

No. 13264

Supreme Court of Illinois

Joslyn

vs.

 Collins 

71641  7

STATE OF ILLINOIS,
SUPREME COURT.
Third Grand Division.

No. 99.

Callins

vs

~~*Justy*~~

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM, 1861. AT OTTAWA.

MERRITT L. JOSLYN

vs.

FREDERICK COLLINSON.

} *Error to McHenry.*

PAGE OF REC. — THIS was an action of assumpsit upon a special guarantee brought by the appellee against the appellant.

13 The declaration contains three counts. To the first and third counts a *nolle pros.* was entered in the court below.

5 The second count is upon a special guarantee, and alleges "that, on the 20th day of September, 1857, at Woodstock, to wit: in said county of McHenry, one W. W. Paine made his certain promissory note in writing, bearing date the day and year aforesaid, and then and there delivered the same to one L. W. Baldwin, in and by which said note said W. W. Paine promised to pay to said L. W. Baldwin, one hundred and thirty dollars nine months after date thereof with interest at 10 per cent. for value received, and the said L. W. Baldwin, to whom the said note was payable, then and there endorsed and under his hand assigned the said note to the said plaintiff, and then and there delivered the same so endorsed to the said plaintiff, and the said defendant then and there by his certain writing upon the back of said note undertook and promised to pay the money therein mentioned which writing was in the words and letters following, to wit: 'For value recd. I hereby guarantee the payment of the within. M. L. JOSLYN.' By means whereof and by force of the statute, defendant became liable, &c."

Breach in the usual form.

12 To which count the defendant in the court below filed a general demurrer, which demurrer was overruled by the court, and the said defendant standing by his demurrer, the court gave judgment in favor of the plaintiff in the court below, and assessed the damages to the amount of the note and interest.

ASSIGNMENT OF ERRORS.

- 1st. The court erred in overruling the demurrer.
- 2d. The court erred in rendering judgment in manner and form aforesaid.

JOSLYN & HANCHETT,
Attorneys for Plaintiff in Error.

POINTS FOR PLAINTIFF IN ERROR.

- 1st. The second count shows upon its face that the guarantee was placed upon the note by a third person after the same was assigned to the plaintiff in the court below, and does not aver any consideration for the promise or guarantee.

Klein vs. Carrier 14th Illinois, 237.
20th Illinois, 337.

- 2nd. If the guarantee was placed upon the note before the assignment of the same by L. W. Baldwin to the said plaintiff, then the count is bad, because special guarantees are not assignable.

Rev. Stat. Ill. 291, § 3 & 4.
21st Pick. 140.
4th Chandler, 151.
19th Maine, 359.

- 3d. Said count does not aver any promise to pay the money in said note mentioned to the plaintiff in the court below.

99-40

SUPREME COURT OF ILLINOIS :

APRIL TERM, 1861.

MERRITT L. JOSLYN
vs.
FREDERICK COLLINS.

ABSTRACT.

JOSLYN & HANCHETT,

Attorney for Plaintiff in Error.

Filed Apr 19. 1861

*Admission
Clerk*

SUPREME COURT OF ILLINOIS,

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ABSTRACT.

JOSLYN & HANCHETT,

Attorney for Plaintiff in Error.

Filed Apr 19. 1861

Shelton

Clerk

Tuesday March 22^d. A.D. 1859
United States of America
State of Illinois
McHenry County Jfs. Pleas before the
Honorable Isaac G.
Wilson Judge of the Thirteenth Judicial
Circuit of the State of Illinois and Presiding
Judge of the McHenry County Circuit Court
at a Circuit Court begun and holden
at the Court House in Woodstock in
said County on Tuesday the 22^d. day
of March in the year of our Lord
one thousand eight hundred and fifty nine

Present the
Honorable Isaac J. Wilson Judge
C. S. Eastern States Circuit
Edwin C. Thomas Sheriff
Attest
G. S. Kappan Clerk.

And therefore to wit on the 7th. day of October A.D. 1859 was filed in the Office of the Clerk of said Court a Precept for summons, which is in the words and figures following to wit;

2 Frederick Collins }
Meritt L. Joslyn } McHenry Circuit Court
Oct. Term A.D. 1858
Assumpsit Damages \$150.00
The Clerk will please issue summoning
in the above entitled cause returnable
next Term of this Court and oblige
Church & Korr
Attys for Plffs.

