

No. 13809

# Supreme Court of Illinois

Thomson

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vs.

Hope et al

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71641  7

Be it remembered that on the  
9<sup>th</sup> day of August A. D 1858. came into the  
Office of the Clerk of the Circuit Court in  
and for the County of Bureau in the State of  
Illinois. Jacob S. Thomson. by Taylor and  
Phelps his attorneys and filed his praecipe for  
summons herein which is in the words and  
figures following to wit

State of Illinois } In Circuit Court  
Bureau County } September Term A. D 1858

Jacob S. Thomson } Trespass on the case  
vs } upon promises  
Thomas Hope and } Damages \$500.00  
Charles L. Kelsey }

The Clerk of said Court  
will please issue a summons in the above  
entitled cause against the above defendants  
lay the action Trespass on the case upon  
promises and the plaintiffs damages at Five  
Hundred dollars

Princeton August 9<sup>th</sup> 1858

Taylor & Phelps atts for Plt's

And on the same day process of summons  
issued out of the Office of the said Clerk of  
said Court; which summons is in the words  
and figures following to wit

2  
State of Illinois }  
Bureau County } To the People of the State of Illinois  
To the Sheriff of said County Greeting

We command you that you  
summon Thomas Hope & Charles L. Halsey if  
they shall be found in your county, personally  
to be and appear before the said Circuit Court  
of said County on the first day of the next Term  
thereof to be holden at the Court House in the  
Town of Pinckton in said County on the first  
Monday in the month of September next to  
answer unto Jacob J. Thomson, of a plea of  
trespass on the case upon promises to the  
damage of the said Plaintiff, as he says in  
the sum of Five hundred dollars and have you  
then and there this writ with an endorsement  
thereon in what manner you shall have execu-  
ted the same

Witness Edward M. Fisher Clerk of  
our said Circuit Court and the seal  
thereof at Pinckton in said County  
this 9<sup>th</sup> day of August in the year  
of our Lord one thousand eight hun-  
dred and fifty eight

End

Edward M. Fisher Clerk  
Upon which summons the Sheriff of said Coun-  
ty made the following endorsement to wit  
"I served the within writ by reading to Charles  
L. Halsey (Thomas Hope not found in my County)  
this 30<sup>th</sup> day of August A.D. 1858.

J. St. Waldron Sheriff  
by James Wharton Deput

8  
And on the 27<sup>th</sup> day of August came the  
said Plaintiff by his attorneys aforesaid and  
filed his declaration and copy of note <sup>by him</sup> then and  
there declared upon which are in the words and  
figures following to wit

State of Illinois } In Circuit Court of said County  
Bureau County } <sup>ss.</sup> September Term A. D. 1838

Jacob T. Thomson Plaintiff  
by Taylor & Phelps his attorneys complain of  
Thomas Hope & Charles L. Hilday defendants  
in a plea of trespass on the case upon promises  
for that whereas the said defendants on the  
fourth day of April A. D. 1837 at Tipton in  
the County of Bureau & State aforesaid made  
their promissory note in writing bearing date on  
that day and then and <sup>there</sup> delivered the same to  
Ebenezer Chamberlain and thereby promised to pay  
the said Ebenezer Chamberlain & under the name  
of E. Chamberlain Three hundred and fifty dol-  
lars six months after the date thereof with  
ten per cent interest for value received which  
period has now elapsed and the said Ebenezer  
Chamberlain by and under the name of E.  
Chamberlain then and there endorsed the said  
promissory note to the said Jacob T. Thomson  
the Plaintiff whereof the said Thomas Hope  
& Charles L. Hilday defendants then and there  
had notice and then and there in consideration  
of the premises promised to pay the said plain

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tiff the amount of the said note and the interest thereon according to the tenor and effect of the said note. Yet the said defendants have disregarded their promises and have not, nor have either of them paid the said sum of money and interest or any part thereof to the damage of the Plaintiff of Five hundred dollars and thereupon he brings his suit &c.

