

No. 13575

Supreme Court of Illinois

Carr

vs.

Waugh

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. **284.**

Carr

To

Wright

3862

Reflected

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION.

APRIL TERM THEREOF, A. D. 1862.

HENRY H. CARR, Garnishee of JAMES
S. SIMPSON, TIMON MINNEHAN and SAGAR
WILD,—Plaintiffs in Error, } *Error to Putnam.*
vs.
WILLIAM WAUGH, Def't in Error.

PLAINTIFF'S POINTS.

I. This contract was assignable under 3d Sec. Rev. S. 1845,
and was assigned before due.

Rev. Stat. 1845, p. 384, Secs. 3 and 4.

II. It was assignable by the express terms of the contract,
being payable to Simpson *or order*.

III. If not assignable under the Statute, James S. Simpson
had no interest in the contract which could be reached by the
garnishee.

Rev. Stat. 1845, p. 66, Sec. 15.

24 ~~Ill.~~ Ill. 322.

Story on Cont. 376 i. 376, k. 376 n.

Parsons on Cont. pp. 195 and 6.

Addison on Cont. ~~782~~ 782

IV. The judgment is erroneous, as it makes no order as to
costs properly and unavoidably incurred in answering. The
"costs of inquest" only should be adjudged against the garnishee.

Rev. Stat. 1845, p. 67, Sec. 19.

V. The judgment is informal, naming Carr as garnishee of
Simpson only, when Wild and Minnehan were also judgment
debtors, and is otherwise informal. 26 Ill. Rep. 50, 463.

MARK BANGS & T. M. SHAW,
Attorneys for Plaintiff.

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Henry H. Cross
vs.
Wm. Wright

Plaintiff vs. Defendant

Filed April 30, 1862
J. Leland
Clerk

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM THEREOF, A. D. 1862.

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Henry H. Case

vs
Wm Vaughn

Plaintiffs Comrs

Filed April 30. 1862

J Selma

clerk

SUPREME COURT OF ILLINOIS,

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ABSTRACT OF RECORD.

2, 3 The defendant in error, as the judgment creditor of James S. Simpson, Timon Minnehan, and Sagar Wild, sued out garnishee process against the plaintiff in error, alleging said garnishee to be the debtor of said Simpson, one of the defendants in the judgment.

5-8 Written interrogatories were filed, and by agreement of the parties, the cause coming on to be heard at the March term of the Putnam Circuit Court, A. D. 1862, Hon. S. L. Richmond presiding, the hearing of the matter was submitted to the Court, a jury being waived, and the garnishee answered orally.

9 He denied that he was indebted, unless upon the following lease :

"ARTICLE OF AGREEMENT between J. S. Simpson and H. H. Carr, both of the County of Putnam, and State of Illinois, *Witnesseth* : The said Simpson has this day rented to the said Carr all that part of his farm that lies east of the meadow and hog-lot, containing twenty-two acres, more or less, to be determined by said Carr and A. H. Turner, to raise one crop of corn and potatoes. Said Carr has the privilege of cutting up 3 or 4 acres of corn for fodder, and the said Simpson to have the *paster* of *staks*. And the said Carr agrees to pay to the order of the said Simpson four dollars per acre for said land, which payment is to be made by the middle of July next. Witness our hands, this 13th day of April, 1861.

J. S. SIMPSON,
H. H. CARR."

Assignment on said Lease.

"I hereby assign the within lease to A. H. Turner for value received. J. S. SIMPSON.

Hennepin, April 13th, 1861."

11 Said garnishee put said lease and assignment in evidence.

9 Further answering, he stated that he took one copy of the lease and Simpson took the other; that Simpson said, at the time, that he would leave the lease with A. H. Turner, who would assist him to measure the land and ascertain the quantity, and that said lessee could pay the rent-money to said Turner. Also, that the land was so measured, and contained 19 $\frac{1}{4}$ acres. Also, that he, the garnishee, on the giving of said lease, understood that it was to be left with said Turner for collection.

10 Also, that he did not understand at that time that the lease was assigned by Simpson to Turner, though it might have been; that he had since been informed that the lease was then assigned to Turner in his (the garnishee's) presence, but had no recollection of it, and had no recollection of being notified of the assignment until after the garnishee summons was served.