(Endorsed) Filed Oct 7. 1858
J. B. Kefauver Clk.

And thereupon there was issued under
the Seal of Said Court a writ of Summons,
which ~~reads~~ is in words & figures as follows
to wit;

State of Illinois }
McHenry County } Cps. The People of the
State of Illinois
to the Sheriff of Said County Greeting
We command you that you summon
Meritt L. Joslyn if he shall be found
in your County personally to be and
appear before the Circuit Court of Said
County on the first day of the next
term thereof to be holden at the Court

3 House in Woodstock in said County
on the 19th Day of October inst.
to answer unto Frederick Collinson
in a plea of assumpsit to the damage
of said Plaintiff as he says in the Sum
of One Hundred and fifty Dollars

And have you then and there
this writ with an endorsement
thereon as to the manner
in which you execute the
Same
Seal
Witness George Hapson Clerk
of our said Court and the
Seal thereof at Woodstock
in said County this 9th day
of October, A.D. 1858
G. H. Hapson Clerk.

(Endorsed.) Served by reading to the within
named Meritt D. Joslyn this 9th day
of Octo. A.D. 1858 John Eddy Shf!
Hrs. Ser. mil & ret, 65 By V. D. Smith Depy
Filed Octo. 10. 1858. W. Hapson Clerk.

And thereafter was filed in the Office
of the Clerk of said Court aforesaid
the Plaintiff's Declaration which

4 Said Declaration is in words and
figures as follows to wit

McHenry Circuit Court

Of the October Term A.D. 1858

State of Illinois

McHenry County. Frederick Collison

Plaintiff in this suit

by Church & Keri his Attorneys complain
of Merritt S. Joslyn Defendant who
is summoned etc. in a plea of trespass
on the case on promises: For that whereas
the said Defendant heretofore to wit: on
the 20th day of September in the year
of our Lord one thousand eight hundred
and fifty seven at Woodstock to wit
in said County of McHenry made his
certain promissory note in writing
bearing date the day and year aforesaid
and then and there delivered the
same to one S. W. Baldwin in and
by which said note said Defendant
by the name style and description of
M. S. Joslyn promised to pay to the
said S. W. Baldwin one hundred and
thirty dollars with interest at ten

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same to one S. W. Baldwin in and
by which said note said Defendant
by the name style and description of
M. S. Joslyn promised to pay to the
said S. W. Baldwin one hundred and
thirty dollars with interest at ten

5 per cent nine months from the date
 thereof for value received And the said
 G. W. Baldwin to whom or to whose order
 said note was payable then and there
 indorsed and under his hand assigned
 the said note to the said plaintiff
 and then and there delivered the same
 so indorsed to the said plaintiff by
 means whereof and by force of the
 Statute in such case made and
 provided the said Defendant became
 liable to pay the said plaintiff said
 sum of money mentioned in said note
 and being so liable in consideration
 thereof then and there undertook and
 promised to pay the same to the said
 plaintiff according to the tenor and full
 true intent and meaning of the said note
 and of the indorsement aforesaid, to
 wit, at the place aforesaid.

And whereas also heretofore to wit
 on the 20th day of September in the
 year of our Lord one thousand eight
 hundred and fifty seven at Woodstock
 to wit: in said County of McHenry
 one W. H. Paine made his certain

5 per cent nine months from the date
 thereof for value received And the said
 G. W. Baldwin to whom or to whose order
 said note was payable then and there
 indorsed and under his hand assigned
 the said note to the said plaintiff
 and then and there delivered the same
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 means whereof and by force of the
 Statute in such case made and
 provided the said Defendant became
 liable to pay the said plaintiff said
 sum of money mentioned in said note
 and being so liable in consideration
 thereof then and there undertook and
 promised to pay the same to the said
 plaintiff according to the tenor and full
 true intent and meaning of the said note
 and of the indorsement aforesaid, to
 wit, at the place aforesaid.