Taylor & Phelps for plff

Copy of note sued on in the foregoing narration  
\$350.00

Pinceton Bureau Co Ill

April 14<sup>th</sup> 1857

Six months after date I promise  
to pay to E. Chamberlain or order three hundred  
& fifty dollars with ten per cent intt value  
Recd

Signed

Thomas Hoops

Charles E. Helsey County

On the back of said note is indorsed

Pay to Jacob J. Thomson

(Signed) E. Chamberlain "

I was before the Honorable Martin Ballou judge  
of the twenty third Judicial Circuit of the State  
of Illinois at a term of said Circuit Court  
begun and held at the Court House in Princeton  
within and for the County of Bureau in said  
State on Monday the sixth day of September

5  
in the Year of our Lord one thousand eight  
hundred and fifty eight

Present Hon. Martin Ballou Judge

Edward M. Fisher Clerk

G. W. Waldron Sheriff

George W. Stipp States attorney

Jacob P. Thomson

vs

Thomas Hope and

Charles L. Kelsey

assumpsit

To wit on the 4<sup>th</sup>

day of September

being the 2<sup>nd</sup> day

of said Term

Now comes the plaintiff by  
Taylor his attorney and on his motion this  
cause is continued to the next term of this Court  
and ordered that an alias summons be issued  
therein against said defendant Tho<sup>s</sup> Hope  
returnable to the next term of this Court

And on the 4<sup>th</sup> day of November A.D. 1858 an  
alias summons issued out of the office of the  
Clerk of said Circuit Court which is in the  
words and figures following to wit

State of Illinois } The people of the State of Illinois  
Barren County } vs. To the Sheriff of said County Greeting

We command you as we have here  
tofore commanded you that you summon Tho-  
mas Hope Impleaded with Charles L. Kelsey  
if he shall be found in your County personally

to be and appear before the said Circuit Court  
of said County on the first day of the next term  
thereof, to be holden at the Court House in the  
Town of Princeton, in said County on the first  
monday in the month of January next to answer  
unto Jacob J. Thomson of a plea of trespass on  
the case upon promised to the damage of the said  
plaintiff as he says in the sum of Five hundred  
dollars; and have you then and there this writ  
with an endorsement thereon in what manner  
you shall have executed the same

Witness: Edward M. Fisher Clerk  
of our said Circuit Court and the  
Seal thereof at Princeton in said  
County this 14<sup>th</sup> day of November  
in the Year of our Lord one thousand  
eight hundred and fifty eight.

Seal

Edward M. Fisher Clerk

Upon which summons the Sheriff of said  
County made the following endorsement to wit  
"The within named Thomas Hoop not found  
in my County

Dec 10<sup>th</sup> 1858

D. E. Norton Sheriff

vs. J. F. Whelzel Deputy

Shas before the Honorable Martin Ballou  
Judge of the twenty third judicial Circuit of  
the State of Illinois at the January Term of  
said Court begun and held at the Court House

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in Princeton in the County of Bureau and  
State of Illinois on Wednesday the third day  
of January in the Year of our Lord one thou-  
sand and fifty nine

Present Hon. Martin Ballou Judge

E. M. Fisher Clerk

D. E. Norton Sheriff

Geo. W. Stipp States atty

Jacob J. Thomson }  
as } assumpsit }  
Thomas Hope and } To wit on the 3<sup>rd</sup>  
Charles L. Kelsey } day of January 1858  
} being the first day  
} of said Term

Now comes the defendant C. L.  
Kelsey by Peter his attorney and files his plea  
to said plaintiffs declaration and also his  
plea of usury in the words and figures  
following to wit

Jacob J. Thomson } Circuit Court  
as } } Bureau County  
Thomas Hope & }  
Charles L. Kelsey } Sept. 3. 1858

And the said defendant Kelsey comes and defends the wrong & injury when  
&c. and says that they did not indulate  
and promise in manner & form as the said  
plaintiff hath above complained against them  
and of this he the said defendant puts him

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All upon the Country, and the plaintiff doth the  
like Taylor & Phelps for Plaintiff,

2 And for a further plea in this behalf said  
defendant Kelley says actio non. because he says  
that the consideration of said note had failed to  
the extent of two hundred dollars in this, that  
the consideration of said note was a pair of mules  
sold by the said Ebenezer Chamberlain to said  
Hope, and that it was a condition of the sale  
upon which said note was given, that the said  
mules were sound, the said Chamberlain so  
represented them to Hope at the time he sold  
them to him and said Hope relied upon such  
representation and the said def. avors that the  
said mules were not sound but were diseased  
which said Chamberlain well knew at said  
time and that by such insidiousness they  
were not worth so much by two hundred dollars  
as they would have been had they been sound  
as represented, and that said plaintiff <sup>well</sup> knew of  
such failure of the consideration before said note  
was assigned to him, and this he the said de  
fendant is ready to verify, whereupon he prays  
judgment &c.

Peters & Farwell  
Attys for def. Kelley

Jacob S. Thomson

us ass't

Thomas Hope &

Charles L. Kelley

Circuit Court Bureau Co. Ills  
to the Court J. 1859

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And the said Kelsey says as to all of the note sued upon, except three hundred and twenty five dollars actio non. Because he says that the said \$325. was the real and only consideration of said note and that the said defendants for the same & the use of the said \$325. for six months executed the note sued upon, and also said Hope gave his individual note for twenty eight dollars and that the said plaintiff is not a bona fide purchaser of said note for a valuable consideration without notice and this the said Kelsey is ready to verify wherefore he prays judgment &c.

