

No. 12882

Supreme Court of Illinois

McLean

vs.

Griswold et al

71641  7

SUPREME COURT.

APRIL TERM, 1859.

SAMUEL P. McLEAN, Appellant. }

vs.

JOHN L. GRISWOLD, Def'ts in {
MATTHEW GRISWOLD, error. }

PLAINTIFF'S POINTS AND BRIEF.

1. The endorsement of King, the payee of the note, not having been offered in evidence, the defendants in error showed no right to recover on the note.

2. The second plea of the plaintiff in error amounted to a plea of the general issue. It in terms denies the legal liability of the parties. If defective at all the defect could not be reached by a general demurrer.

3. The plaintiffs below having sued Samuel P. McLean and Eliza J. McLean, and the latter having plead her coverture in bar, and the plaintiffs hav-

ing dismissed the suit, as to the feme. covert, they could not proceed to judgment against Samuel P. McLean, 1st Chitty Pleading, 44 and 45, 12 Illinois 84, Davidson vs Poona.

The case of Harkness, et al, vs Thompson, et al., 5 Johnson 160 and 20 Johnson 160 and 151 are not in point. The contract of an infant is voidable. The contract of a feme covert is absolutely void.

GROVE, for Plt'ff in error.

Mr Lean

vs
Griswold

Brief

Filed April 19, 1889

L. L. Cloud
Clerk

1. For issue
 2. Plea that Co. deft cannot
sue ~~enormous~~
 2. Plea of Carriage by Co.
- Will pursue as to
from car nt.

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1859.

SAMUEL P. McLEAN *vs.* JOHN L. GRISWOLD and MATTHEW GRISWOLD.

Appeal from Peoria County.

BRIEF, POINTS, &c.

1. The demurrer to the second plea was properly sustained.

This was a plea filed by Samuel P. McLean, setting up as a defence for himself the coverture of his co-defendant, who with himself was joint maker of the note sued upon.

This plea was defective for the reasons:

1st. Such plea can only be pleaded by the party entitled to its benefit; coverture being a personal privilege merely.

2d. It must be pleaded by the party in person, and verified by affidavit, which was not done.

3d. It ought to have been pleaded in abatement, and not in bar.

SECOND POINT.

The Court decided correctly in permitting the trial to proceed against Samuel P. McLean, after Eliza McLean had pleaded her coverture in abatement.

This was the only course which could have been legally pursued.

1 Chitty's Plead., 51.

20 John. R., 123.

Tolman vs. Spalding, 3 Scam., 14.

Tidd's Prac., 9 Ed. 682, 896.

3 Cowen, 374.

N. H. PURPLE, *for Defendants.*

171-44

20 cts 1000

7. The Court below erred in not rendering judgment for the Defendant below

8 General errors

& the Plaintiff in error prays that said judgment be reversed against him & may be removed & taken wholly for nought & esteemed

Now Atty
for Plff & Error
& Appellant

And now comes the appellee and says that there is no error in this record and prays that the judgment may be affirmed
W. P. Purple for Appellee
Apr 22. 1859.

Peoria County J. S. Clerk's Office

Peoria County Court.

Be it Remembered, That on this 18th day of May, in the Year of our Lord, one Thousand Eight Hundred and Fifty Eight, there was issued from the Clerk's Office of the County Court of said County, a Summons, which in Words and Figures, is as follows.

To Wit.

State of Illinois }
Peoria County, } ss

The People of the State of Illinois to the Sheriff of Peoria County - Greeting:
We Command You that you summon

Samuel P. Maclean and Eliza J. Maclean

if they shall be found in your County, personally to be and appear before the County Court of said Peoria County on the first day of the next Term thereof to be holden at the Court House in Peoria, in said Peoria County, on the First Monday of June, 1858, to answer unto

John L. Griswold and Matthew Griswold in a plea of Trespass on the Case upon promises.

to the damage of the said plaintiff, as they say in the sum of Two Thousand Dollars. And have you then and there this Writ with an endorsement thereon, in what manner you shall have executed the Same.

Witness, Charles Kettelle, Clerk of our said Court, and the Seal, thereof, at Peoria, this 18th day of May A.D. 1858.

