

12027

No. _____

Supreme Court of Illinois

Cushman

vs.

Glove, et al,

71641  7

La Salle County Circuit Court April Term 1850
Monday April 22.

State of Illinois }
La Salle County } ss.

Shas before the Hon Theophilus L. Dickey presiding Judge of the 9th. Judicial Circuit of the State of Illinois at a term of said Court begun & held in and for the County of LaSalle on Monday April 22 1850 It being the twenty fifth year of the Independence of the United States of America.

Present The Hon Theophilus L. Dickey Presiding Judge
Philo Lindley Clerk
B. C. Cook States Atty.
Henry Kaulout Sheriff

Be it remembered that hereupon to wit: on the 21st day of March. 1850 the defendant filed the Transcript from the Court below which is in words & figures following viz:

Joseph O. Glous &
Burton C. Cook

vs
William H. W. Bushman 1850 28th February summons issued return'd March 5th. 1850 at 4 O'clock P. M.

Sum. detrauded

\$80.

Costs due

Summons return'd by M. C. Fish Coroner the same by read to defendant March 1. 1850.

March 5th parties appearance. case by consent suit continued to March 6th at 9 o'clock A.M.

March 6th parties appearance. Plff. declares in favor for a promissory note executed by John V. A. Woods to Joseph O. Glous or Glous & Cook for \$75.00 payable Feby. 27th. 1850.

Defendant pleads the general issue.
After hearing the proofs & allegations of the parties It is
considered that the said Joseph O. Glous and Burton C. Cook
recover against the said William H. W. Cushman the sum
of seventy five dollars for their damages - and also the sum of
one dollar and thirty one cents for their costs. Damages \$75.00
Costs. Summons 18¢, Docketing said 12¢ Costs 1.31
Continuance 12¢, 1 Subp^a 18¢, Exec. 3 wts. 18¢ \$76.31
Ent. Judgment. 25. Execution 25 --- 1.31

State of Illinois }
Se Sale County } I the subscriber Judge of the County Court
of Se Sale County do certify that the above
transcript and the papers annexed contain a full and perfect
statement of all the proceedings and of the Judgment before
me in the above entitled cause. Dated March 20th 1850
Henry G. Cotton

And also on the day aforesaid said defendant Cushman
filed an appeal bond taken in the Court below & is in words
& figures as follows to wit:

Know all men by these presents
that W^m William H. W. Cushman and Henry Green of the
County of Se Sale in the State of Illinois are held and firmly
bound unto Joseph O. Glous and Burton C. Cook of the same place
in the penal sum of one hundred and fifty two dollars and
sixty two cents lawful money of the United States for the payment
of which well and truly to be made we bind ourselves our heirs
and administrators jointly severally and firmly by these presents.
Witness our hands and seals this nineteenth day of March 1850

The condition of the above Obligation is such that when as
the said Joseph O. Glous & Burton C. Cook on the sixth day of
March A.D. 1850 before H. G. Cotton Judge of the County Court
of Se Sale County aforesaid did recover a Judgment against the
above bounden William H. W. Cushman for the sum of seventy

six dollars and thirty one cents from which Judgment the
said William H. W. Bushman has taken an appeal to the
Circuit Court of the County of La Salle aforesaid and State of
Illinois. Now if the said William H. W. Bushman shall present
his appeal with effect and shall pay whatever judgment shall be
rendered by the Court upon dismissal or trial of said appeal then
the above obligation to be void, otherwise to remain in full force and
effect.

Will. H. W. Bushman

Henry Green



Approved March 24th. 1850

H. G. Cotton

And also on said 21st. day of March, and after the filing
of the aforesaid Transcript & Bond, the following summons
was issued viz:

State of Illinois }
La Salle County } 38th.

The people of the State of Illinois to the
Sheriff of said County Greeting

We command you to summon Joseph P. Glous & Barton C.
Cook if to be found in your county, if not their agent or
attorney, personally to be and appear before the Circuit Court of said
County on the 1st day of the next term thereof to be holden at the
Court house in Ottawa on the 22^d day of April next, to prosecute
their suit, which they instituted against William H. W. Bush-
man and reverse Judgment before Henry G. Cotton Judge of
the County Court of said County on the 6th day of March 1850
for the sum of \$75.00 besides costs, from which said Judgment
the said William H. W. Bushman has taken an appeal to the
Circuit Court of said County, and further to do and perform
whatever said Court may then and there consider in the premises.
Serve hereon you then and then this writ.