Peters & Farrell  
 Defts ally

Copy of affidavit filed January 3<sup>rd</sup> 1859  
 Jacob J. Thomson }  
                   us asst } Circuit Court Bureau Co.  
 Thomas Hope & } Ills. to the Jan. 3. 1859  
 Charles L. Kelsey }

State of Illinois }  
 Bureau County } ss  
   C. L. Kelsey being duly affirm  
 ed says that he expects and believes he can prove  
 the statements made in his plea of usury herein  
 filed, and that he has as stated in said plea  
 a partial defence to the note sued upon

I subscribed & affirmed to  
before me this 3<sup>rd</sup> day of  
January 1859  
Wm. Martin J.P.

Charles L. Kelley

Jacob J. Thomson  
vs  
Thomas Hoopie and  
Charles L. Kelley

assumpsit

To wit on the  
10<sup>th</sup> day of Jan<sup>y</sup>.  
being the 7<sup>th</sup> day  
of said Term

Now comes the plaintiff by <sup>Taylor & Phelps</sup>  
his attorneys and files his demurrer to the de-  
fendants plea filed herein in the words and  
figures following to wit, and the defendant <sup>Kelley</sup> comes  
by Peters & Farwell his attorneys and files his  
joinder to plaintiffs said demurrer in the words  
and figures to wit

Estate of Illinois }  
Bureau County } ss.

In Circuit Court  
January Term 1859

Jacob J. Thomson  
vs  
Thomas Hoopie &  
Charles L. Kelley

And the plaintiff by Taylor  
& Phelps his attorneys comes and says that by  
reason of any thing alleged in the plea of the  
defendants, filed herein that he ought not to be  
precluded from maintaining his aforesaid action

against said defendants, for the whole amount claimed in his declaration aforesaid because he says that the <sup>said</sup> plea as above pleaded is not sufficient in law to bar the plaintiff from recovering the amount of money claimed in his said declaration whereupon he prays judgment &c. It makes this demurrer general & special And assigns for special demurrer

- 1<sup>st</sup> That said plea is bad, for duplicity, in this that it states that ~~that~~ the note sued on was given for the use of \$325, six months, and also that said defendant Hoop gave his note for \$28.00. which are two distinct matters
- 2<sup>d</sup> That said plea is not sufficiently certain in that it dont appear for what debt Hoop gave ~~his~~ his individual note, nor when he gave it, <sup>nor to whom he gave it</sup> nor when it was due, nor that it was ever paid or that it has any connection whatever with the note sued on
- 4<sup>th</sup> It dont state for what the note sued on was given or that plaintiff had knowledge of the consideration of said note

Taylor & Phelps for Plf

And the said def<sup>t</sup> says that the said plea is sufficient in law and this he the said def<sup>t</sup> is ready to verify whereupon he prays judgment &c.

Seton & Tarwell  
attys for Def<sup>t</sup>, Talbot

Plas before the Hon. M. E. Hollister  
Judge of the ninth Judicial Circuit of the State  
of Illinois, at the March Term of the said  
Court in and for the County of Bureau, begun  
and held at the Court House in Princeton in  
said County on the second monday in the month  
of March in the year of our Lord one thousand  
eight hundred and fifty nine

Present Hon. M. E. Hollister Judge  
E. M. Fisher Clerk  
D. E. Norton Sheriff  
Wm. Bushnell States attorney

Jacob T. Thomson }  
vs }  
Thomas Hope and }  
Charles L. Kelsey }  
} assumpsit }  
} 22<sup>nd</sup> day of March }  
} being the 8<sup>th</sup> day }  
} of the Term }

Now comes the plaintiff by  
Taylor his attorney and files his replications  
herin as follows to wit:

State of Illinois } In Circuit Court  
Bureau County }  
March Term A. D. 1859  
Jacob T. Thomson }  
vs }  
Thomas Hope and }  
Charles L. Kelsey }

And the plaintiff by Taylor &  
Shelps his attorneys and says that by reason of

any thing alleged in the 2<sup>nd</sup> plea of the defendant by him above pleaded, that the plaintiff ought not to be barred from maintaining his aforesaid action for the whole amount claimed in his declaration, because he says that it is not true as stated in said second plea, that the plaintiff well knew of the failure of the consideration of the promissory note sued on before said note was assigned to him and of this he puts himself upon the Country