Cha Kettelle Clerk per Geo Kettelle Sply.

Seal

County Court Summons

Peoria County Court.

Griswolds

vs.

Sam^l Maclean

Etal.

State of Illinois }
Peoria County }

I have duly served this within by reading the same to the within named

Samuel P. Maclean and

Eliza J. Maclean.

as I am thereunto commanded

May 20 - 1858.

J. W. Smith, Sheriff

by J. J. Hunsicker Sply

Geo. Kettelle

100

10

20

\$1.30

dy

1858

9

Impress & att.

Attorney

And also on the 18th day of May, in the Year of our Lord, one Thousand Eight Hundred and Fifty Eight, there was filed in the said Clerk's office of said County, a Declaration, which in Words &c is as follows.

To Wit.
County Court. Peoria Co
June Term A.D. 1858.

State of Illinois } ss.
Peoria County }

John L. Griswold and Matthew Griswold partners in trade and doing business under the name firm and style of Griswold & Co. the Plaintiffs in this suit complain of Samuel T. Maclean and Eliza J. Maclean the Defendants in this suit of a plea of trespass on the Case upon promises for that whereas heretofore to wit on the twenty sixth day of September A.D. 1856, at Peoria To Wit at the County of Peoria aforesaid the said Defendants made their certain promissory Note in Writing and then and there delivered the same to one John King and thereby then and there promised to pay to the said John King by the name and style of "John King Esq" Six hundred and fifteen Dollars and eighty one cents or before the first day of April A.D. 1858. for value received and thereupon in consideration of the premises the said Defendants became liable and promised to pay to the said John King the said sum of money in the said promissory Note specified according to the Tenor and Effect thereof and the said John King then and there endorsed assigned and delivered the same to John L. Griswold and Matthew Griswold by the name and style of their said firm and thereupon the said defendants became liable and promised to pay to the Plaintiffs the said sum of money in the said promissory Note specified according to the Tenor and effect of the said promissory Note and of the said endorsements thereof; And also for that whereas afterwards to wit on fifth day of April A.D. 1858. at Peoria To Wit at the County of Peoria aforesaid the said Defendants were indebted to the Plaintiffs in the sum of Two Thousand Dollars.

3 for Money then and there lent by the Plaintiffs to the Defendants at their request And in the Sum of Two Thousand Dollars for Money then and there paid by the Plaintiffs for the use of the Defendants at their request. And in the Sum of Two Thousand Dollars for money then and there received by the Defendants for the use of the Plaintiffs

And in the Sum of two thousand Dollars for money then and there found to be due from the Defendants to the Plaintiffs on an Account, then and there stated between them, And whereas the Defendants afterwards to Wit on the Day and Year And at the County last aforesaid in consideration of the premises respectively then and there promised to pay to the Plaintiffs the said Several Sum of Money in the Several Counts of this Declaration mentioned respectively on request Yet they have disregarded their promise and (although often requested so to do) have not paid the said said Several Sums of Money in the said several counts of this Declaration mentioned nor either of them nor any part thereof to the Damage of the Plaintiffs two thousand Dollars therefore they Due &c.

Purple & Pratt.
Pltffs Attys

Copy of Note Sued on

Dollars 615 $\frac{81}{100}$, Peoria Illinois Sept 20th 1856.
On or before the first day of in April A.D. 1858 We promise to pay to the Order of John King Esq. Six hundred and fifteen Dollars & Eighty one Cents for value received
Samuel P. Maclean
Eliza J. Maclean

Endorsed on Back

Pay Inwold & Co or order.
John King.

Acct. Sued on

Samuel P. Maclean & Eliza J. Maclean
to Inwold & Co

Dr

To Money Lent	\$2000. 00.
To Money Paid	2000. 00
" " Recd (our use)	2000. 00
" " Due on account.	2000. 00
	\$ 8000. 00

Procipe

John L. Griswold
 Matthew Griswold
 vs.
 Samuel P. Maclean
 Eliza J. Maclean

Assumpsit
 Damages
 \$2000. 00

Issue Summons in above en-
 titled cause to Sheriff Peoria County against above
 named defendants & oblige.