And whereas also heretofore to wit
 on the 20th day of September in the
 year of our Lord one thousand eight
 hundred and fifty seven at Woodstock
 to wit: in said County of New Henry
 one W. H. Paine made his certain

6 promissory note in writing bearing date the day and year aforesaid and then and there delivered the same to one L. M. Baldwin in and by which said note said M. M. Paine promised to pay to said L. M. Baldwin one hundred and thirty dollars. nine months after the date thereof with interest at ten per cent for value received and the said L. M. Baldwin to whom the said note was payable then and there indorsed and under his ~~lead~~ hand signed the said note to the said plaintiff and then and there delivered the same so indorsed to the said plaintiff and the said defendant then and there by his certain writing upon the back of said note undertook and promised to pay the money therein mentioned which writing was in the words and letters following to wit: For value received I hereby guarantee the payment of the within M. G. Joslyn - by means whereof and by force of the Statute in such case made and provided the said defendant became liable to pay said plaintiff said sum

7 of money mentioned in said note and being 'so liable in consideration thereof then and there undertook and promised to pay the same to the said plaintiff according to the tenor and effect the intent and meaning of the said note and of the Endorsement and writing aforesaid to wit at the place aforesaid,

And whereas, also the said Defendant afterwards to wit: on the first day of October in the year of our Lord One thousand Eight hundred and fifty eight at Woodstock in said County became and was indebted unto the Plaintiff in a large Sum of money to wit one hundred and fifty Dollars for money before that time lent and advanced to and paid, laid out and expended for said Defendant by said Plaintiff at said Defendant's request; and for money before that time had and received by said Defendant to and for the use of said Plaintiff; and also in like Sum for goods wares & merchandise before that time sold and delivered

by said plaintiff to said defendant
at like Special instance and request
and also in like sum for the labor
and diligence of said plaintiff
before that time done and performed
by said Plaintiff for said defendant
and at the like instance and request
of said Defendant; and also in like
sum then and there found due and
owing said Plaintiff on an account
stated between them and being so
indebted said Defendant in consideration
thereof then and there undertook and
promised to pay said Plaintiff said
last mentioned sum of money at
thereunto afterwards requested.

(Yet the said Defendant notwithstanding
his said promises and undertakings
but contriving &c although often required
so to do has not paid said Plaintiff
either of said Sums of money ^{above} mentioned
or any part thereof but so to do has
hitherto wholly neglected and refused
and still does neglect and refuse
to the damage of the said Plaintiff

9 one hundred and fifty dollars and
therefore he brings this Suit &c.

Church & Rev

Atty for P & G.

Copy of Instrument and account filed on
\$36.00 Woodstock September 20th 1854

Nine Months after date for value
received I promise to pay J. W. Paine
one hundred and thirty dollars with
acc with interest at ten per cent

(Signed) J. W. Paine
on back } for value Rec^d. I hereby guarantee
of note } the payment of the within note
Signed M. S. Joslyn

M. S. Joslyn

To Frederick Collison Dr

To money lent and advanced \$150.00

To money Expended and paid out for \$150.00

To money received for use of \$150.00

To Groceries, wine, and Merchandise \$150.00

To Labor and Services \$150.00

To balance on account stated \$150.00

(Entered / Filed Oct. 7, 1858

J. S. Kaffin clk.

10

And then comes the defendant and files
his plea to the plaintiffs declaration as
follows viz.

Joslyn vs Andrick Collinson	} In McHenry Ct. October Term 1858
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And the said deft by
Joslyn & Marchet his attys comes and
defends the wrong and injury whereof
and says that he did undertake and
promise in manner and form as in the
first & third count of the said plffs declaration
is set forth and of this he puts himself
upon the Country

Joslyn & Marchet
for Deft.

(Endorsed) filed Oct. 21, 1858. J. B. Marchet.

Joslyn vs H. Callison	} In McHenry Ct. October Term 1858
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And the said deft.
by Joslyn & Marchet
his attys comes and defends the wrong
and injury whereof and says that the
second count of the said plffs declaration

is not sufficient in law for him to maintain
his said action against him and this
11 he prays may be enjoined of by the
Court.

Joslyn & Hanchet
for Deft.