11 He stated that there was no such endorsement on the copy held by him.

12 *T. M. Shaw* was then called as a witness for the garnishee, and testified *as to* the execution of the lease at its date, and that it was on the same day assigned to Turner, as Carr did know or might have known.

That the assignment was written on the lease when the lease was executed, but not signed until the lease was executed; that on the same day Simpson started for Pike's Peak.

Said witness further stated that he knew nothing of the consideration of the assignment, except what Simpson told him, viz: That Turner let him have money to go to the Peak, and wanted that and some other papers, which he left with the witness, to go to Turner; that he saw no money paid.

Waugh read the record of the judgment aforesaid, which was for \$116.90 damages, besides costs.

14 Upon the foregoing evidence the Court found for the defendant in error. ^uThe garnishee then moved for a new trial; which motion being overruled, he excepted to the decision overruling

moved for discharge

7 the same, and the Court rendered judgment against him for \$78.66. That the said plaintiffs recover of the said defendant, Henry H. Carr, as garnishee of James S. Simpson, the said sum of seventy-eight dollars and sixty-six cents, and that he have execution therefor. To reverse which judgment he brings the case to this Court.

He assigns the following errors :

1. The Court erred in overruling motion to be discharged.
2. In overruling motion for a new trial.
3. In overruling motion in arrest of judgment.
4. In rendering judgment against Carr for full amount of indebtedness on lease without any order as to costs properly incurred by garnishee.
5. Judgment not in proper form, being against Carr as garnishee of Simpson only, and is otherwise informal.
6. Judgment for Waugh, when it should have been for Carr.

98 287

Henry W. Linn
vs.

William Wray

Abstract of Record

Filed Apr. 30. 1842

L. L. Grace
52 vs # clear

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

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284

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 10. In overruling motion for a new trial.

Filed Apr 30, 1842

J. Deane
Clerk

SUPREME COURT OF ILLINOIS,

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Henry W. Carr
vs.

William Wroughton

Abstract of Record

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 2. in overruling motion for a new trial.
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 9. In granting judgment against Carr, for the
 10. In overruling motion to be

Filed Dec 30, 1842

S. G. Lusk
Clerk

(1)

State of Illinois }
Putnam County }
}

Placed before the Honorable
Samuel L. Richmond Judge of the 25th
Judicial District of said State at a Term
of the Circuit Court in and for said
County of Putnam, began and held
at the Court House in Waverly in
said County on Monday the Sixth day
of March A.D. 1862

Present Hon. Samuel L. Richmond Judge
James G. Co. Real State Attorney
Harvey B. Luper Sheriff
John P. Gerberich Clerk

Be it remembered that heretofore
to wit on the 12th day of June 1861 the
following Affidavit was filed in said
Court which is in the words and figures
following to wit.

State of Illinois }
Putnam County }
} In Circuit Court of
said County and March
Term A.D. 1861

William Naugh

vs.
James J. Simpson Sagar Wida
and Simon Winkler

127
William Raugh the plaintiff in the above
suit being duly sworn on his oath says
that at the said March Term of the said
Court he obtained a judgment in the
above named suit against the said Defen-
dants James S. Simpson Sagar Nida and
Simon Minihan for the sum of one hundred
and sixteen $\frac{22}{100}$ dollars and his costs therein
expended which amounts to the further sum
of six $\frac{42}{100}$ dollars that execution has been
issued by the clerk of said Court on the
said judgment against the said James S.
Simpson Sagar Nida and Simon Minihan
directed to the Sheriff of Putnam County
the residence of the said James S. Simpson
Sagar Nida and Simon Minihan that
said execution has been duly returned by
the said Sheriff "to property found where
to levy in my County" that said Defendants
have not within the knowledge of this affiant
any property in their possession liable to
execution — That this affiant has rea-
son to believe and verily does not believe
that one Henry De Leann is indebted to said
Simpson or has property goods and effects
in his hands belonging to the said Simpson
and further deponent saith not

(8)

Subscribed and sworn to }
before me this 12th June A.D. 1861 } William Haugh
John P. Gerberckh Clerk }

