

No. 12570

Supreme Court of Illinois

Kellogg

vs.

Carr

~~185~~ 47

William Kellogg

by

Nathan Carr

338.30

49

1858

12570

Superseded

William Kellogg
William S. Hops
Richard Hegg
Piffs & error
is

Nathan Carr &
John Carr
Defendants in
Error

Supreme Court

And the plaintiffs come
and say that there is manifest
error in the record proceedings and
in the rendition of judgment in this
cause to the injury of Piffs and
for a judgment of reversal when
the record they show to the Court
has the following.

1. The Court erred in rendering
Judgment against Defendants
without first disposing of their
demurrer filed in said Cause.
2. The Court erred in rendering
Judgment against plaintiffs in error
without reversing Judgment against
Lightner.
3. The Court erred in allowing
the Clerk to assess damages.
4. The Court erred in rendering
Judgment in ~~affirmance~~ Piffs in error.
5. The Judgment should have been
for Piffs in error.
6. Other errors for which the
error in said record appearing
the Plaintiffs pray the Court to set said

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Jhonmey
for my

1. 1/2 lb of ...

2. 1/2 lb of ...

3. 1/2 lb of ...

4. 1/2 lb of ...

5. 1/2 lb of ...

6. 1/2 lb of ...

7. 1/2 lb of ...

8. 1/2 lb of ...

9. 1/2 lb of ...

Pleas before the Hon John S Thompson
Judge of the tenth Judicial Circuit of the
State of Illinois, at a circuit Court began
and held at the Court in Mounmouth within
and for the County of Warren and state of Illinois
on the third Monday in the month of March
in the year of our Lord One thousand Eight
hundred and fifty seven. It being the
sixteenth day of Month.

Present Hon John S Thompson Judge

James H Stewart State Attorney

William Saputny Clerk

Charles M. Mills Sheriff

89 Nathan Carr & John Carr }
vs } Assumpsit
William Kellogg, William S. Kellogg }
Charles S. Clark, Richard Gregg }
Harvey A. Lightner & James Knox }

The following is a Copy of the Declaration filed
March 6th 1857 in the above entitled Cause

State of Illinois } ss
Macon County } March Term A D 1857 of the
P Macon County Circuit.

Nathan Carr Jr & John Carr by the name and
style of N & J Carr Plaintiffs by J. G. Madden
their Attorney Complain of William Kellogg, William
S Mof, Charles S Clark, Richard Gregg, Harry
Lightner and James Enot. Defendants, is to wit
&c of a plea of Trespass on the Case on promises for
that Whereas one L A Brown & Son heretofore
traded, on the Twenty fourth day of June one thousand
Eight Hundred and fifty six at Marmouth in the
County aforesaid made their certain promissory note
in Writing, bearing date a certain day and year
therein mentioned, to wit the day and year aforesaid
And thereby then and there promised to pay at the
Banking House of Mackay & Quincy in Marmouth
aforesaid, on the first day of January next after
the date of said Note bearing January 1st 1857 to
the order of the said Defendants by the name &
style of Kellogg Mof & Co. Three Hundred and
Fifteen Dollars, with interest at the rate of ten
per cent. For value Received And then and there
Delivered the said promissory Note to the said

Defendants; and the said Defendants to whom
or to whose order the payment of the said
sum of money in the said promissory note specified
was to be made after the making of the
said promissory note before the payment of the
said sum of money therein specified took, on
the day and and year aforesaid at the
place aforesaid indorsed the said promissory
note by which by which said Indorsement they
the said Defendants by the name and style
of Kellogg, Messrs & Co then and there ordered
and appointed the said sum of money in the
said promissory note specified to be paid to the
said Plaintiffs and then and there delivered the
said promissory note so indorsed as aforesaid to the
said Plaintiffs and the said Plaintiffs aver that
afterwards when the said promissory note became
due and payable according to the tenor and
effect thereof to wit, on the first day of January
1857 at the said Banking House of Mackay &
Quincy to wit at Wrentham in the County aforesaid
the said promissory note was duly presented
and shown for payment thereof and payment of
the said sum of money therein specified, was then
and there duly required according to the tenor
and effect of the said promissory note but
that neither the said Kellogg Messrs & Co nor
the said S A Brown & Sons nor any person

