

12177

No. _____

Supreme Court of Illinois

Van Alstyne

vs.

Hose

71641  7

John V. A. Hors
Appellant
vs
Isaac Paul Alstyne
Defendant in error

And now comes the said Appellant and says that in the record & proceedings aforesaid & in the rendition of the said judgment there is manifest error in this, to wit,

- 1st The court had no ^{sufficient} jurisdiction of the parties -
- 2d The court erred in rendering the judgment aforesaid -
- 3d The judgment is excessive

John V. A. Hors
In person

And said Isaac Paul Alstyne by Dickey & Wallace his attorneys - says there are no such errors as alleged and that said judgment ought to be affirmed
Dickey & Wallace

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Does vs Van Alstyne

Evors

Filed July 3-1855.
L. Veland Clk.

And afterwards, to wit; on the seven day of the
plaintiffs declaration was filed in the words and
figures following to wit;

" State of Illinois LaSalle
Circuit Court of May term in the year of our
Lord One thousand eight hundred & fifty four
LaSalle County vs - Grace Van Alstyn plaintiff
in this suit by Dickey, Wallace & Coarman his
attorneys complainants of John V. A. Woods defendant
in this suit To a plea of trespass on the case on
promises - for that whereas the said defendant
herebefore to wit; on the twenty seventh day of August
in the year of our Lord one thousand eight hundred
and forty one at Kinderhook, to wit; at the
County aforesaid, made his certain promissory note
in writing bearing date the day and year aforesaid
and then and there delivered the same to the said
plaintiff, in and by which said note said defendant
promised to pay to the said plaintiff or bearer one
year after date for value received the sum of
Four hundred dollars with interest, and the
said plaintiff avers that said note was made
and by the terms thereof made payable in the State
of New York to wit; at Kinderhook in the State of
New York and that by the laws of the State of New
York at the time said note was made and at the
time the same became due and payable the
legal rate of interest in said State of New York was
and ever since has been and still is seven dollars
upon one hundred dollars for one year and at
that rate for any greater or less^{er} term or any
longer or shorter term

By means whereof and according to the
Statute in that case made and provided the said

State of Illinois } Pleas before the Honorable
Sasalle County } Edwin S. Sealand presiding
Judge of the Sixth Judicial
Circuit of the State of Illinois at a circuit
Court commenced and held in & for the County
of Sasalle and State of Illinois at the Court Room
in Ottawa on the Second Monday, the second
day of May in the year of our Lord
one thousand eight hundred and fifty four and
of the Independence of the United States the
Seventy eighth

Present

The Honorable Edwin S. Sealand	Presiding Judge
Wm. Lindley	Clerk
Richard Brown	Sheriff
W. H. L. Wallace	State Attorney

On the Eighteenth day of May 1854 Security for
costs was filed in the under signatures following
to wit:

"Sasalle County Circuit Court - Grace
Van Matyore vs John V. A. Hoos - Aft - Dam
\$1500 - We do hereby enter ourselves Security for
costs in this suit, and acknowledge ourselves bound
to pay or cause to be paid all costs that may accrue
in this action, either to the opposite party or to
any of the officers of this Court in pursuance of the
laws of this State - Dated Ottawa this day
of April A.D. 1854

Seamus & Mc Caff

dependant then and then became liable to
pay the said plaintiff the said sum of money
in the said promising note specified according to
the term and effect of said promising note and
interest thereon from the day of the date of the
same to the time of payment of the same

And being so liable he, the said dependant
in consideration thereof afterwards, to wit, on the
twenty seventh day of August in the year of our Lord
one thousand eight hundred and forty one
aforesaid, at the County aforesaid undertook and
then and there faithfully promised the said
plaintiff to pay him the said sum of money
in the said promising note specified according
to the term and effect of the said promising note,
to wit, at the place aforesaid,

And Whereas also the said dependant afterwards
to wit, on the twenty eighth day of April in the year of
our Lord one thousand eight hundred and fifty
four in the County aforesaid was indebted to the
plaintiff in one thousand dollars for the price
and value of goods and chattels then and there
sold and delivered by the plaintiff to the dependant
at his request, and in one thousand dollars for
the price and value of work then and there done
and materials for the same provided by the
plaintiff for the dependant at his request, and in
one thousand dollars for money then and there
lent by the plaintiff to the dependant at his
request, and in one thousand dollars for money
then and there paid by the plaintiff for the use
of the dependant at his request, and in one
thousand dollars for money then and there
received by the dependant for the use of the plaintiff

and in five hundred dollars for interest due
from the said defendant to the plaintiff for and
in respect of the plaintiff being, for and
given day of payment of money due from the
defendant to the plaintiff at the defendant's
request for a long time then elapsed, and in
one thousand dollars for money found to be
due from the defendant to the plaintiff on an
account then and there stated between them.