Afterward to wit: on the 13th
day of June the following Garnishee
Summons was filed in said Court in
the words and figures following to wit:
State of Illinois } The People of the State of
Putnam County } Illinois to the Sheriff of
said County greeting
Whereas at the March Term A.D. 1861 of the
Circuit Court of the said County a judgment
was rendered in favor of William Haugh
against James S. Simpson Sagar Kild and
Simon Minihan for the sum of one
Hundred and sixteen dollars and ninety
cent debt and costs and upon said judg-
ment execution has been duly issued and
returned by H. B. Leper Sheriff of said County
"No property found", and whereas affidavit
had been made and filed before me setting
forth that the said James S. Simpson Sagar
Kild and Simon Minihan have no property
in the knowledge of the affiant in their
possession liable to execution but that
Henry McLean indebted to said Defendant
or his effects or estate of said Defendant

(47)
Simpson in his hands: He therefore com-
mand you to summon the said Henry
H. Carr if he shall be found in your County
personally to be and appear before the
Circuit Court of said Putnam County
on the first day of the next Term thereof
to be holden at the Court House in Ken-
nepin in said Putnam County on the
Fourth Monday of October 1861 to answer
as garnishee in said cause, and to abide
such order or judgment as shall be made
or rendered in the premises.

And have you then and there this writ
with an endorsement thereon in what man-
ner you shall have executed the same.

Witness John P. Gerberich Clerk of
our said Court and the seal thereof at
Kennepin aforesaid this Twelfth day of
June A.D. 1861

John P. Gerberich Clerk

The following is a copy of the Sheriff's return
on said summons to wit:

State of Illinois }
Putnam County }

I have duly served the within
by reading the same to the within named
Henry H. Carr June 12th 1861 as I am
therein commanded

H. B. Super Sheriff

Afterward to wit: on the 2nd day of November
A.D. 1861 the following Interrogatories were
filed in said court in the words and
figures following to wit:

State of Illinois } Circuit Court thereof
Putnam County } To October Term A.D. 1861

(5)

William Raugh

^{vs.}
Henry W. Carr Garaihue
of James S. Simpson et al

Interrogatories to be answered by the above
named defendant

1st Are you indebted to the above named
James S. Simpson if you state fully the
nature and amount of such indebtedness
and when the same became due

2nd If you answer that you rented lands of
said Simpson, and that said rents remain
unpaid, and that the lease is now held
by one Africa Turner, please answer whether
or you ever had any conversation with
said Simpson relative to leaving said
lease with said Turner - if you state
when such conversation occurred - and
state fully the conversation between
you and said Simpson relative to the
leaving of said lease with said Turner

3rd State whether or not said Turner ever
notified you that he held said lease if
you state whether said notice was given

(6)
orally or in writing the contents of said
notice and whether such notice was given
before or after the service of summons
upon you in this case. State if said
Turner ever presented to you the said
lease or demanded payment of the same

C. Blanchard

Plff. Atty

Afterward to wit on the 11th day of
March A.D. 1862 the same being one of
the days of said Term to wit: the second
day the following order was entered of
record in said cause to wit

William Haugh

vs.

Henry W. Carr Garnishee of } Garnishee —
James S. Simpson Sagar Kild }
and Simon Minahan }

Now comes the Defendant
Carr by C. M. Shaw his attorney and asks
leave to withdraw his answer herein before
filed in this cause - which is granted
and answer withdrawn

Afterward to wit on the 12th day of
March A.D. 1862 the same being one of

(7)

the day of said Term to wit: the Third day the following Judgement was entered of record.

William Haugh
vs.
Henry H. Lear Garnishee of }
James S. Simpson Sagar Hill } Garnishee
and Simon Mihihan }

Now again comes the Plaintiff by Charles S. Forsyth his Attorney and the Defendant Lear by S. M. Shaw his Attorney - A Jury being received this cause coming on to be tried by the Court - and after hearing all the evidence the Court finds the said Defendant Henry H. Lear indebted to the said James S. Simpson in the sum of Seventy - eight dollars and sixty - six cents - Thereupon the said Defendant Lear by his Attorney makes a motion for a new trial, which motion being considered by the Court the same is hereby overruled - Therefore it is considered ordered and adjudged by the Court that the said Plaintiff recover of the said Defendant Henry H. Lear as Garnishee of James S. Simpson the said sum of Seventy - Eight Dollars and sixty - six cents and that he have Execution therefor

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The Defendant Henry H. Coar is allowed
thirty days in which to file his Bill of Exceptions

Afterward to wit: on the 29th day of
March 1862 the following Bill of Exceptions
was filed in said Court in the words
and figures following to wit:

