.*

The trial was had then on the first and second pleas. The record shows, that the *issues* (*plural*) as to "*W. B. Johnson only*," were tried. The words are in substance, that there was a trial of the *issues*, *by agreement* of the parties, *as to Johnson only*, by a jury of right men, "who, being duly *selected*, *tried and sworn*, by agreement of the parties, to try the issues joined here in our plea of W. B. Johnson *only*, after hearing evidence, arguments of counsel, and instructions of Court, retired to consider their verdict," &c. It therefore appears that the *issues* (*plural*) were tried as to Johnson only, and the jury so sworn, and that too *by consent.* It would be nonsense to say that they were sworn only to try one issue, when the word *issues* is used. In the phrase "issues as to plea of Johnson," plea is to be interpreted not in its *technical* sense, but as *defence* or pleading, and so as not to mean *one plea.* Besides this, it appears, that the jury were sworn to try the issues *by consent*, and no objection can be made. Also, the only plea on which issue was joined actually, was the first, (to that only there being a *similiter*,) and the second was equivalent to it; the first being only the general issue, (though it pretends to be a *special plea*,) under which all the facts stated in the record here could be shown. The second plea was specially replied to and *no similiter.*

The Bill of Exceptions *absurdly* attempts to show that the jury were sworn to try the issues as to defendants—*both of them.* The Bill of Exceptions cannot contradict the record of the judgment. It is only to preserve things *not of record.* The record is the only guide as to the facts stated in it as to swearing of jury and rendering of their verdict. But the bill does not contradict the record. The *only* issues there were, were between plaintiffs and defendant, Johnson and Garrison, *was not served.* If served, then if he did not plead, they would be sworn to *assess damages.* If he did plead, then and not till then, would there as issue *as to him.* It would be absurd to suppose in this Court that the jury were sworn to try issues as to both defendants, when there were issues only as to *one* of them. If they were sworn to try issues *as to both*, still the effect of the oath would be that they were sworn only as to the issues *which were*, which were *with Johnson only.* The swearing of jury was therefore right, both by record, and even by bill of exceptions.

The Bill of Exceptions shows that on the trial, the plaintiffs proved, by the attorney of defendant, the signatures of the note as to *both defendants*, and that the note was then and there read in evidence, *without exception being taken.* The exception that it was not sufficiently proved, cannot be taken here for the first time. It was not necessary though, to prove it at all, or that plaintiffs or defendants were partners. (See remarks on first plea above.) There was simply a denial that they signed the note, *as partners*, and *we never said they did*, any more than we said they did as *loafers*, *merchants* or *doctors.* There is *no denial of the note* in the plea, as required by the statute, to put us on the proof of the note. It proved itself. Our proof though, showed defendants to have been joint *promissors*, and their not excepting to the introduction of the note, sets all question as to the correctness of the trial at rest. They should have excepted to the introduction of the note *at the time* of offering it, not laid by to except to it *after verdict.* They should have objected when we could have remedied any formal error, if there was any, in proof. We declared in first count, under names, Buel, Hill, Granger & Co., averred the note so drawn to us, and signed just as the note introduced in evidence. All this is an answer to the 5th, 6th, 7th and 8th assignments of error.

The 11th assignment of error is that the case is not disposed of, as to Garrison, the co-defendant, *not served.* It was not necessary. Johnson could not except to it. The case without order, still remains pending as to Garrison. At any time a sci fa could be issued—*he not having appeared.*

J. W. WESTCOTT,

Attorney and Counsel for Appellees.

Since making above Brief, appellees have seen abstract of defendants. An amended abstract is filed by us.

It appears that the writ *was amended* March 12, 1860. The order of the Court was, "that the writ stand as returned, and *run* against *both defendants*." This was enough without the formal amendmend which was endorsed on the writ. The writ, though *unamended*, it is submitted, would be good enough. It was in *the first place* just as prescribed by the statute. Our amendment in summons part of the writ, by also inserting Johnson's name, can not effect the *attachment* portion which was all right—or release the property.

A point is made by appellants, that the record shows that "Garrison appeared." That *he did appear at any time in the case, is utterly false, in point af fact.* The clerk, in making up his record, has made one or two *slips of the pen*, from which they attempt to show that he *did appear*. He put in no pleading, though in the case; nor was his appearance ever entered. The order made March 12, 1860, was, "defendants' came by J. R. Anderson, attorney, and submit motion to quash writ," &c. This could mean, of course, *only defendants* that *Anderson* appeared for, to wit, *Johnson*; besides this, the motion was by him as *attorney for Johnson alone.* The same reasoning applies to the orders of 10th and 23rd of April; where the record says, "defendants, by J. R. Anderson, their attorney," &c.

The motions and pleadings mentioned in all these orders, were *not* Garrison's *at all.* The Court will not take loose expressions, in a record, so evidently *erroneous* and *false*; and from them here adjudge—that Garrison *appeared.* It will presume, that an attorney appeared only for those he had made pleas or motion for; why should the record be saying that Garrison appeared on Johnson's motion? It meant only to say, that the parties interested in the motion or plea appeared—to wit, on part of defendants—*Johnson only.* The entry of the trial, by the jury, shows, that *the Court* and *parties* at that time understood Garrison had not appeared, and that there was no issue to be tried as to Garrison. It shows "that *no service* was had on Garrison," and that *no issue* was tried as to him. The Court will presume all things to sustain these proceedings.