Notwithstanding the said defendant not regarding
his said promises and undertakings in this behalf
hath not as yet paid the said several sums of
money or any part thereof to the said plaintiff
although often requested so to do. But the said
defendant to perjure the same hath hitherto
wholly neglected and refused and still doth
neglect and refuse to the damage of the said
plaintiff of fifteen hundred dollars and
therefore he brings this suit.

Dickie, Waller & Eastman
Plffs Atty

"(Copy of Note Sent on)"

"One year from date for value received I
promise to pay Isaac Van Alstyn or bearer
four hundred dollars with interest

Kinderhook August 27th 1841

John V. A. Nees

"(Copy of a/c)"

John V. A. Nees To Isaac Van Alstyn Dr	
For Goods & Chattels	\$ 1,000.,
" Wages & Mercantile	1,000.,

" Money lent you	1,000,
" Money paid for you	1,000,
" Money rec ^d for my use	1,000,
" Interest on money due	500,
" Money due on a/c	1,000, "

Said afterwards, to wit: on the same day last
aforesaid, the same being one of the days of the
said May term the defendants appearance
was filed in writing as follows to wit:

" I, John V. A. Hoes, Clerk of the Court - John V. A.
Hoes and Isaac Van Alstyn - I do hereby
enter my appearance in this cause and request
the Clerk of this Court to enter the same of
record - Ottawa April 11th AD 1841
John V. A. Hoes"

Said again afterwards to wit on the same
18th day of May aforesaid a Note was filed in
the records and signs following to wit:

" One year from date for value received I
promise to pay Isaac Van Alstyn or his assigns
four hundred dollars with interest =
Kinderhook August 27th 1841
John V. A. Hoes"

On the back of said note were the following
endorsements to wit:

" No. 1. 27th August 1842 Rec^d of
John V. A. Hoes Esq. Twenty eight dollars for one years
interest on this note"

"No. 2. 10 August 1843 Rec^d of Peter S. Hoos for John
V. A. Hoos twenty eight dollars for one year's Dr. up to
27 Dec on this note & my receipt to P. S. Ho
L. Hoos"

"No 3 - Nov 7 1844 Received on the within note
28 twenty eight dollars by Peter S. Hoos"

"No. 8. I guarantee the payment of the within note
and disburse with notice of non-payment
Me. Van Buren"

"No 4 - October 10th 1845 Received on the within
note twenty eight dollars"

"No 5 - 1849 Jan 2^d Me. Van Buren deposited
in Bank of N. \$100 to apply on this note to credit of
Barat V. A. when p^d to Isaac V. A. 25 Jan 1849"

"No 6 - Aug 14 Rec^d of Jn. V. A. Hoos for Mary E. S.
\$60, in full of Int. to ¹⁵ May 1851 and \$13 for compound
Int. for each of 2 A.S."

"No 7 - Rec^d of Louis Hoos twenty eight dollars Aug.
Aug. rec^d of him of J. V. A. Hoos 10. Aug 1843
Aug 16 1843 Isaac Van Alstyne"

And afterwards, to wit, on Friday the 26th day of
May 1854, the same being one of the days of
said term of said court, the following order
was made and entered of record in said cause
viz:

"Grace Van Alstyne"
 235 vs Dolt
 John V. A. Hoos 3 This day the defendant
 comes and enters his appearance
 in person, and the plaintiff comes by Dickey, Wallace
 & Eastman his attorneys and on their motion the
 defendant is ruled to plead herein by Monday
 morning next"

And afterwards, to wit: on Friday June 2^d, 1834
 the same being one of the days of said term the
 following further order was entered of record in
 said cause viz:

"Grace Van Alstyne"
 235 vs Spruifert
 John V. A. Hoos 3 This day came the plaintiff
 by Dickey Wallace & Eastman his attorneys and the
 defendant being then times solemnly called came
 not but made default, and on motion of plaintiffs
 attorneys it is ordered that judgment be rendered
 against said defendant by default for want of a
 plea pursuant to the rule herein, And it
 appearing to the Court that this suit is founded
 upon a promissory note for the payment of money
 only the Clerk is directed to compute the damages
 which is done and found to be four hundred
 and eighty five dollars and twenty seven cents
 which is reported to and accepted by the Court.
 It is therefore considered that the plaintiff have
 and receive from the defendant the said sum of
 Four hundred and eighty five dollars and twenty

sums for his damages and also his costs and charges herein incurred and that he have Execution therefor."