State of Illinois }
Putnam County } } In Circuit Court of
said County March Term
A.D. 1862

William Haugh }
vs } Garnishee to
Henry H. Coar Garnishee of } October Term A.D. 1861
James S. Simpson Sagar Hill }
and Simon Minihan }

Be it remembered that
on this day came the parties to the above
suit the said Haugh by C. S. Forsyth his Atty,
and the said Coar Garnishee by J. M. Shaver
his Attorney and by agreement of parties
in open Court this cause came on to
be heard upon the oral answer under
oath of said Garnishee to the interrogatories
herein filed and the evidence and facts
submitted to the Court by such agreement
a jury having been waived by the parties

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hereto and the same submitted to the
court for trial

Henry De Leon the Garnishee being sworn
and interrogated answered as follows

I am
not indebted in any way and was not at
the time Garnishee process was served
upon me in this case indebted in any
way shape or manner to said Simpson
Hill and Minihan nor any nor either of
them nor had I at said time nor have I
now any goods or effects in my hands belong-
ing to them nor to any or either of them unless
I was indebted to James S. Simpson on a lease
dated some time in April 1861

On April 1861 I leased of Simpson certain
lands agreeing in and by the lease to pay him
four dollars per acre for the land. The lease
was drawn up in writing signed by him
and myself - he took one copy and I took
the other. he told me at the time that he
would leave the lease with A. B. Turner
who would assist him to measure the land
and find out how much there was. we
did measure it and there was $19\frac{3}{4}$ acres
of it and I could pay the money to him
I understood at the time that it was to

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be left with him for collection. Did not understand at that time that the lease was assigned by Simpson to Turner though it might have been, and I have since been informed that the lease was assigned to Turner on the day it was signed by me and in my presence but I have no recollection of it. I have no recollection of being notified of the assignment until after the service of Garnishee summons on me. The amount due on the lease is

Said Garnishee then introduced and read in evidence without objection - proof of execution thereof being waived - the following lease it being the copy retained by said Simpson and endorsement thereon as the lease referred to in his answer. The lease is as follows

Article of agreement between J. S. Simpson and W. H. Carr both of the County of Putnam and State of Illinois. Witnesseth the said Simpson has this day rented to the said Carr all that part of his farm that lies east of the meadows and hog-lot containing twenty-two acres more or less, to be determined by said Carr and A. H. Turner - to raise one

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crop of corn and potatoes - said learr
has the privilege of cutting up 3 or 4
acres of corn for fodder and the said
Simpson to have the pastur of uaks, and
the said learr agrees to pay to the order
of the said Simpson four dollars per
acre for said land which payment
is to be made by the middle of July next
Witness our hands this 13th day of April 1861
J. S. Simpson
H. H. learr

The following is a copy of the assignment on
the back of said lease

I hereby assign the within lease
to A. M. Turner for value received
Wennepin April 13th 1861
J. S. Simpson

learr testified that there was no assignment on
back of copy of ~~said~~ lease held by learr

F. M. Shaw sworn as a witness on part of Gar-
rishee testified as follows.

The lease first read in evidence between
Simpson and learr dated April 13th 1861 was
signed by the parties in my office on that
day and the assignment on the back was

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on some day. The lease was assigned by Simpson to Turner at that time and think Leard did or might have known it. They executed lease and think on same day Simpson started for Pikes Peak. The assignment was written out on back when Leard signed the lease though think the assignment was not signed until after the lease was executed. The leases were brought into my office by the parties to fill out some blanks which were left. Know nothing of the consideration of the assignment of the lease except what Simpson told me. said Turner had let him have money to go to the Peak and wanted to assign that and some other papers which he left with me to Turner - saw no money paid

The Plaintiff read in evidence the record of a judgment in said Court which is as follows to wit:

William Naugh
vs.
James S. Simpson Sagar Hill and
Simon Whihan } Assumpsit

The Plaintiff comes by
W. S. Forsyth his attorney and it appearing

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to the Court that the summons was served on the Defendants more than ten days before the commencement of this Term. The Defendants although three times solemnly called came not but made default. It is therefore considered that the Plaintiff ought to recover his damages on account of the non-performance of the promises in his Declaration mentioned and this suit being upon a note in writing for the payment of money only, and said damages resting in computation it is referred to the Clerk to assess such damages and make report thereof; and the Clerk having made such computation and produces the report of the amount of the damages, stating such damages at one hundred and sixteen dollars and ninety cents and said report is approved by the Court. Therefore it is considered that the said Plaintiff recover of said Defendants the said sum of one hundred and sixteen dollars and ninety cents damages so assessed and also his costs herein expended to be taxed and have execution therefor.