Taylor & Phelps for Pltff

State of Illinois } In Circuit Court  
Bureau County } March Term 1859

Jacob J. Thomson }  
vs }  
Thomas Hoop & }  
Charles L. Kelvey }

And the plaintiff by Taylor & Phelps his attorneys comes and says that as to the 3<sup>d</sup> plea of defendants, he ought not to be barred from maintaining his aforesaid action against said defendants because he says that it is not true as in said plea alleged that plaintiff is not a bonafide purchaser of the note sued on in this suit for a valuable consideration without notice and of this he puts himself upon the Country

Taylor & Phelps attor  
for Pltff

And the defendants come by Tilers & Farwell  
their attorneys and withdraw their plea and  
appearance herein

In the matter of  
Jacob J. Thomson

vs.

Thomas Hoop and  
Charles L. Helsey

assumpsit

This day come the said plain-  
tiff by Taylor & Phelps his attorneys and the said  
defendant Charles L. Helsey being three times solemn-  
ly called comes not nor comes any one for him  
but makes default herein. It is therefore consider-  
ed and ordered by the Court that the said plain-  
tiff have judgment by default against the said  
defendant Helsey for his damages herein and it  
appearing to the Court that this suit is brought  
upon an instrument of writing for the payment  
of money only and that the damages of said  
plaintiff in this case rest in computation it  
is therefore ordered by the Court that the Clerk  
assess compute and report the said damages  
whereupon the Clerk proceeded to make the assess-  
ment and computation aforesaid and reported to the  
Court the sum of (\$ 418.83) four hundred and  
eighteen and <sup>83</sup>/<sub>100</sub> dollars as the amount of the  
plaintiffs damages herein, which assessment and  
computation upon examination by the Court ap-

seeming to be just and correct is by the Court approved and allowed. It is therefore ordered and considered by the Court that the said plaintiff have and recover of the said defendant Kelsey the said sum of (\$418.83) four hundred and eight and <sup>83</sup>/<sub>100</sub> dollars being the amount of the damages assessed and computed as aforesaid together with his costs and charges herein expended and that he have execution therefor against the said defendant Kelsey.

Jacob T. Thomson	}	is a wit on the 1 <sup>st</sup> day		
vs			}	of April being the 17 <sup>th</sup>
Thomas Hoop and				
Charles L. Kelsey				

Now comes the said defendant Kelsey by Peter his attorney and prays an appeal herein to the Supreme Court and presents his appeal bond herein with James S. Everett <sup>as</sup> his security which is approved by the Court, and ordered to be filed, and said appeal is thereupon allowed.

Copy of appeal Bond

I know all men by these presents that we Charles L. Kelsey and James S. Everett of the County of Bureau and State of Illinois are here and firmly bound unto Jacob T. Thomson also of the same County and State in the penal sum of six hundred dollars current money of the United

States for the payment of which well and truly to be made we bind ourselves our heirs executors and administrators jointly severally and firmly by these presents. Witness our hands and seals this first day of April A.D. 1859.

The condition of the above obligation is, such that whereas the said Jacob T. Thomson did on the Twenty second day of March A.D. 1859 in the Circuit Court in and for the County and State aforesaid in a certain suit brought therein by the said Jacob T. Thomson against one Thomas Hope and the said Charles L. Stelsey recover a judgment against the above bounden Charles L. Stelsey for the sum of Four hundred and eighteen dollars and eighty three cents debt and costs from which said judgment of the said Circuit Court the said Charles L. Stelsey has prayed for and obtained an appeal to the Supreme Court of said State

Now if the said Charles L. Stelsey shall duly prosecute his said appeal with effect and shall 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 the said Supreme Court then the above obligation to be void otherwise to remain in full force and virtue

Approved  
M. E. Hollister  
Judge &c.

Charles L. Stelsey Esq  
James S. Everett Esq

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State of Illinois }  
Bureau County } S.S.

I Edward M. Fisher Clerk  
of the Circuit Court within and for said County  
in the State aforesaid do hereby certify that the  
above and foregoing is a true and perfect copy  
of all the proceedings in the above entitled  
cause as the same appears on file and of record  
in my Office

In testimony whereof I hereunto set  
my hand and affix the seal of the  
said Court at my Office in Pinckton  
in said County this 27<sup>th</sup> day of April  
A. D. 1859

324  
~~Jacob J. Shannon~~  
vs  
John & Kelley  
vs  
Jacob J. Shannon  
artificial transcript of  
Record

324

Filed April 30, 1860  
d. Ireland Ch.

\$ 418.53  
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\$ 20,94 15 Dgt

13809  
\$5.25