And again on Friday June 9th 1834 the Court being on of the days of said term of said Court the following final order was entered of record in said Cause viz;

"Inac Van Alstyne
235 vs Spruitt
John V. A. Hoos 3

This day comes the defendant in his own proper person and prays the Court for an appeal herein to the Supreme Court of this State, which is granted by the Court upon condition that said defendant within thirty days from this date, file an appeal bond herein, payable to the plaintiffs in the penal sum of six hundred dollars with George W. Davis as his security."

On the 17th day of June 1834 a bond was filed with the Clerk of this Court in the words & figures following to wit;

"Know all men by these presents that We John V. A. Hoos and George W. Davis are held and firmly bound unto Inac Van Alstyne 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 9th day of
June A.D. 1834.

The condition of this obligation
is such that whereas Isaac Van Matton did on
the 2^d day of June A.D. 1834 in the Circuit Court
of the County of Madison and State of Illinois render
a judgment against the above named John F. A.
Heros for the sum of Four hundred and eighty five
dollars & twenty seven cents, from which judgment
of the said Circuit Court the said John F. A. Heros
has taken an appeal to the Supreme Court of
said State. And if the said John F. A. Heros
shall not and truly prosecute his said appeal
and pay the judgment, costs, interest and
damages in case the judgment shall be affirmed
then the above obligation shall be void otherwise
to be and remain in full force.

John F. A. Heros *sw*
Geo. H. Harris *sw*

State of Illinois I, John F. Ash Clerk of the
Madison County & Circuit Court in and for
said County and State do
hereby Certify that the above foregoing is a true
full, perfect and complete record of all the papers
and proceedings in the above entitled cause as the
same appears on record & on file in my office.
In Witness Whereof I have hereunto set
my hand and the Seal of said Court
at Ottawa this 2^d day of June A.D. 1835
John F. Ash Clerk

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James Van Alstyne

Atty.

John P. De Wood

Comptroller

12177

Filed June 11, 1855.
V. Ireland Clerk.

1855

Rec^d of J. F. A. Hen
\$2.65 for etc. amount
J. F. A. Hen

Jan 22, 1855

John P. A. Hors } In Sup Court
appellant vs

Isaac Van Alstyne }
Appellee " } This was an action
of Assumpsit commenced in the
LaSalle Circuit Court by the Plaintiff
below. The Defendant below waived
the summons and entered his appearance
in the words following:

LaSalle Circuit Court
John P. A. Hors }
appellant vs

Isaac Van Alstyne }
Appellee " } I do hereby enter
my ~~self~~ appearance in this cause and
request the Clerk of this court to enter
the same of record, Ottawa April
11th 1854 John P. A. Hors

The first term of said court after
the execution of said writing commenced
on the 2^d Monday of May being the
8th day of the month

On the 18th day of May being
the day of the ^{said} term the Plaintiff
below filed his declaration & took
a rule for a plea and no plea being

filed judgment was entered against
the Defendant below

The Errors relied upon for the
reversal of the judgment are

First The rendition of the judgment
the declaration not having been
filed ten days before the term of
the Court See R.S. title Practice
p 414 Sec 8 & 415 Sec 13.

Second The judgment is excessive.

The Clerk in entering the
appearance of ~~the~~ Defendant below
under the writing aforesaid makes the
Record say that the Deft appeared
in person, This, though not true
in fact & not, I think, fairly inferable
from the Record, does not, I conceive,
materially change the question.
The party gave no intimation even of
an intention to proceed in the cause
at that term of the Court. All he
did either by the writing or the Record
was to waive the summons and the
prerequisites beyond that to authorize

the party to proceed in the cause
were as necessary to be performed
or waived affirmatively as though
a summons had been issued & served.

The same reason exists for
the filing of the Declaration in case of
a waiver of the summons as in
that of suit commenced in the ordinary
way. In each case the party equally
needs to be advised of what is to be brought
against him in time to be prepared
to meet it.

The Statute ~~supplies~~ says
(Sec 8) The cause shall be continued
"unless the party agree to have
a trial". There is no such agreement
in this case.

The court, I think, is not
warranted in implying that because
the party voluntarily ~~appeared and~~
waived the summons & entered his appearance
that therefore he intended to waive
the filing of the Declaration or any of the
prerequisites necessary to ^{authorize} ~~entitle~~ the
plaintiff to proceed in the cause. Such
inferences might do great injustice.

The case stands, in my judgment,
precisely as if summons had been
issued & served & I do not see how

Any distinction can be made
The Plaintiff without further argument submits
this cause to the Court — J. W. H. H. H.

Wm 13
Appellee
vs

Van Aert
Appellee

Chief Abstract
And Submision

Filed July 13. 1855.
C. W. H. H. H.