or persons on behalf of the said S A Bonn
& Sons did or would at the said time when
the said promissory note was presented and
shown for payment thereof as aforesaid
or at any time before or afterwards or afterwards
pay the said sum of money therein specified or
any part thereof but wholly neglected and refused
to do so of all of which said several premises
the said Defendants afterwards to wit, on the
day and year last aforesaid had notice and
thereupon afterwards to wit on the 3^d day of January
A D 1857 at the place aforesaid the said
promissory note was duly protested for non payment
thereof according to the Statute in such cases
made and provided of all of which said several
premises the said Defendants afterwards and
within two days then next following to wit on
the day and year last aforesaid and at the
place aforesaid had notice, and the said
Plaintiffs aver that at the time when said
notes become due and payable to wit on the
first day of January A D 1857 at the place
aforesaid, the said S A Bonn & Sons were
utterly insolvent, so that the institution of a
suit, against them for the recovery of the
Amount of money in said promissory note specif-
ied would have been entirely unavailing, and
that the said S A Bonn & Sons are still utterly

Insolvent, by means thereof and by force of the
statute in such case made and provided
the said Defendants then and there became
liable to pay to the said Plaintiffs the said
sum of money in the said promissory note spec-
ified when they the said Defendant should to
them afterwards requested; and being so liable
they the said Defendants in consideration
thereof afterward trinit on the day and year
last aforesaid, and at the place aforesaid under
took, and then and there faithfully promised
the said Plaintiffs to pay them the said sum
of money in the said promissory note specified
when they the said Defendants should to them
wrote afterwards requested, And whereas also the
said Defendant afterward trinit on the first
day of February in the year of our Lord one thousand
and Eight Hundred and Fifty Seven at the County
aforesaid was indebted to the said Plaintiff
in the sum of five hundred Dollars lawful
money of the United States of America for so
much money before that term lent and advanced
by the said Plaintiff to the said Defendants and
at the special instance and request of the said
Defendants, and for other money by the said
Plaintiffs before that time paid laid out and
expended to and for the said Defendants, &c
at the like request of the said Defendant.

And for other money by the said Defendants
before that time had and received to and for the
use of the said Plaintiff. And being so indebted
the said Defendants in Consideration thereof
afterward, to wit, on the same day and year
last aforesaid, and at the place aforesaid
undertook and then and there faithfully promised
the said Plaintiff well and truly to pay unto
the said Plaintiff the sums of money in the
Count mentioned, when the said Defendants should
be therunto afterwards requested. And whereas
also the said Defendants afterward, to wit, on
the same day and year last aforesaid and at
the place aforesaid, accounted together with the
said Plaintiff of and concerning divers other
sums of money before that time due and owing
from the said Defendants to the said Plaintiff
and then and there being in arrears and unpaid
and upon such accounting the said Defendants
then and there were found to be in arrears and
indebted to the said Plaintiff in the further sum
of five hundred Dollars of lawful money as a
foresaid. And being so found in arrears and
indebted to the said Plaintiff the said
Defendants in Consideration thereof afterward, to wit
on the same day and year last aforesaid, and
at the place aforesaid, undertook and then
and there faithfully promised the said Plaintiff

well and truly to pay to the said Plaintiff
the said sum of money last mentioned when
the said defendants should be therunto afterwards
requested, Nevertheless the said Defendant
although often requested &c.omit at the time
when the said note became due and payable
according to the tenor and effect thereof
and oftentimes since, omit at the place
aforesaid have not yet paid the said several
sums of money abovementioned any or either
of them, or any part thereof to the said Plain-
tiff but to pay the same or any part thereof
to the said Plaintiff, the said Defendants
have hitherto altogether neglected and refused &
still do so neglect and refuse to the damage of
the said Plaintiff of five hundred Dollars and
therefore the said Plaintiff bring suit &c
J G Madden
Atty of Plaintiff.