Yours &c
 Purp & Pratt.

Dec Pre &c.
 John L. Griswold &
 Matthew Griswold
 vs.
 Saml. P. Maclean
 Eliza J. Maclean
 Attest

Filed May 18. 1858
 Clerk
 Geo. H. H. H. H.

Purp & Pratt per off atty.

And afterwards, To Wit. on the 26th day of May in the
 Year of our Lord, one Thousand Eight hundred and Fifty Eight.
 There was filed in the Clerk's Office of said Court, the following
 Plea of the Defendants.
 To Wit:

John L. Griswold
 Mathew Griswold
 vs.
 Samuel P. McLean
 Eliza J. McLean

In Peoria
 County Court.
 June Term
 1858

And the defendant Samuel P McLean comes & defends &c.
 And for Plea says he did not undertake & promise as the
 said Plaintiffs have thereof complained against him
 And of this he puts himself upon the County

by Grove his atty.
 And for further Plea the defendant says Actio Non. because
 he says that at the time of the execution of the Note in Plain-
 tiffs declaration And at the time of the making of the several
 promises in Plaintiffs Declaration mentioned the defen-
 dant Eliza J McLean was and still is married to the
 defendant Samuel P. McLean who is still living And
 this defendant is ready to verify Wherefore he prays.
 Just &c. by Grove his atty!

Brainerd et al
vs.
McLean

Eliza J. McLean

Eliza

Filed May 26 1858
 Clerk's Office
 Peoria County
 Ill.

And afterwards, to wit: on the 27th day of May, in the Year
 of our Lord one Thousand Eight hundred and Fifty Eight.
 there was filed in said Clerk's Office, a Plea of coverture on the
 part of one of defendants, which is as follows.

To Wit:

State of Illinois }
 Peoria County ss.

In the County Court of Peoria County
 June Term 1858.

Eliza J McLean
 impleaded with Samuel P McLean

als.
 John L Griswold
 Matthew Griswold

Eliza J. McLean defendant in this
 suit in her own proper person comes and defends the Wrong and
 injury when, & And prays judgment, &c. because she says that and
 before the time of the making of the said several promises in
 Plaintiff's declaration mentioned she was and still is married to
 Samuel P McLean, who is still living to wit at this County.

of Peoria aforesaid and this she is ready to verify wherefor
she prays judgment of the said declaration & writ that the
same may be quashed

Eliza J. Maclean

In Peoria County Court.

Between John L. Griswold &
Mathew Griswold } Plaintiffs
and Samuel P. McLean
& Eliza J. McLean } Defendants.

Eliza J. McLean One of the de
fendants in the above cause maketh oath & saith that the
Plea hereto annexed is true in substance & in fact.

Sworn & subscribed before me

this 27 day of May A.D. 1858

Edga J. Maclean }
Jas M. Cunningham. Police Magistrate

John Griswold
et al
vs.
McLean et al.
Plea of conversion

Filed May 27 1858
Clerk
M. S. J.

and also and afterwards To Wit on the 8th day of June. in the year
of our Lord, one Thousand Eight Hundred and Fifty Eight
there was filed in the said Clerk's Office, a Demure of said
Plaintiffs, which is as follows.

To Wit.

Griswold & Co.
vs.
Sam^r P. McLean
et al.

And now comes the Plaintiff and demurs
to the 2nd plea of Def^t. Samuel P. McLean filed herein
Pratt J.

Griswold &
vs.
Sam P. McLean
et al
Demur.

Filed June 8th 1858
Clerk
Geo. H. Kellie
Spy.

7
Proceedings of the County Court of Peoria County and
State of Illinois, at a Term of said Court began and held
at the Court House in Peoria on said County and State on
the first Monday of June, it being the 7th day of said
month. A.D. 1858, under the extended jurisdiction of
said Court, and for judicial and other business

Present. Hon Wellington Loucks Judge
Charles Little Clerk and
Francis W Smith Sheriff.

Tuesday June 8th 1858.

John L. Griswold and
Matthew Griswold

vs.

Assumpsit.

Samuel MacLean and
Eliza J. McLean.