The above was all the evidence in the case. The Garnishee by his counsel asked to be discharged but the Court overruled

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said motion to be discharged to which
decision of the court in overruling said mo-
tion and refusing to discharge said learr
said learr by his Attorney then and there ex-
cepted.

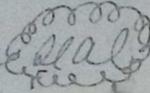
The court then found that learr was indebted
to simpson in the sum of

and that it was subject
to the garnishee in this case and the pay-
ment of said Haughs judgment against
said Simpson Wild and Minihan and the court
so announced whereupon the garnishee learr
by his Attorney entered a motion for a new
trial in this cause but the court overruled
said motion and refused to grant a new
trial herein to which decision of the court
~~in~~ overruling said motion for a new trial
and in refusing to grant a new trial the said
learr then and there excepted. The court being
about to enter judgment against said Garni-
shee the said learr by his Attorney entered a
motion in arrest of judgment which motion
in arrest of judgment the court overruled
to which decision of the court in overruling
said motion in arrest of judgment the
Defendant by his counsel then and there ex-
cepted.

The court then entered final judgment

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against said Garnisher in favor of said
 Haugh for
 And inasmuch as the matters aforesaid
 do not otherwise fully appear of record the
 said barr by his counsel then and there and
 at the time of said trial prayed the court
 to sign and seal this his Bill of exceptions
 herein which is done accordingly and this
 Bill of Exceptions is made a part of the
 Record in said cause

S. L. Richmond 
 Judge 2nd Judicial District

State of Illinois,
 Putnam County I. S. I, John P. Seiberich,
 Clerk of the Circuit Court in and for said
 County & State aforesaid, do hereby certify that
 the foregoing is a true and complete Trans-
 cript of the Record in said cause, as ap-
 pears of Records ^{files} in my office -

In Witness Whereof, I have hereunto
 set my hand and affixed the seal of
 said Court, at Bennepine, in said
 County, this (19th) Nineteenth day of
 April A.D. 1862.

John P. Seiberich, CLK.

Clerk's fees:

Making Transcript & cert. & seal = \$4.00
 paid by Shaw - J. P. Seiberich, CLK



William W. W. W.

Henry A. Carr.

Garrison & James
& Simpson & Co.

Manuscript of Record

J. M. Shaw of planters in
1850



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And now comes the said plaintiffs in
error by J. M. Shaw his attorney and
says there is manifest error in the
Record and proceedings aforesaid in
this to wit

- 1st That the said Circuit Court erred in
overruling said plaintiffs in Error's
motion to be discharged
- 2nd That the said Court erred in overruling
plaintiffs motion for a new trial
- 3rd That the said Court erred in overruling
plaintiffs motion in arrest of judgment
- 4th That the said Court erred in entering
judgment that Defendant in error should
recover of said Barr as Barrister of James
S. Simpson the whole sum of Seventy eight ⁶⁰/₁₀₀
dollars without any award as to costs
properly incurred by Barrister in this
proceeding
- 5th That the said judgment is not in the
proper form being rendered against him as the
Barrister of Simpson only one of the defendants
in the original judgment in favor of said
Wright and otherwise informal
- 6th That the judgment was ^{rendered} for the said Wright
in said Barr and against the said plaintiffs
in error whereas by the law of the land
the judgment should have been rendered for
the plaintiffs in error and against the
defendant in error.

Wherefore because of said errors and others
not named said plaintiffs in Error pray
that Citation and Supercedas may issue
That said judgment be reversed and
that he be restored to all things which he
has lost by reason thereof.

J. M. Shaw atty for
plaintiffs in Error.

And the said William Waugh comes
by J. Dent his atty., and says that
there is no error for which said judgment
should be reversed, wherefore he prays that
said judgment be affirmed, &c.

J. Dent,
atty. for said Waugh.

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Henry S. Carr
partner of James
S. Simpson Sugar mill
and Simon Nicholas

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William Wrought

Record & assignment of

Equity

Filed April 24, 1862

L. Deland.

Clk.