Copy of Note sued on

\$315.

Month June 24th 1856.

On the first day of January next after date
we promise to pay to the order of Miss Valley

Mp & Co One Hundred and Fifteen ¹⁰⁰ Dollars
with Interest at the rate of ten per cent at the
Banking House of Mackay & Quimby in Mon
month, Value Received

N^o - Due S A Bann & Son

Copy of Indorsement
For Value Received we assign the within
note to H & J Carr.

W Hellogg. Mp & Co.

Copy of Acct

Money lent & advanced	\$ 500.
Money Paid out & c.	\$ 500.
Money had & received	\$ 500.
Due on acct stated	\$ 500.

The following is a true Copy of Demurrer filed
March 16th 1857 to Plaintiff Declaration in the foregoing
case

State of Illinois }
Warrn County }
Warrn Circuit Court

March term AD 1857

Nathan Carr & John Carr
partners by the name & style of Carr & Carr }

vs

William Kellogg, William S. Mox
Charles S. Clark, Richard Gugg
Harvey S. Lightner & James Knox }

And the said Defendants save and except
said Knox & Clark come and defend the wrong and
injury when & And say that they ought not to be held
to answer unto the Plaintiff in this case because
they say that the said Declaration and each of said
counts are not nor are either of them sufficient
in law for them to answer unto. And of this they
put themselves upon the judgment of the Court
& pray judgment &c

George F. Harding
Defendants Attorney

And afterwards to wit on the 20th day of March
A.D. 1887 the following record was made in the foregoing case

89
Nathan Carr & John Carr }
vs. } Appraisers
William Kellogg, William S. Mass }
Charles S. Clark, Richard Gregg }
Harry A. Lightner & James Knott }

This day came the Plaintiffs
by their Counsel and it appearing to the satisfaction of
the Court that William Kellogg, William S. Mass, Richard
Gregg and had been duly served with process and being
three times solemnly called came not, nor any person
for them to defend this suit but made default
herein. Therefore it is considered by the Court that the
said Plaintiffs have and recover of and from the aforemen-
tioned Defendants the amount of their damages herein
and because those damages are unknown to the Court
it was ordered that the Clerk assess the same, and the
Clerk having assessed and reported the same at the sum
of Three hundred and thirty eight dollars and thirty
cents damages; Therefore it is considered by the Court, that
the said Plaintiffs have and recover of and from the
aforementioned Defendants the sum of Three hundred
and thirty eight dollars and thirty cents damages so
assessed by the Clerk aforesaid, Together with their
costs by them in this suit expended, and may have
execution therefor. And it is further ordered by the

Court that a Scire facias issue herein against
James Knox to the Sheriff of Knox County, returnable
to the next term of this Court to show Cause if any
he can why he should not be made a party to this
Judgment. And it is further ordered by the Court
as to James Knox, this be continued until the next
term of this Court

The following is the full amount of Cost in
the foregoing Case as appears of Record

N & J. Carr } Mann Circuit Court
vs } March term AD 1857
Kellogg Moss & Co }

Clerks fees Wm. Saffery 3,90
Copying papers to S Court 2,00

Sheriffs fees C. M. Mills Mann Co .70
" " J. W. Smith Peoria " 3,50
" " C. W. Euke Knot " 1,60

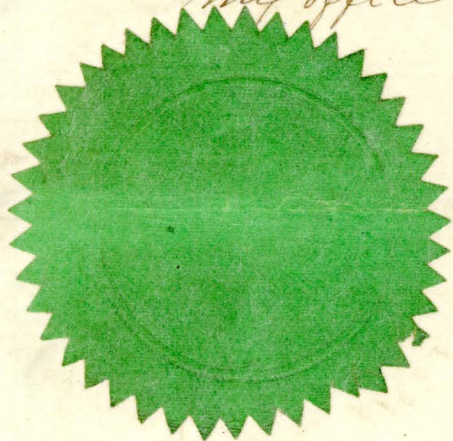
Witness fees Erastus Rice 2,00
" " C. Hardin 4,00