This day came the said Plaintiffs by Purple
and Pratt. their attorneys, and the said defendants by Henry Groves
their Attorney and this cause came on to be heard on the demurrer
of the said Plaintiff to the 2^d plea of the said defendant. The Court
being fully advised in the premises doth sustain the said demurrer
Whereupon came the said Plaintiff by his attorney and says that he
will not further prosecute the said Eliza J. McLean

Friday June 11th 1858.

John L. Griswold and
Matthew Griswold

vs.

Assumpsit.

Samuel MacLean

This day came the said Plaintiff
by Purple and Pratt. their attorney and the said Samuel
MacLean by Henry Groves his attorney, and thereupon was
ordered by the Court that a jury be called to try said cause
Whereupon came a jury of Twelve good and lawful men
To Wit.

8
A O. Garrett, Gideon Butler, James Delano, John McDonald
Matthew Taggart, Daniel Bower, James H. Ross, Edwin Matthias
William Vinson, Critten Dawson, Charles Greenleaf, and addiso
Ruby, who were duly chosen, tried and sworn well and truly to try
said cause and a true Verdict render according to the Evidence
given. The jury having heard the Evidence in the case etc
returned into Court the following verdict "We the jury find
for the Plaintiff and assess his damages at the Sum of. (\$ 319.00,
Three Hundred and 19/100 Dollars. Thereupon came the said
defendant by his Attorney and entered his Motion for a new
trial of this Cause. The Court being sufficiently advised
in the premises doth overrule the said Motion. Therefore the Court
considered by the Court, that the said John L. Griswold and Matthias
L. Griswold do have and recover of and from the said Samuel
MacLean the aforesaid Sum of \$ 319. Three Hundred and Nineteen
dollar his damages aforesaid and also his costs and Charges by him
about his suit in this behalf expended and that he have Execution
therefor. Thereupon the said defendant prays an Appeal of this
Cause to the Supreme Court of this State, which is allowed
on his entering into Bonds in the penal Sum of. (\$ 500)
Five Hundred dollar conditional according to law, within
30 days with John Bryner as Security

9th And afterwards To Wit, on the 8th day of June AD 1858. there was filed in the Said Clerk's Office a Bill of Exceptions, which, in words and figures, following

To Wit.
John Griswold
Mathew Griswold
vs
Samuel P. McLean
Eliza J. McLean
In the County Court of Peoria
County.
June Term 1858

Be it remembered that on this day this cause came on to be heard upon the demurrer of the Plaintiffs to the second plea of the Said Samuel P. McLean and the Court, being fully advised in the premises sustained said demurrer. To which decision of the Court, sustaining said Demurrer the defendant Samuel P. McLean then & there at the time objected and excepted & prays that his bill of exceptions should be signed & sealed & made part of the record in this cause which is done.

Wellington Loucks Judge Sct.

Griswold
vs.
McLean
Bill of exceptions

Filed June 8. 1858.
Clerk

And afterwards To Wit, on the 11th day of June AD. 1858. there was filed in Said Clerk's Office, the following Bill of Exceptions

To Wit.
John L. Griswold
Mathew Griswold
vs.
Samuel P. McLean
In the County Court.

Be it remembered that on the trial of this cause the Plaintiffs offered the following note in evidence to the jury, having first proved the execution thereof.

Dollars 615 $\frac{81}{100}$

Peoria Illinois

Sept 26th 1856

On or before the first day of April A.D.
1858 We promise to pay to the Order of John King Esq
Six Hundred and fifteen Dollars & eighty one cents for
value Received

Samuel P. Maclean

Eliza P. Maclean

(Endorsements on above Note)

Pay Quivold & Co
or order.

John King

Filed June 11 1858.

C. H. Kelleth

per Geo. H. Kelleth

Apptg

April 10 1858 rec

Three hundred dollars

on within note

G. Co.

To which the defendant objected on the following grounds.