But in addition to this, if the entries in the record are to be read literally, and the Court is to believe, on the loose expressions of the clerk, that *defendants* appeared, *both of them*, it appears from the record of the trial, that "by agreement of the *parties*," the jury were sworn to try the *issues* only as to Johnson, and that all parties consented to such a trial, and virtually to the verdict and judgment on such issue. This agreement would waive all errors *as to proceeding to trial as to only one defendant:* but there is none. The Court, in construing its record, will be governed by its ordinary rules of construction, and as to a *slip of the pen*—an *s* too much or little—if a record, and the whole proceedings, show it must be an error, it will be disregarded. The mere fact that Anderson *never filed a motion or plea for Garrison*, and never made a move for him in the case, and that *Garrison* was *not served*, are enough to show that there must be an error in the statement, that "*defendants*" appeared by him on the motions," and that "defendants" means *Johnson only.* It is submitted, also, that, where the record shows an appearance of a defendant *not served*, it should be entered of writing, signed by the attorney, and in such a way as to show that the defendant *not served*, came into Court, with the intention of submitting himself to its jurisdiction—and if he came into Court on the hearing of a motion, that it was on a motion made by him. On the loose expressions of the record, we know, and knew we could not act against Garrison, unless *newly served.*

J. W. WESTCOTT,

For Appellees.

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H. K. Burl
adv

W. B. Johnson

Appellee's Brief-

Filed May 3rd 1861
L. Leland
Clerk

SUPREME COURT OF ILLINOIS.

AT OTTAWA.

H. K. BUEL, ET AL,
APPELLEES.
ADS
W. B. JOHNSON,
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SUPREME COURT.

W. B. JOHNSON, Impl. with
A. GARRISON, &c.,
vs.
BUEL, HILL, GRANGER & CO., &c.

GARRISON & ANDERSON
For Appellee.

Brief and Points.

FIRST:

We say in the first point which we make, "That the writ of attachment in this cause "was irregularly issued." See 1 Purple Stat., 97. Sec. 6; 3 Scam., 557.

SECOND:

We say in our second point, "That the court erred, in deciding, that it had jurisdic- "tion to proceed and adjudicate the case, without first having acquired jurisdiction over "the person of Johnson & Garrison, in the way and manner pointed out by the Statutes. See authorities above cited.

THIRD:

We say in our third point, "The Jury in this case, were improperly sworn." See abstract.

FOURTH:

We say in our fourth point, "That the Bill of Exceptions imports a statement of all "the evidence, and the evidence in judgment of law, is insufficient "to authorize a verdict against defendant Johnson." 24 Ill., 168.

The defendents are *described as partners* in the declaration, and when thus described, defendants may specially deny such partnership by plea in abatement under the Statute, and the plaintiff's then, will be bound to prove such co-partnership. See 12 Ill., 127; 13 Ill., 649; 23 Ill., 340.

The plea in this case is a plea in abatement under the Statute. See 12 Ill., 127; Grah. Pr., 228; 8 Term Rep., 631; 3d Bos. & Pul., 9, *note* d.

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We say in one fifth point, "That the demurrer to defendent's third plea, was improp- "erly sustained. That plea sets up a legal defence to the action. There was no consid "eration for defendent's promise." See 17 Ill., 354; also 505, 507.

SIXTH:

We say in our sixth point, "That it appears from the Record, that the defendant's "second plea was undisposed of in the Court below. The defendant's defence therefore "stands confessed upon the Record. Hence judgment should have been given in his "favor. See 4 Scam., 54; also 338.

SEVENTH:

We say in our seventh point, "That Garrison having appeared in this action in the "Court below, his default should have been entered, and when the cause was tried, dama- "ges should have been assessed against him, or some other disposition of the case should "have been made as to him, before entering final judgment against Johnson." See 12 Ill., 373; also 552; 2d Scam., 319; 4 Scam., 170; also, 338.

All of which is most respectively submitted.

GARRISON & ANDERSON,
Of Counsel for Johnson

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W. D. Johnson

vs

Bull Hill Granger Co.

Points

Filed May 3rd 1861

Lorenzo Leland

Clerk

SUPREME COURT.

W. B. JOHNSON, Impl. with
A. GARRISON, &c.,
vs.
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GARRISON & ANDERSON,
Of Counsel for Johnson

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W. B. Johnson
vs
Buck Hill Springs Co
Paints

Filed May 8th 1861
Lorenzo Leland
Clerk

SUPREME COURT OF ILLINOIS.

AT OTTAWA.

H. K. BUEL, ET AL,
APPELLEES.
ADS
W. B. JOHNSON,
APPELANT,

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SUPREME COURT OF ILLINOIS.

AT OTTAWA.

H. K. BUEL, ET AL,
APPELLEES.
ADS
W. B. JOHNSON,
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S. W. Harris
For appellee

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H. K. Burl
ads
W. B. Johnson

Appellee's Amd - Abstract

Filed May 3 - 1861
L. Leland
Clerk

SUPREME COURT.

APRIL TERM, A. D. 1861.

WILLARD B. JOHNSON, (IMPLEADED,)
Appellant,
vs.
HENRY K. BUELL ET AL,
Appellees.

GARRISON & ANDERSON,
For Appellant.

ABSTRACT.

Folio 2. Affidavit of LANGDON, one of the Plaintiffs in the Court below, for Attachment,

Alleges: Willard B. Johnson (Appellant) was a non-resident, and A. Garrison a resident of this State, and jointly indebted, and pray an Attachment against Johnson, and Summons against Garrison.

6, 8. Attachment Writ: directed "against the property of said Johnson," "so as to compel the said Willard B. Johnson to appear and answer"—silent as to Garrison.

9. Amended Attachment Writ: commanding Sheriff to "Summon A. Garrison to be and appear before," &c.

10. Return of Sheriff: "that by virtue of said Writ of Attachment on the 19th day of January, 1860, he attached all the right, title and interest of the said Johnson, in and to one hundred thousand Shingles," &c. Also served by reading to W. B. Johnson 20th day of January, 1860, A. Garrison not found in my County. John Gray, Sheriff.