\$19.70

J. G. Mallard Notary Public fees
Protecting Note &c

2, 25
\$21.95

State of Illinois }
Warren County } I William Lafayette Clerk
of the Circuit Court for said County do hereby
certify that the foregoing is a full true and complete
copy of all the proceedings in the foregoing case
as appears from the files and records now in
my office



In testimony whereof I have hereunto
set my hand and affixed the seal of
the said Court at my office in Hannibal
this 18th day of April A.D. 1857
Wm Lafayette Clerk

132 49
Carr et al
n

Kellogg et al
Record

Filed April 21, 1887
L. Leland
Clerk



Know all Men by These Presents, That William Kellogg
William S. Moss, Richard Gregg
as principal, and Charles Ballance
as security, are held and firmly bound unto Nathan Barr & John Barr

penal sum of six hundred dollars in the
and lawful money of the United States, for the payment of which, well and truly to be made, the said
William Kellogg, William S. Moss, Richard Gregg &
Charles Ballance
bind themselves their heirs, executors, and administrators, jointly, severally, and firmly by
these Presents.

Witness, our hands & seals

this 23^d day of April A. D. 1857.

The Condition of the abobe Obligation is such; That, whereas, the above named
Nathan Barr & John Barr
did, at the March Term of the Circuit Court,
held in and for the County of Warren in the State of Illinois, A. D. 1857 recover a
judgment against the above bounden William Kellogg, William S. Moss
& Richard Gregg

& thirty cents damages & the costs of the Court for the sum of three hundred & thirty eight dollars
Kellogg, William S. Moss & Richard Gregg to reverse which said judgment, the said William
have sued out a Writ of
Error from the Supreme Court, within and for the Third Grand Division of said State. Now if the said
William Kellogg, William S. Moss, & Richard Gregg
shall duly prosecute said Writ of Error, and pay, or cause to be paid, all judgments, costs, interest and
damages which the said Supreme Court shall adjudge against the said William Kellogg
William S. Moss, & Richard Gregg and abide the order and judgment of said
Supreme Court in this behalf, then this obligation is to be void, otherwise to remain in full force and effect.

Wm Kellogg [SEAL.]
W. S. Moss [SEAL.]
Rich Gregg [SEAL.]
C Ballance [SEAL.]

132

Kellogg et al
vs
Barr

Filed May 6. 1858

S. Leland
Clerk

William Kellogg et al
vs
Nathan Barr et al

Supd Bond

Filed May 6. 1858
S. Leland
Clerk

Copied of the above obligation is such, that whereas the above named

Court

in the State of Illinois, A. D. 1858 recover a

day of

A. D. 1858

Supreme Court in this behalf, then the obligation is to be void, otherwise to remain in full force and effect.

[Seal]
[Seal]
[Seal]
[Seal]

STATE OF ILLINOIS,
SUPREME COURT,

ss. The People of the State of Illinois,

TO THE CLERK OF THE CIRCUIT COURT FOR THE COUNTY OF *Warren* GREETING:

BECAUSE, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of *Warren* County, before the Judge thereof, between *Nathan Carr & John Carr by the name & style of N. & J. Carr*

plaintiffs, and *William Kellogg, William S. Moss and Charles S. Clark, Richard Gregg, Harvey A. Sighthead and James Knox,*

defendants it is said manifest error hath intervened, to the injury of the aforesaid *William Kellogg William S. Moss & Richard Gregg* as we are informed

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

WITNESS, The Hon. WALTER B. SCATES, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this *6th* day of *May* in the Year of Our Lord One Thousand Eight Hundred and Fifty-*Seven*.

L. Leland
Clerk of the Supreme Court.
By J. B. Rice Deputy

19
William Kellogg et al
vs
Nathan Carr et al
Writ of Error

This writ of error is
to operate as a Super-
sedens and as such
is to be obeyed by
all concerned.

L. Leland Clerk
By J. B. Rice
Deputy

Filed May 6. 1857.

L. Leland
Clerk

