

STATE OF ILLINOIS,
41
SUPREME COURT,
Third Grand Division.

No. 238.

Clawson

vs

Stone

1862

136 24

McPherson

1
Meas

To a Term of the Circuit Court, begun and held at the Court House in the City of Peoria within and for the County of Tazewell and State of Illinois on the First Monday of the month of September A.D. 1861.
Present Hon James Harriatt Judge of the 21st Judicial Circuit of the State of Illinois composed of the Counties of Mason, Tazewell &c

Be it remembered that on the 22^d day of August A.D. 1861, a declaration was filed in the office of the Clerk of the Circuit Court of Tazewell County Illinois, which said declaration is in the words and figures following, to wit:—

" Circuit Court } Of the September Term A.D. 1861.
" State of Illinois } s.s.
" Tazewell County)
" George H. Stone Plaintiff in this suit,
" By Bryan & Stone his Attorneys complain of Jacob Clauser
" and William Dow Maus ^{Defendants} of a plea of trespass on the case
" on promised; For that whereas the said Defendants on the
" Ninth day of December in the year of our Lord, one
" thousand eight hundred and at Boston. to wit;
" at the county aforesaid, made their certain promissory note
" in writing, and then and there delivered the same to B. L.
" Merrill & Co and thereby, by the name, and description of
" Jacob Clauser W. Dow, Maus promised to pay to the order
" of the said B. L. Merrill & Co by the name and description
" of B. L. Merrill & Co Four hundred and five Dollars and
" four cents with interest at the rate of six per cent per
" annum from date, with current rate of exchange on Boston
" payable at the Bank of G. H. Rupert & Co Peoria Ill. six months

„ after the date thereof for value received, which period has
 „ now elapsed, and the said B. S. Merrill & Co then and there
 „ indorsed the same to said Plaintiff of which the Defendant
 „ then and there had notice, and then and there, in
 „ consideration of the premises, promised to pay the amount
 „ of said note to the Plaintiff, according to the tenor and
 „ effect thereof, and whereas, also, the said Defendants,
 „ afterward, to wit, on the First day of August in the
 „ year of our Lord one thousand, eight hundred and sixty
 „ one at Pekin in said County of Tazewell aforesaid, were
 „ indebted unto the Plaintiff in the sum of Six hundred
 „ Dollars for money before that time lent and advanced to,
 „ and paid, laid out and expended for said Defendants
 „ by said Plaintiff at their request; and for money
 „ before that time had and received by said Defendants
 „ to and for the use of said Plaintiff; and for goods,
 „ wares and merchandise, before that time sold and
 „ delivered by said Plaintiff to said Defendants at their
 „ request; and for the labor, care and diligence of
 „ said Plaintiff before that time done and performed,
 „ and materials for the same furnished and provided
 „ by said Plaintiff for said Defendants, at the request
 „ of said defendants, and for money found to be due
 „ from the Defendants to the Plaintiff in an account then
 „ and there stated between them, and being so indebted,
 „ said Defendants, in consideration thereof, then and
 „ there promised to pay said Plaintiff said last mentioned
 „ sum of money, when thereunto afterward requested.
 „ Yet the said Defendants, although often requested,
 „ have not paid said Plaintiff either of the said
 „ sums of money or any part thereof, but so to do
 „ have wholly neglected and refused, and still do
 „ neglect and refuse, to the damage of said Plaintiff

Sold by
John C. Clark & Son
120 Chestnut Street
Philadelphia

" of Six hundred dollars, and therefore he brings suit, etc
" Bryan & Stone
" Plffs Attys

" Copy of Instrument and Account sued upon
" \$405⁴/₁₀₀ Boston Dec 9th 1859

" Six months after date in the subscriber of
" Pekin County of Jazwell and State of Illinois promise
" to pay to the order of B. S. Merrill & Co with exchange
" Four hundred & five Dollars Four cents, value received
" with six per ct Interest from date payable at the
" Bank of G. H. Rupert & Co Pekin Ill
" No 1339 Jacob Blauser
" Due Jan 9/12 1860 H. Dow Maus

" Indorsed
" Pay George H. Stone or order
" B. S. Merrill & Co

Jacob Blauser		
H. Dow Maus	To George H. Stone	Dr
" For money lent and advanced		\$600
" For money expended and paid out for		\$600
" For money received for use of		\$600
" For Goods, Wares & Merchandise		\$600
" For Labor and Materials		\$600
" For balance on account stated		\$600

Now afterwards, to wit on the same day a summons was issued from the office of the Clerk of said Circuit Court, which said summons is in the words and figures following, to wit:—

State of Illinois } The People of the State of Illinois, To the
Jazwell County) Sheriff of said County, Greeting:

We command you that you summon Jacob
Blausser and William Dow Maus if they shall be found
in your county, personally to be and appear before the
Circuit Court of said Jazwell County, on the first
day of the next Term thereof, to be holden at the
Court House in Pekin, in said Jazwell County, on
the first Monday of September 1861, to answer unto
George H. Stone in a plea of Assumpsit to the damage
of said Plaintiff as he says in the sum of Six hundred
Dollars - and you have them and there this writ, with
an indorsement thereon, in what manner you shall
have executed the same

Witness, George H. Harlow, Clerk of our said
Court, and the seal thereof, at Pekin aforesaid,
this 22 day of August a.d. 1861.
Geo H Harlow Clerk

And afterwards, to wit: on the 31st day of August
said summons was returned with the following
indorsement, to wit: =

State of Illinois } I have duly served the within by
Jazwell County) reading the same to the within named
Jacob Blausser & William Dow Maus August 28th 1861
as I am therein commanded
C. Williamson Sheriff

And afterwards, to wit: on the 3^d day of September
a.d. 1861. a plea was filed in said cause, which said
plea is in the words and figures following, to wit:

State of Illinois } Of the September Term A.D. 1861. of the
"Fazwell County" } Circuit Court of Fazwell County

"William Dow Maus }
"+ Jacob Blauser }
" ats }
" George H. Stone }

And the said Defendants, by
"their Attorney N. W. Green, come and defend the wrong
"and injury when & and say "actio non" because they
"say they did not undertake and promise in manner
"and form as the Plaintiff has herein above complained
"against them, and of this they put themselves upon the
"Country

N. W. Green Defts atty

"Peff doth the like
" Bryan & Stone for Peff

And now afterwards, to wit: at a Term of the Circuit
Court begun and held at the Court House in the City
of Pekin, within and for the County of Fazwell and
State of Illinois on the first Monday of the month of
September A.D. 1861. Present, Hon James Harriatt Judge
of the 21st Judicial Circuit of the State of Illinois,
Chapman Williams as Sheriff and George H. Harlow -
Clerk, the following proceedings, were had, to wit: =

1st day Monday September 2^d 1861
Hugh Fullerton the States Attorney being absent, the
Court appointed Caleb J. Dilworth, States Attorney for the
present term of this Court

8th dayTuesday September 10th 1861.

George H. Stone
 " "
 Jacob Clauser +
 William Dow Maus

Assumpsit

Now come the parties by their Attorneys, and a Jury being waived, by consent, this cause is tried by the Court, and the Court having heard the allegations and proofs of parties and argument of counsel thereon, is of opinion that the Plaintiff hath sustained damages, but because those damages are unknown to the Court, the Clerk is ordered to make an assessment thereof, and he having assessed those damages to the sum of Four hundred and forty seven ⁶³/₁₀₀ Dollars (\$447 ⁶³/₁₀₀) and made report thereof the same is approved by the Court, whereupon the Defendants move the Court for a new trial, which motion the Court overruled. It is therefore ordered and adjudged by the Court that the Plaintiff have and recover of the said Defendants, the damages aforesaid in form aforesaid assessed, likewise the costs and charges by him about his suit expended, and that execution issue therefor. Thereupon the Defendants file their bill of exceptions and pray an appeal, which is granted by the Court, with bond to be filed in 30 days in the sum of \$700 - and by agreement the security to be approved by the Clerk

Be it remembered that on the 10th day of September A. D. 1861, a bill of exceptions was filed in said cause, in the words and figures following, to wit: =

Sold by
John C. Clark & Co.
250 North Street
Philadelphia.

State of Illinois } Of the September Term A.D. 1861, of
Tazewell County) the Tazewell County Circuit Court

George H. Stone }
vs } In Assumpsit
Jacob Blauser &
William Dow Maus }

Be it remembered that on the trial of this cause, the Plaintiff offered in evidence a note in the words and figures as follows, to wit:—
Boston Dec 9th 1859

\$405 ⁴/₁₀₀
Six months after date we the subscribers of Pekin County of Tazewell and State of Illinois, promise to pay to the order of B. L. Merrill & Co with exchange Four hundred & five Dollars, four cents, value received with Six per cent Interest from date, payable at the Bank of G. H. Rupert & Co Pekin Ill.