1. That said Plaintiffs had no right to proceed with said cause against Samuel P. Maclean (the Plaintiffs having dismissed their cause as to said Eliza P. Maclean)
2. Because said Plaintiffs having sued two defendants cannot proceed to trial & judgment against one
3. The Plaintiffs have no right to maintain this action
4. The Note is not proper evidence under the Pleadings

But the Court overruled the objection and admitted the Note in evidence to which decision of the Court overruling said objection and in admitting said Note in evidence the defendant S. P. Maclean then & there at the time objected and excepted

This was all the evidence on the Cause

The Jury found for the Plaintiff

11 The defendant entered a Motion for a new Trial in words and figures following

John L. Griswold
Matthew Griswold

VS
J. S. M. Leary

In Peoria County Court.

The defendant enters a Motion for a new trial in this cause for the following among other reasons.

- 1 The Court admitted improper evidence on the part of the Plaintiffs
- 2 The Verdict is against the evidence
- 3 The Verdict should have been for the defendant.
- 4 other reasons.

Grove for deft.

But the Court overruled said Motion and refused to grant a new trial To which decision of the Court overruling said Motion and in refusing to grant a new trial the defendant then & there at the time objected and excepted

The defendant then entered a Motion in arrest of judgment in words and figures following

John L. Griswold
Matthew Griswold

VS
Samuel P. M. Leary

In the County Court.

The defendant enters a motion in arrest of judgment in this cause for the following reasons

- 1 The plaintiff brought Suit and declared against two defendants and they can not take judgment against One
- 2 The Note declared on is a joint and not several

- 3 The judgement should be for the defendant.
- 4 The proceeding is illegal and not according to the precedents
- 5 Other reasons

Grove for deft.

But the Court overruled said Motion & refused to arrest said judgement. To which decision of the Court overruling said last motion And in refusing to arrest said judgement. the defendant then & thus at the time objected & excepted

The Court then rendered judgement against Samuel P. McLean in words following.

"Therefore it is considered by the Court, that the said John L. Griswold and Matthew L. Griswold do have and recover of and from the said Samuel Mac Lean the aforesaid sum of \$ 319. Three Hundred and Nineteen dollars his damages aforesaid and also his costs and charges by him about his suit in this behalf expended And that he have Execution therefor to which the defendant at the time objected & excepted & prayed that this bill of exceptions might be signed and sealed and made part of the record in this cause which is done.

Wellington Loucks. *Seal*
County Judge

And now on this 11th day of June A.D. 1858. comes
Samuel P Maclean and files his Appeal Bond. (in the
office of County Clerk). which is in words & as follows.

To Wit:

Know all Men by these presents that We Samuel
P McLean as principal and John Bryner as surety
are held and stand firmly bound unto John L. Griswold
and Matthew Griswold in the sum of Five hundred
dollars to the payment of which well and truly to be made we
bind ourselves our heirs executors administrators and assigns.
Sealed with our Seals and dated at Peoria this twelfth
day of June A.D. 1858.

The Condition of the above obligation
is such that whereas the above named John L. Griswold
and Matthew Griswold at the June Term A.D. 1858 of
the County Court of Peoria County in the State of Illinois
recovered judgment against the above bounden Samuel
P McLean for the sum of three hundred and Nineteen dollars
and costs of suit from which judgment the said Samuel
P McLean has prayed an Appeal to the Supreme Court in
and for the State of Illinois which has been allowed
Now if the said Samuel P McLean shall duly pros-
ecute his said appeal And pay said judgment interest
damages and all costs in case said judgment shall be
affirmed then this Obligation to be void otherwise to
remain in full force and effect.

Samuel P Maclean Seal
John Bryner Seal

State of Illinois } Clerk's Office. }
Peoria County. }
I, Charles Kettels, Clerk of the
County Court of said County, do hereby certify, that the
Forgoing is a ^{file of} true ^{and correct} transcript of the Proceedings had
in a case of John L. Griswold & Mathew Griswold
vs.

Samuel & Eliza J. MacLean
as appear from the records and papers of said case
filed in this Office

Witness my Hand and Seal
of said Court this 24th day of
February A.D. 1859.

Charles Kettels Clerk

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John Griswold
Matthew Griswold

v.
J. O. MacLean
Etal

Transcript of. cause
in

Co At Perma Co

Filed April 14, 1859
Hls
L. Leland
Clerk

Fees Transcript \$5.25
paid by drafts atty H. Leland
H. Leland