Writ and Return filed January 20, 1860.

11. March 8th, 1860, after writ had been returned, motion made by Anderson, Attorney for Johnson, for order quashing said Writ of Attachment on the ground that it did not command said Sheriff to summon said Garrison.

12. Cross motion of Plaintiffs to amend writ in that particular.

13. Cross motion allowed, and motion of Johnson denied. Writ then and there amended.

8, 9. See Writ and Amendment above mentioned.

14. At the same time a motion was filed to set aside return made on original Writ as thus by amendment appearing on Amended Writ. Motion denied and ordered that Writ as
40. issued stand as returned and be read against both Defendants, and that Court had thereby jurisdiction, &c.

16. Exceptions taken to these rulings by Defendant, Johnson.

NARR OF PLAINTIFFS DESCRIBED.

"Henry K. Buell, Henry L. Hill, Gilbert L. Granger and Philando C. Langdon, part-
"ners under the name of Buell, Hill, Granger & Co., Plaintiffs in this suit, by Causin &
"Wescott, Attorneys, complain of W. B. Johnson and A. Garrison, partners," &c., Defendants, who are summoned and attached, &c., of a plea of trespass on the case on promises.

Folio 17. For that, whereas, the said Defendants, &c., made their certain promissory note, &c,
18. for the sum of $120, payable to the order of the said Plaintiffs, by the name of Buell, Hill, Granger & Co., &c. By means whereof, &c. (Being one Count.)

20. Also. follows, the common counts, for $300, for money lent, had, paid and advanced, and for goods, wares and merchandise, sold and delivered by Plaintiffs to Defendants.

21. Also, for work and labor of Plaintiffs for Defendants.

23. Also, on account stated between them, set forth, "Copy of Instrument and account "sued on." "The amount appearing due according to the tenor and effect of said note, or an amount equal thereto is all that is sought to be recovered in this suit, the common counts introduced to guard against a void answer."

COPY OF NOTE.

(FURTHER BILL OF PARTICULARS.)

JOHNSON & GARRISON,

To BUELL, HILL, GRANGER & Co., DR.

To Money Lent, &c., &c., &c., ... $300.

24. 1st Plea of Defendant Johnson, impleaded, &c., "says that the said Plaintiff ought "not to have and maintain their aforesaid action against him; because, he says, that he and "the said Garrison did not, as partners, by the name, style and description of W. B. Johnson "and A. Garrison, make and deliver to the said Plaintiffs said promissory note in writing, "nor as such did not undertake nor promise to pay to the said plaintiffs the said several "sums of money, nor any part thereof, in manner and form as the said Plaintiffs have above "in their said declaration complained against him; and of this he said Defendant impleaded "as aforesaid, puts himself upon the country."

25. Affidavit verifying the truth of the above plea by said Johnson.

26. 2d Special Plea, concluding with a verification, in substance, "that one Daniel Bell was indebted to said Plaintiffs, and that they had sued out an Attachment, and that the Sheriff, acting under the direction of Plaintiffs, had seized upon the property of said Defendant, Johnson, and was proceeding to remove and sell the same, unless Defendant would then and there promise to pay Bell's debt to them; and that thereupon Johnson, without any consideration whatever, made such promises; and that such promises are the supposed promises in the said declaration mentioned."

25. 3d. Special plea of Johnson—with verification—in substance, the statute of frauds, that Bell was still indebted to Plaintiff, and that the promises of Johnson in said declaration mentioned were promises to pay Bell's debt.

30. Affidavit of merits by Johnson.

42. Demurrer to Defendant, 3d special plea,—and same was sustained.

31. October 25th, 1860, and trial had—"And said Jury were sworn in said cause, which "was to try the issue therein joined between the said Plaintiffs and the said Defendants "before the Court and Jury, and true verdict give according to the Law and evidence."

"Plaintiffs called to maintain the issue on their part J. R. Anderson, who testified he "knew W. B. Johnson and A. Garrison, Defendants, and that the signature to each to the "note shown him was in their several hand writings, he has seen each of them write, and
32. "knows their hand-writing well"—that said note, of which the following is a copy, was then and there read in evidence to the Court and Jury by Plaintiffs' Attorney, Mr. Westcott, the following is a copy of said note:

$120. CHICAGO, October 13, 1859.

"Twenty days from date we jointly and severally promise to pay Buell, Hill, Granger "& Co., or order, One Hundred and Twenty Dollars, for value received with interest."

W. B. JOHNSON,
A. GARRISON.

"And after reading said note in evidence as aforesaid, said plaintiffs rested their case, "and said defendants produced no evidence—also rested; and that the foregoing is all the "evidence produced on the trial."

Verdict for Plaintiffs against said Johnson for the sum of $127 20.

Folio 33. Johnson filed a motion for new trial, on the grounds:

1st. The verdict is contrary to the Law and the evidence.

2d. The evidence in judgment of Law is not sufficient to authorize a verdict for the Plaintiffs.

3d. The Jury were not properly empannelled and sworn in the cause, and

4th. Plaintiffs did not prove that the Defendants were *partners* as described in their declaration.

35. Motion for new trial overruled, and Defendant excepted order, &c., for Bill of exceptions and appeal.

38. COPY APPEAL BOND.

48. Order of Judgment against said Johnson for amount of verdict.

42. ENTRY OF MOTIONS.

April 10, 1860—in this cause, in these words:

HENRY K. BUELL, *et al*
vs.
W. B. JOHNSON & A. GARRISON, } *Attachment.*

And now again comes the parties to this cause, Plaintiffs as well as said Defendants by their respective Attornies as aforesaid, and Defendants motion to strike out Sheriff's return on the writ issued in this cause being heard and the Court being fully advised overruled said motion.