No. 1339
Due June 9/12. 1860

Jacob Blauser
W. Dow Maus

"Indorsed"

Pay G. H. Rupert & Co or order for collection
B. L. Merrill & Co

to the reading of which note in evidence, the defendants by their counsel at the time objected, whereupon the Plaintiff offered the said note in evidence under the common counts, and called witnesses by whom the signatures of the defendants were proven, after which the Plaintiff again offered the said note in evidence, to the reading of which said note in evidence, the defendants by their counsel again at the time objected, which objection was overruled by the Court, to the overruling of which objection, the

defendants by their counsel at the time excepted -
 whereupon the note was read in evidence under the common
 counts, this was all the evidence offered in the cause -
 whereupon the Court rendered judgment for the Plaintiff
 Clerk to assess damages, which were assessed at Four
 Hundred and forty seven & ⁶²/₁₀₀ Dollars, and costs
 of suit, whereupon the Defendants entered their motion
 for a new trial, to wit: -

" State of Illinois } Of the September Term A. D. 1861,
 " Tazewell County)^{as.} of the Tazewell County Circuit Court

" George H. Stone }
 " ^{vs} Jacob Blausen and } In Assumpsit
 " William Dow Maus }

And now come the Defendants
 and move the Court for a new trial and for
 reasons offer the following -

" That the Judgment of the Court was contrary to Law
 " That the Judgment of the Court was contrary to Evidence
 " N. H. Green
 " atty for Defts

Which motion the Court overruled, to the overruling of
 which motion the Defendants by their counsel at the
 time excepted and craved an appeal, and now
 present this as their Bill of Exceptions and pray that
 the same may be signed and sealed by the Court
 which is done

James Harriott 

Be it remembered, that on the 9th day of
 October A. D. 1861, an appeal bond was filed in said
 cause in the words and figures following, to wit: -

Know all men by these presents, that we Jacob Clauser
William D. Maus and Samuel G. Maus of Tazewell
County Illinois are held and firmly bound unto George
A. Stone of Peoria County Illinois in the penal sum
of Seven hundred Dollars good and lawful money
of the United States of America, for the payment of
which well and truly to be made, we hereby bind ourselves
our heirs, executors and administrators, jointly, severally
and firmly by these presents, In Witness whereof, we
have herunto set our hands and affixed our seals, this
Seventh day of October in the year of our Lord one
thousand eight hundred and sixty one.

The condition
of the above writing obligatory is such, that whereas
the said George A. Stone did on the 10th day of
September A.D. 1861, in the Circuit Court, in and
for the County of Tazewell and State of Illinois
recover a Judgment against the above bounden Jacob
Clauser and William D. Maus for the sum of Four
hundred and forty seven dollars and sixty three cents
and costs of suit, from which said Judgment of the
said Court the said Jacob Clauser and William
D. Maus have prayed for and obtained an appeal
to the Supreme Court of said State. Now if the said
Jacob Clauser and William D. Maus shall duly prosecute
their said appeal with effect, and shall moreover pay
the amount of the judgment, costs, interest and damages
rendered, and to be rendered against them 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 effect.

Taken and approved by before me }
this 9th day of October 1861. }
Geo. H. Harlow Clerk }
per A. P. Griswold deputy clerk }

Jacob Clauser }
W. Dow Maus }
Saml G. Maus }

State of Illinois }
Tazewell County } ss. I, George H. Harlow Clerk of the
Circuit Court, within and for said County, do hereby
certify that the foregoing 9 pages contain a full, true
and complete transcript of the record of proceedings had
in said cause, and the papers on file in my office, as
fully as the same appears of record in my office



Witness my hand and the Seal of
said Circuit Court hereunto affixed
at Office in Pekin in said County this
26th day of February A.D. 1862.

George H. Harlow Clerk
per A. P. Griswold deputy

Fees \$500 paid by Mans

Geo H. Harlow

G.H.

State of Illinois } Third Grand Division
Supreme Judicial Court } April Term AD 1862

Jacob Clauson and William Don Mills
Appellants

George H. Stone Appellee
Appeal from Tazewell

And now comes the
Appellants in said cause, and say
that in the Record and proceedings
aforesaid and in the rendition of

the judgment aforesaid manifest error hath intervened in the law;

1st The Court erred in admitting said Instrument of writing in evidence

2nd The Court erred in finding for the Plaintiff upon insufficient testimony

3rd The Court erred in rendering judgment for the Plaintiff

4th The Court erred in refusing to grant a new trial

And for said Error prays that said judgment may be reversed

D. J. Prettyman & A. H. Green
Attorneys for Appellants.

And now comes the said ~~defendant~~
~~appellee~~ in ~~error~~ George H. Stone and says that in the record and proceedings aforesaid there is no error and prays that said judgment may in all things be affirmed
James Roberts

Jacob C. Courser &

vs. Geo. H. Stane

vs. Appellants

George H. Stane

Record & assignment
of land

Filed April 23, 1862

L. Leland
clerk