Witness Philo Lindley Clerk of said Court and the
Seal of said Court at Ottawa this 21st day of March
A.D. 1850.

Philo Lindley Clerk

The following is the return of the Sheriff on said summons.

Executed this writ by reading to J. C. Glous. B. C. Cook
Mar 30th 1850 H. Kaulbus Shff

P. Eaton Gardell Spy
Filed March 30th. 1850 P. Lindley Clk.²⁰

Afterwards to wit: on the 10th day of May 1850 the following proceedings were had in said Circuit Court, viz:

Joseph C. Glous &
Benton C. Cook

vs

Appeal

William H. W. Bushman

This day came the plaintiffs in their own proper persons & the defendants by E. L. Selane his Atty. & thereupon came the following Jurors of a Jury viz: Justus Harris, A. D. Butterfield, A. Thorp, E. H. Raymond, J. D. Nichols, W. L. Gibson, B. B. Reynolds, R. Woodruff, Wm. H. Brown, J. Hampton, A. F. Wagner & Amos Spenser who were elected twice & sworn to well & truly try the issues herein & after hearing the evidence & arguments of course the Jury retired to consider of their verdict. & It is ordered by the Court that they have leave to seal their verdict & return the same into Court to morrow morning.

And afterwards to wit: on the 11th day of May the following further proceedings were had in said Court viz:

Joseph C. Glous &
Benton C. Cook

vs

Appeal

William H. W. Bushman

This day again came the parties hereto by their respective Attorneys together with the Jury sworn herein on yesterday, who returned into Court the following sealed verdict to wit: we the Jury find the issues for the plaintiffs & assess their damages at seventy five dollars. Whereupon the defendants entered a motion for a new trial which motion

after hearing the arguments of counsel & due deliberation
thereon have is concluded. It is therefore considered that the
plaintiffs have & recover of the defendants the said sum of
twenty five dollars for their damages also their costs & charges
by them herein expended & that they have execution therefor.

On the 18th day of May 1850 the defendants filed the
following Bill of Exceptions to wit:

Glenn & Cook } Sadale Circuit Court April Term 1850
vs }

Wm. H. W. Crishman } Be it remembered that on the trial of this
Cause it was proven that on the 8th day
of March 1849 Isaac H. Fiedinbush while preparing to go to
California gave defendants a power of Attorney in the words
and figures following viz

Know All men by these presents
that I Isaac H. Fiedinbush of the town of Ottawa in the
county of Sadale and State of Illinois have made nominated
and appointed and by these presents do make nominate and
appoint William H. W. Crishman of the town of Ottawa in the
County and State aforesaid my true and lawful Attorney for
me and in my name and for my use and benefit to ask
demand sue for recover and receive of and from the County
Commissioners Court or the County Commissioners of Sadale
County Illinois the sum of five hundred dollars received of
William Simmons by said Court or Commissioners sometime
about the month of June A.D. 1837 as appears by the records
of said Court relative to the establishing and confirming a
ferry to said William Simmons across the Fox and Illinois
rivers together with the interest on said sum of money
or from any person or persons liable for the same and to use
and take all such means as he may think advisable

either in Law or Equity in my name or otherwise for the recovery thereof. And to Compromise arbitrate once agree for the same once acquittance or other sufficient discharge for the same for me and in my name to make seal and deliver and to do all lawful acts and things whatsoever concerning the premises. As fully and in every respect as I ^{might or} myself could do were I personally present. And Attornies, one or more under him for the purposes aforesaid to make once again as please me to make. Satisfying once confirming and by these presents allowing whatsoever my said Attorney shall in my name lawfully do, or cause to be done in and about the premises by virtue of these presents. And my said Attorney is hereby authorized to pay to Henry G. Cotton one hundred dollars out of any of said money when received. In Testimony whereof I have hereunto set my hand and seal this eighth day of March 1849. Isaac H. Fredinburch *Isaac H. Fredinburch*

State of Illinois }
Seale County } ss. On this ninth day of March A.D. 1849
personally appeared before the undersigned
a Justice of the peace in and for the
aforesaid County Isaac H. Fredinburch who acknowledge his
signature to the within power of Attorney for the uses and purposes
therein expressed.
J. H. Moonill J.P.