APRIL 23d, 1860.

43. All the parties to the suit again appeared in Court, and after hearing counsel the Court decided and sustained demurrer to 3rd plea.

43. OCTOBER 25, 1860.

Order of trial, and consent, and trial by eight Jurymen. Verdict for Plaintiffs as aforesaid.

"Clerk's certificate, that the foregoing is a full and complete transcript of the Bill of "Exceptions on file," and of all orders and judgment entered of record, &c.

GARRISON & ANDERSON,
For Appellant.

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Supreme Court

W. B. Johnsons Appelt.

vs

Bull, Hill, Granger & Co. Appellees

Abstract of Case

Garrison & Andrews

attys for Johnsons

"

Filed May 3rd 1861

Lemuel Leland

Clerk

folio 1

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Pleas, 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 Fifth day of November in the year of our Lord One Thousand Eight Hundred and ~~Last~~ 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 H Higgins
Grant Goodrich } Judges.

Carlos Haven Prosecuting Attorney.

John Gray Sheriff of Cook County.

Attest, Wallis Kimball Clerk.

1

Be it Remembered that heretofore to wit on the first day of December in the year of Our Lord one thousand eight hundred and sixty. Willard B Johnson impleaded with A Garrison filed in the Office of the Clerk of the Superior Court of Chicago his Bill of Exceptions in words and figures as follows to wit

Superior Court of Chicago

Willard B. Johnson Impl^{t} with A. Garrison ads Buel, Hill, Granger & Co^{s} } Bill of Exceptions

State of Illinois
Cook County ss.

Be it remembered that heretofore to wit on the 16th day of January 1860 Philander C. Langdon on of the Plffs above named made an affidavit.

2.

State of Illinois
Cook County ss

Philander C. Langdon being first duly sworn maketh oath that he, Henry K. Buell, Henry L. Hill and Gilbert L. Granger are partners in trade under name of Buell Hill Granger & Co. that W. B. Johnson and A. Garrison are jointly & severally indebted to said firm on a certain promisory note for the sum of One Hundred and twenty Dollars due twenty days from date with
3. interest said note dated October thirteenth A. D. 1859 on which is now justly due and owing over and above all offsets & payments the sum of One Hundred and twenty one $ 121 80 Dollars and Eighty cents. That said

W. B. Johnson is a non resident of the State of Illinois and a resident of the State of Wisconsin & said A. Garrison a resident of said State of Illinois - Whereupon said Buell Hill Granger & Co pray attachment against the said Johnson and a writ of
4. Summons against said Garrison to be issued to said said Cook County directed to Sheriff thereof returnable to the March term A. D. 1860 of the Superior Court of Chicago in said County - Damages in Summons $300. Action trespass - Case on promises.

Sworn to and subscribed before me on the 16th day of January A. D. 1860 } Philander E. Longdon

Walter Kimball Clk

To Clerk of Superior Court of Chicago.

Causan & Westcott Attys Plff

5. and then and there filed said affidavit with the Clerk of said Court, upon which the said Clerk issued from said Court under the seal thereof an attachment

State of Illinois }
Cook County } ss.

The People of the State of Illinois to the Sheriff of said County greeting:
Whereas Philando. C Langdon hath complained on oath to Walter Kimball Clerk of the Superior Court of Chicago, of Cook County that W. B. Johnson & A. Garrison are justly indebted to Henry K. Buell, Henry L. Hill Gilbert L. Granger & Philando. C. Langdon to the amount of One Hundred & Twenty one dollars and Eighty cents; and Oath having also been made that the said W. B. Johnson resides out of this State so that the ordinary process of Law cannot be served upon W. B. Johnson, and the said Henry K. Buell Henry L. Hill, Gilbert L. Granger & Philando. C. Langdon having given bond and security according to the directions of the act in such case made and provided. We therefore Command You that You attach so much of the Estate, real or personal of the said W. B. Johnson to be found in your County as shall be of Value sufficient to satisfy said debt and Costs according to the said Complaint; and such Estate so attached in your hands to be secure

8 or to provide that the same may be liable
to further proceedings thereupon according
to law at a term of said Superior Court
of Chicago to be holden at Chicago within
and for the County of Cook on the first
Monday of March next so as to Compel
the said W. B. Johnson to appear and
answer the Complaint of the said Henry
K. Buell, Henry L. Hill, Gilbert L. Granger
& Philando C. Langdon. #
We further command you that you Summon
A. Garrison if he shall be found in your
County personally to be and appear before
the Superior Court of Chicago of said Cook
County on the first day of the term thereof,
to be holden at the Court House in the
City of Chicago in said Cook County
on the first Monday of March next to
answer unto Henry K. Buell Henry L. Hill
Gilbert L. Granger & Philando C. Langdon in
a plea of trespass on the case on promises
to the damage of said plaintiffs as they say
in the sum of three Hundred Dollars.
And have you then and there this writ with
an Endorsement thereon in what manner you
shall have executed the same
Witness Walter Kimball, Clerk of our said Court and the
10. seal thereof at the City of Chicago in said County

and that you Summon - as garnishee
to be and appear at said court on the first
Monday of March next then and there to
answer what may be objected against
when and where you shall make known to the
said Court how you have executed this writ
And have you then and there this writ

Witness Walter Kimball Clerk
of our said Court and the seal
thereof at Chicago in said County
this 16th day of January A.D. 1860

Walter Kimball
Clerk

Original writ

LS

this 16th day of January A. D. 1860

Walter Kimball

Clerk.