(Endorsed.) Filed Oct. 20. 1858 J. W. Kapnick

In McHenry Circuit Court

Oct. Term 1858

St. Collin

M. L. Joslyn

And the said Deft
by Joslyn & Hanchet

his attys comes & defends the wrong & injury
wherein and says that he did not
undertake and promise in manner
and form as is set forth in the first
and third counts of said plffs declaration
& of this he puts himself upon the country

Joslyn & Hanchet
for Deft.

And thereafter to wit on the 9th day of
April A.D. 1859 the following Bond
was filed in the Office of the Clerk
of said Court which said Bond
is in words and figure, as follows, to wit

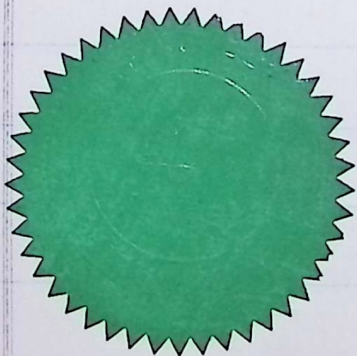
12 We Merritt Joslyn and Melvin H. Baldwin acknowledge ourselves to owe and be indebted unto Frederick Collinson in the final sum of Three Hundred Dollars the payment of which we well and truly to be made we bind ourselves jointly and severally firmly by these presents.

Witness our hands and seals this the 9th day of April 1859

The condition of the above obligation is such that whereas the said Frederick Collinson did on the 31st day of March 1859 at the March Term 1859 of the M^c. Henry Circuit Court recover against the said Merritt L. Joslyn a judgement in the sum of One Hundred forty nine & 86/100^{ths} Dollars and costs of suit taxed at dollars, from which said judgement the above bonded Merritt L. Joslyn has appealed to the Supreme Court of the State of Illinois, Now if the said Merritt L. Joslyn shall duly prosecute his said appeal and pay the judgement and interest and damages in case said judgement

the same and doth order and adjudge
14 that the plaintiff have and recover
of the defendant his costs and charges
about his journey in summes
Expended and that he have Execution
therefor ^{to which ruling of the Court the plaintiff by counsel} ~~the Court~~ ^{has since excepted}
being fully advised upon the
proofs herein submitted, assesses the
plaintiff's damages at the Sum of
One hundred forty nine Dollars &
Eighty Six Cents. It is therefore
ordered and considered that the plaintiff
have and recover of the defendant
the sum of One Hundred forty
nine Dollars Eighty Six Cents his
damages so assessed as aforesaid
as also his costs and charges
herein Expended and that he have
Execution therefor. Whereupon the
defendant prays an appeal to the
Supreme Court of this state which is
allowed on condition that he enter
into Bonds conditioned according
to Law in the Sum of Three Hundred
Dollars within ten days from date
with Melvin B. Baldwin as surety

15 State of Illinois }
McHenry County } J. S. George J.
Kaspar Clerk
of the Circuit Court in and for said
County in the State aforesaid do hereby
certify that the above & foregoing
is a true complete copy of the
Records of this Court in a cause
wherein Frederick Collison is plaintiff
and Merritt L. Joslyn defendant
as appears by a diligent examination
thereof. In Witness whereof I
hereunto set my hand
and the Seal of said Court
at Woodstock this 20th
Day of April A.D. 1860
J. S. George J.
Kaspar Clerk.



Superior Court

April 2nd - 1861

Edward L. Foster

vs

Frederick C. Cochran

} Error to McCleary

And the same defense

and by counsel & there his attorneys

comes and defends &c And says that

in the record and proceedings &c there

is not any such errors as in and

by the 5th assignment of errors is

alleged And thus the same debt is

ready to pay &c

Belcher & Kerr
attys for Deft

41699-40
Collinson vs. Dwyer

Record

Supreme Court
April Term 1860

M. Dwyer vs.
Frederick Collinson
} appeal

Comes now the said
Jeff by J. P. H. H. H. H.
his atty and says that
in this record there is
manifest error and
assigns the following
points

1st The Court said in
overruling the demurrer

2nd The Court said in
rendering judgment in
favor of the defendant

J. P. H. H. H. H.
Respectfully

Filed May 26. 1860

L. Leland
Clerk

~~No objection~~
~~or appeal~~
Superior Court allowed
and appeal to stand
as by stipulation
file