That afterwards to wit; on the 20th day of January 1860 said Sheriff by virtue of said Writ of attachment attached all the right title and interest of the said Johnson in and to One Hundred thousand Shingles more or less and made his return on said writ. By virtue of the within writ I have attached all the right, title & interest of the within named W. B. Johnson in and to One Hundred & fifty thousand Shingles more or less & they giving a forthcoming bond I have released the property this 19th day of January 1860.

11 Also served by reading to W. B. Johnson the 20th day of January 1860 A. Garrison not found in my County.

1 Levy .50
1 Service .50
Milage .10 Pd by
Ret. atty.
$1.20

John Gray Sheriff
By A. C. Hesing Depty

That afterwards to wit, on the 8th day of March 1860 and after said Writ had been returned to the Office of said Clerk of said Court with his return Endorsed thereon as aforesaid the said Johnson by J. R. Anderson his Counsel for that purpose duly moved the said Court at the March Term thereof

for a rule or order quashing said writ of attachment on the ground that it did not command said Sheriff to summon (said
12 Garrison) the joint debtor named in said affidavit, upon which the said writ was and is grounded or for such other or further rule order or relief as the said Court might see fit to grant in the premises. And thereupon the said Plffs then & there made there Cross motion for leave to amend said writ, and after hearing Counsel for the respective parties it was ordered, adjudged and determined by the said Court, that said writ be so amended as to command said Sheriff to summon A. Garrison the said joint debtor named in said affidavit, and
13. that said motion of said Johnson be denied, and that said writ was then & there amended accordingly. Thereupon said Johnson by his said Counsel for that purpose only then & there at said March Term moved said Court for a rule or order striking out that portion of said Sheriff return made to said writ of attachment relating to the service of the same personally upon said Johnson, or for such other or further rule order or relief as said Court might see fit to grant in the premises.

Superior Court of Chicago
Williard B. Johnson Impl'd
with Andrew Garrison
ads
Buel, Hill Granger &c

Motion

14

And the said defendant Johnson Impleaded as aforesaid by J. R. Anderson his Attorney comes and moves the Court here for a rule or order setting aside, or striking out that part or portion of the Sheriffs return made to the writ of attachment in this cause which relates to the Service thereof upon said Defts Johnson on the 20th day of January 1860 by reading &c, or for such other or further rule, order or relief as this Hon Court may see fit to grant in the premises, and that this motion is

15 founded on said writ of attachment the Sheriffs return thereto, the rules and orders of this Court Entered in this Cause and the papers on file therein, and that the Defts appears in this cause for the purpose of making this motion only.

J. R. Anderson
Atty for Johnson
for this Motion only

After hearing Counsel for the respective parties said Court overruled said Motion, and then & there decided said matters against said Johnson and adjudged the proceedings aforesaid legal and proper and that said Court have Jurisdiction to proceed with
16. the cause. To which ruling and decision of the Court the Counsel for said Johnson did then & there except.

Superior Court of Chicago
of the March Term A.D. 1860

State of Illinois
County of Cook } ss.

Henry K Buell. Henry L. Hill Gilbert L. Granger and Philando C. Langdon partners under name of Buell, Hill, Granger & Co Plaintiffs in this suit by Cousins & Westcott. Attorneys Complain of W. B. Johnson and A. Garrison partners &c Defendants who are summoned & attached &c of a plea of Trespass on the case on promises: For
17. that whereas the said Defendants heretofore to wit: on the thirteenth day of October 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 aforesaid, and then
and there delivered the same to said
plaintiffs, in and by which said note
said Defendants by the name Style and
description of W. B. Johnson & Garrison
jointly & severally promised to pay to the
order of the said plaintiffs by name of
18 Buell Hill Granger &co one Hundred
and Twenty Dollars with interest
meaning interest at rate of six per cent
per year twenty days after the date of said
note which time hath now elapsed for
valued received, By means whereof and
by force of the Statute in such case made
and provided, the Defendants became
liable to pay said Plaintiffs 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 plaintiffs
19. according to the tenor and effect of the
said note to wit: at the place aforesaid
And whereas also the said Defendants
afterwards, to wit on the first day of January
in the year of our Lord one thousand Eight
Hundred and Sixty to wit: at said County
became and were indebted unto the said
Plaintiffs in a large sum of money

to wit Three Hundred Dollars for money before that time lent and advanced to said Defendants by said Plaintiffs at said Defendants request, and also in the like sum, for money before that time paid
20. laid out and expended for said defendants by the said Plaintiffs at the like special request of said Defendants; and in the like sum for money before that time had and received by said Defendants to and for the use of said Plaintiffs, and also in the like sum, for goods wares and merchandise before that time sold and delivered by said Plaintiffs to said Defendants at the like special instance and request; and also in the like sum for the labor care and diligence of said Plaintiffs before that time done and performed by said Plaintiffs for said
21. Defendants, and at the like instance and request of said Defendants; and also in the like sum then and there found to be due and owing to said Plaintiffs on an account stated between them; and being so indebted said Defendants in consideration thereof then and there undertook and promised to pay said Plaintiffs said several sums of money above mentioned when thereunto afterwards requested.—

yet the said defendants not regarding their
said promises and undertakings but contriving &c although often requested so to do
22 have not paid said Plaintiffs either of
said sums of money above mentioned or
any part thereof, but to do so have hitherto
wholly neglected and refused and
still do neglect and refuse to the damage
of said Plaintiffs of Three Hundred Dollars
and therefore they bring this suit &c

Cousin & Westcott
Plaintiffs Attorneys

Copy of Instrument and account sued on.
The amount appearing due according to tenor
& effect of said note for an amount equal thereto
is all that is sought to be recovered in this
23 suit. the common counts introduced to
guard against a void answer

Cousin & Westcott

$120. Chicago Oct 13th 1859

Twenty days from date we jointly &
severally promise to pay Buell, Hill
Granger & Co or order One Hundred &
twenty Dollars for value recd with interest.

W. B. Johnson
A. Garrison

Johnson & Garrison

To Buell, Hill Granger & Co Dr

To money lent and advanced $300

To money paid, laid out and Expended $300

To money had and received to and for the use of said Plaintiffs $300

To Goods Wares and merchandise sold and delivered $300

To Labor and Services $300

To Balance due on account Stated $300

To which declaration said Johnson by said Anderson as his attorney pleaded thereunto

24. a certain plea.

Superior Court of Chicago
Williard B. Johnson Impl
with Andrew Garrison
ads
Buell, Hill, Granger & Co

Plea

And the said Defendant Williard B. Johnson Impld as aforesaid by J. R. Anderson his attorney comes & defends the wrong & injury when &c and says that the said Plaintiffs ought not to have or maintain their aforesaid action against him: because he says that he and the said Garrison did not as partners by the name, style & description of W. B. Johnson & A. Garrison make and deliver to the said

Plaintiffs said promissory note in writing
nor as such, did not undertake nor promise
to pay to the said Plaintiff the said several
25 sums of money nor any part thereof in
manner & form as the said Plaintiffs have
above in their said declaration com-
plained against him; and of this he the
said Deft Impl^d as aforesaid puts himself
upon the country.

J. R. Anderson
Atty for Johnson

State of Illinois
Cook County S.S.

Williard B. Johnson being
duly sworn says that he is the defendant
in the above entitled action and that he
has read the foregoing plea and that the
same is true in substance & matter
of fact. And further deponent says not

W. B. Johnson

Sworn before me this
12th day of March 1860

C. D Wolf J.P.

26 And for a further plea in this behalf
as to the said several supposed promises
and undertakings in said declarations
mentioned, the said Deft Impl^d as aforesaid
says that the said Plaintiffs ought not

to have or maintain there aforesaid action
against him: because he says that before
& at the time of making the said several
promises and undertakings in Plffs said
declaration mentioned one Daniel Bell
then was and still is indebted to the said
Plffs, and being so indebted the said
Plffs sued out against said Bell an
27. attachment in the Superior Court of Chicago
by virtue of which and in pursuance of
the direction of said Plffs a large quantity
of Bass bark belonging to the Deft was seized
levied upon and taken away, and the
said Plffs then ~~& there~~ threatened to sell the
same unless said Deft would then and
there undertake and promise to pay to
the said Plffs said Bells indebtedness
to them. and the said Deft did then & there
without consideration undertake & promise
the said Plffs to pay them a portion of said
Bells indebtedness which are the said
28 several supposed promises and under=
takings in said Plffs declarations mentioned
and this the said Deft is ready to verify
Whereupon he prays judgment if the said
Plffs ought to have or maintain their action
against him &c And for a further plea
in this behalf as to the said several —

supposed promises & undertakings in the said declaration mentioned the said Deft Impld as aforesaid says that the said Plffs ought not to have or mataine their aforesaid action against him because he says that at the time of making of this the
29 said several promises & undertakings in said declaration mentioned, said Bell there was and still is indebted to the said Plffs and the said Deft then & there undertook and promised to pay to said Plffs said indebtedness from said Bell to said Plffs which are the said supposed undertakings and promises in Plffs said declaration mentioned and this the said Deft is ready to verify. Wherefore he prays judgment if the said Plffs ought to have or maintain their aforesaid action against him &c

J. R. Anderson
Atty for Johnson

Superior Court of Chicago
Williard B. Johnson Impld
with Andrew Garrison
a ds
30 Buell Hill Granger & Co } Affd of Merits

W. B. Johnson one of the Defts named in the above entitled cause being duly sworn

says that he believes that he has a good defence to the above entitled suit on the merits. And further the deponent says not

W. B. Johnson

Sworn before me this 8th day of March A. D. 1860

C. D Wolf J. P.

That afterwards to wit on the 25th day of October 1860 at a Term of said Court holden at the Court House at the City of Chicago in said County said Cause came on for trial before the Court and a jury; and said Jury were sworn in said Cause which was to try the

31. issue therein joined between the said Plffs and the said Defendants before the Court and Jury and true Verdict give according to the law and the Evidence. And the said Plffs to maintain and prove the issue on their part called, sworn and examined as a Witness J. R. Anderson Attorney for said Johnson who testified as follows, I know W. B. Johnson & A. Garrison Defts and that the signature of Each to the note shown me is in their several hand writing. I have seen Each of them write, and know their hand writing well, that said Note of which the following is a copy

32. was then & there read in evidence to the Court and Jury by Plffs Attorney Mr Wescott The following is a copy of said Note

Chicago Oct. 13. 1859

$120. Twenty days from date we jointly and severally promise to pay Buell Mill. Granger & Co or order One Hundred and Twenty Dollars for value rec with interest

W. B. Johnson
A. Garrison

And after reading said Note in evidence as aforesaid said Plffs rested their case. And the said Defts produced no evidence and also rested their case, and that the foregoing is all the Evidence produced
33. and given on said trial. And the Jury then & there rendered a verdict for and in favor of the said Plffs and against said Johnson alone for the sum of $137.20. And thereupon the Counsel for said Johnson then & there filed a motion on part and in behalf of said Johnson in said Court for a new trial on the grounds.

1st The Verdict of the Jury is contrary to the law and the Evidence.

2d The Evidence in Judgment of law is not sufficient to authorize a Verdict for the Plffs.

3d The Jury were not properly Empanelled
and Sworn in the Cause, and
24. 4th Plffs did not prove that the Defts were
partners as alledged in their declaration
And after Hearing Wm Anderson for the
motion and Wm Wescott in opposition
thereto the said Court then & there at the
November Term thereof, to wit November
12 1860 ruled and decided that said
motion for a new trial be denied.
To which ruling and decision the Counsel
for said Johnson did then & there Except.
And the said Court then and there rendered
a judgment upon said Verdict for and in
favor of said Plffs and against said Johnson
35 for the sum of $127.20 damages besides Costs
of suit. And thereupon the Counsel for said
Johnson then & there moved said Court for
a rule or order that said Johnson have
twenty days in which to make and file
his bill of exceptions in this Cause, and
file his bond with security in the sum
of three hundred dollars the amount
fixed by said Court to enable him to
appeal said Cause to the Supreme Court
of this State, and said Court then & there
granted said order giving said Johnson
said 20 days in which to make and file

36 said Bill of Exceptions and Bond.
And inasmuch as the said several matters
so produced, insisted upon and decided
as aforesaid do not appear by the Record
of the Verdict and Judgement aforesaid the
Counsel for said Johnson did within the
time limited by said order prepare the
aforesaid Exceptions to the opinion and
ruling of said Court as aforesaid, and
requested His Honor G. Goodrich the Judge
holding said Court, and who tried said
Cause to put his seal to this bill of
Exceptions containing the said several
37. matters aforesaid according to the
form of the Statute in such case made
& provided, and thereupon his Honor Judge
Goodrich at the request of the Counsel
for said Johnson did pursuant to
the Statute in such case made & provided
on the 12th day of November 1860 put his
seal to this Bill of Exceptions.

Grant Goodrich (Seal)

Know all Men by these presents. That we Willard B Johnson & Louis Heintz of the County of Cook and State of Illinois, are held and firmly bound unto Henry L Bull, Henry L Hill, Gilbert L Granger & Philander C Langdon also of the same County and State in the penal sum of Three Hundred 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 ad=
38 =ministrators, jointly, severally and firmly, by these presents.

Witness, our hands and seals, this 30th day of November A.D. 1860

The Condition of the above obligation is such, That where=as, the said Henry L Bull. Henry L Hill. Gilbert L Granger & Philander C Langdon did on the 25th day of October A.D. 1860. in the Superior Court of Chicago in and for the County of Cook, and State aforesaid, and of the October Term thereof A.D. 1860. recover a judgment against the above bounden Willard B Johnson impleaded with A Garrison for the sum of One hundred & twenty seven dollars and twenty cents. besides costs of suit; from which said judgment of the said Superior Court of Chicago the said Willard B Johnson has prayed for and obtained an appeal to the Supreme Court of said State.

Now. Therefore if the said Willard B Johnson shall duly
39 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 obligation to be void, otherwise to remain in full force and virtue

W. B Johnson [Seal]
Louis Heintz [Seal]

Taken and entered into before me, at my office in Chicago this 30th day of November A.D. 1860
Approved Nov 30/60
Grant Goodrich Judge &c

Be it Remembered that on the 13th day of March in the year Eighteen hundred and Sixty said day being one of the days of the March Term of the Superior Court of Chicago the following among other proceedings was had in said Court and Entered to Record to wit.

Henry K. Buell, Henry D. Nill. Gilbert L Granger and Philando C. Langdon

vs Attachment

40 W. B. Johnson and A Garrison

This day comes said Plaintiffs by Caussin & Westcott their Attorys, and said defendants by J. B. Anderson their Attorn also come, and submit motion to quash the writ ifsued in this Cause and Plaintiffs submit their cross motion to amend the writ, and the Court being fully advised allows Cross-motion and overrules defendants motion to quash the writ, and it is ordered that the writ ifsued in this cause stands as returned and read as against both defendants

And afterwards to wit on the 10th day of April

41. (being one of the days of the April Term of said Court) A. D 1860 the following among other proceedings was had in said Court and entered to Record to wit:

Henry K. Bull et al
vs Attachment
W. B. Johnson and A. Garrison

And now again comes the parties to this cause Plaintiffs as well as said Defendants by their respective Attorneys as aforesaid and Defendants motion to strike out Sheriffs return on the writ issued in this cause being heard, and the Court being fully advised overrules said motion.

42 And afterwards to Wit: on the 23d day of April (being one of the days of the April Term of said Court) A.D. 1860 the following among other proceedings was had in said Court and entered to Record, to Wit:

Henry K. Bull Henry L. Hill
Gilbert L. Granger and Philands C. Langdon
vs Attachment
W. B. Johnson and A. Garrison

This day again comes said plaintiffs by Caussin & Wescott their Attorney, and said Defendants by A. Anderson their Attorney also come, and Counsel being heard on plaintiffs demurrer to defendants third plea herein pleaded, and the Court being fully advised sustains the demurrer.

113 And afterwards to wit: on the 24th day of April (being one of the days of the April Term of said Court) A.D. 1860 the following among other proceedings was had in said Court and entered to Record to wit:

Henry K. Buell, Henry L. Hill
Gilbert L. Granger and Philando C. Langdon
vs Attachment
W. B Johnson and A. Garrison

And now again comes said plaintiffs as well said defendants by their respective attorneys as aforesaid, and on motion it is ordered that plaintiffs have leave to reply double to Defendants 2d plea herein pleaded

114 And afterwards to wit: on the 25th day of October (being one of the days of the October Term of said Court) A.D. 1860 the following among other proceedings was had in said Court and entered to Record to wit:

Henry K. Buell, Henry L Hill
Gilbert L. Granger and Philando C. Langdon
vs Attachment
W. B. Johnson and A. Garrison

This day comes the said Plaintiffs by Cannon & Westcott their Attorneys, and the said Defendant W. B. Johnson by J. R. Anderson his Attorney also comes, and it is ordered upon agreement

of the parties that a Jury of Eight persons come to try the issues joined herein plea of the said defendant W. B. Johnson only. The said defendant A. Garrison not being served with
45 process of Summons issued in this cause, Whereupon comes the Jury of good and lawful men to wit: J. C. Cunningham J. J. Ruby, Chas W. Colby, Peter Freeman, John Wadsworth, L. Chatterson, S. M. Rassetter, and Luther Berly, being a Jury of Eights persons who being duly Elected tried and Sworn by agreement of the parties to try the issues joined on plea of the said defendant W. B. Johnson only, after hearing Evidence argument of Counsel and the instructions of the Court, retire to Consider of their Verdict, and afterwords come in to Court submit their Verdict and Say, We the Jury find issues for the said Plaintiffs
46 on the issues joined herein with the said defendant W. B. Johnson, and apess their damages herein against him to the Sum of One Hundred and twenty seven dollars and twenty cents.

And thereupon the said defendant W. B. Johnson submits his motion herein for a new trial in this cause.

And afterwards to wit on the 12th day of November (being one of the days of the November Term of said Court) A.D. 1860 the following among other proceedings was had in said Court and duly Entered to Record to wit:

Henry K. Buell, Henry L. Hill
Gilbert L. Granger and Philando C. Langdon
vs Attachment

47. W. B. Johnson and A. Garrison

And now again comes the said plaintiffs by Lansing & Westcott their Attorneys, and the said defendant W. B. Johnson by J. R. Anderson his Attorney also comes, and Counsel being heard on the motion heretofore submitted herein for a new trial in said cause, and the Court being fully advised in the premises overrules said defendants motion for a new trial herein. Whereupon said defendant enters his exceptions herein to the decision and ruling of the Court wherefore plaintiffs ought to have judgment entered on the Verdict of the Jury rendered herein against said defendant:

48 Therefore it is considered that the said Plaintiffs do have and recover of the said defendant W. B. Johnson Impleaded with A. Garrison their damages of One Hundred and twenty seven dollars and twenty cents

in form aforesaid by the Jury here found and assessed against said defendant, and also their costs and charges in this behalf expended and have execution therefor, and that an order issue for sale of property attached by virtue of the writ of attachment issued in said cause, And therefor said defendant W. B. Johnson prays an appeal herein to the Supreme Court of this State which is allowed to him on filing his appeal Bond in penalty of three Hundred Dollars with security to be approved by a Judge of this Court in twenty days, with bill of exceptions

4/9

State of Illinois
County of Cook } S.S.

I, Walter Kimball clerk of the Superior Court of Chicago, in and for said County do hereby certify, that the foregoing is a full true and complete

transcript of the Bill of Exceptions on file in my office and of all orders & Judgment entered of Record in said Court and appeal Bond in a certain suit wherein Henry K Bull. Henry L Hild. Gilbert L Granger & Philander Langdon are plaintiffs and W B Johnson and A Garrison are defendants.

57.

In testimony whereof I hereunto subscribe my name, and affix the Seal of said Court. at the City of Chicago. in said County this 16th day of April A.D. 1861

Walter Kimball Clerk

Supreme Court

Willard B Johnson impleadee appellant
vs
Henry K Bull et al appellantz

April Term 1861

And now comez the said Willard B Johnson impleadee appellant by Garrison & Anderson hiz attorneys And sayz there iz manifest Error in the Record & proceedingz and also in the giving of judgment in thiz cause

To wit

1st The original writ should have contained a Command to Summon the Deft Garrison

2nd The court Erred in permitting the attachment writ to be amended and also in allowing the return of the Sheriff on the original writ to stand as a return on the amended writ as a Return

3rd The court in adjudgingz it had junsdiction thereby & that Plffs proceedingz were legal & in overruling defendantz motionz in regard to said Amendment & Return

4 Erred the jury were improperly Sworn — in fact no jury was sworn to try the issue in this cas

5 The Court Erred in overruling defts Johnsons motion for a new trial upon the groundz therein stated

6 Plffs should have moved the defendantz were hastingz — as plaintiffs were hastingz

7 The verdict was contrary to & not warranted by the evidence or law of the case & should have been for the defendants Johnson

8 The demurrer was improperly sustained to ~~Defts~~ Johnsons 3d plea

9 The Court should have rendered judgment for Appellant on his 2d plea. the same being admitted & not replied to — the plea should have been disposed of

10 It was error to enter final judgment against Johnson without disposing of the defendant Garrison

Wherefore this appellant prays that the judgment aforesaid for the errors aforesaid may be revoked reversed annulled and altogether held for naught and that he be restored to all things which he hath lost by occasion of the judgment aforesaid

April 18. 1861

Garrison & Anderson

2548

Supreme Court

Willard B Johnson
vs Appellant

Buck et al
vs
Johnson impld &c

Buck Hicks & Granger
& Co Appellees

Record & Bill of Ex

Filed April

Garrison & Anderson
for Appellant

Fees $6.50
Paid by Garrison
W Kinkead Cl

Henry K. Buck
et al Appellees

ads

W. B. Johnson
impl &c Appellants

3d Division
At Ottawa

Supreme Court
of Illinois –

And now come the said appellees and say as to the said assignment of errors to the said appellants that in the said record proceedings in said cause there is no error and this they are ready to verify &c wherefore they pray judgment &c

J. W. Westcott
atty & counsel
for appellees –

Injunction Case

Henry K. Bruce
et al

vs

W. B. Johnson
et al -

Injunction

Filed April 25: 1841
L. Lemmon
Clerk