And afterwards before going away on the 3^d day of April 1849
said Isaac H. Fredinburch gave to John Fredinburch a power of
Attorney in the words & figures following
To wit all men by these
presents that I Isaac H. Fredinburch of Ottawa County of Seale
and State of Illinois have made nominate and appointed
and by these presents do make nominate and appoint John
Fredinburch my true and lawful Attorney for me and in
my name and for my use and benefit to ask demand
sue for recover and receive of any and all persons all such

sum or sums of money debts and demands whatsoever
which are now due and owing unto me the said Isaac
H. Freidmough from any and all persons and to have me
and take all lawful ways and means in my name
or otherwise for the recovery thereof also to make all contracts
and agreements relative to the ferry in the town of Ottawa
belonging to me which my said Attorney may think necessary
and to do all things to protect my right and interest in the
said ferry, and in general to do all acts relation to my
personal property rights and interests which I might or could
do were I personally present.

In Witness Whereof I have hereunto set my hand and seal this
3 day of April A.D. 1849 Isaac H. Freidmough *[Signature]*

State of Illinois *[Seal]* On this 4 day of April 1849 personally appeared
Sasalle County *[Seal]* me a Justice of the Peace in and for said
County Isaac H. Freidmough who acknowledged that he signed the above instrument for the purposes
therein expressed. J. H. Morris Jp.

That shortly afterwards said Isaac H. Freidmough left
this country for California and is still there. That for six
months before the making of said powers of Attorney - plaintiffs
being attorneys at law - were acting under the employment
of said Isaac H. Freidmough in trying to secure and collect the
demand described in said Power of Attorney to defendants -
and that after said Isaac H. ~~Freidmough~~ left for California
they still conducted the business as his Attys at law. That
in September 1849 plaintiffs finding it impossible to secure
collect said demand for said Isaac H. by law succeeded in
compounding the matter with John V. A. Kees who had a
better legal right to the same claim than said Isaac H.
and in consummating said compromise in consideration of
a waiver by Pltffs. (for said Isaac H. Freidmough of his claim

to said demand) in favor of said Hoes - plaintiffs took from said Hoes a promissory note for the sum of twenty five dollars signed by said Hoes & payable on its face to the plaintiffs declaring to Hoes at the time of taking the same & before that they owned twenty five dollars of the same for fees for their services rendered for Isaac H. Gledinbough in relation to said claim and that the said when collector was going to Isaac H. Gledinbough - & said note was given by Hoes into the personal possession of plaintiffs - & that the same was worth \$75.00.

It was further proven that some time in the first part of the month of February 1850 said note was seen by said Hoes in the possession of defendant - who then asked Hoes to pay the same.

It was further proven that at the trial of this cause before the County Judge - Pliffs were about to send for a witness to prove a demand by them of said note from deft. before the commencement of this suit & a refusal by defendant to give up the same when defendant said to plaintiff that he would not make that a point in the case - or he would waive proof of that fact or words to that effect.

A witness was also called who testified that some two months ago - it might be more - witness was Clerk in deft. store when Glous one of the Plaintiffs came in & a conversation occurred in relation to some note - but being a stranger, did not notice what note was spoken of - Glous asked Rushman if he had the note - Rushman said he had - Glous demanded it - Rushman refused to give it up to him and Glous went out saying he would see him.

Defendant gave in evidence the following power of Attorney created Volcano precinct California

Now all men by these presents that I Isaac H. Gledinbough of the Volcano precinct

California ^{authorizes} ~~constitutes~~ and appoints and have by their
present ^{of the town} authorized ~~constituted~~ and appointed William
H. Cushman ^{of the town} of Ottawa La Salle County State of Illinois
my legal agent and attorney in fact to transact all
business in my name to sue and be sued to receive all
moneys due and all legal debts and claims to all all
lands or parcels of lands owned or claimed by me and to
give title for the same and to do all and every kind of
business in my name and for me as fully and entirely
as though I myself were present doing and transacting the
same. In testimony whereof I have hereunto set my hand
and seal this day of November 29th A.D. 1849

Attest

Isaac H. Greenburgh ^{Notary}

Witness A. Henderson. John Monroe

Territory of California

Volcano Precinct

Personally appeared before me the
Subscribed Notary for the above named
precinct Isaac H. Greenburgh and acknowledged the above
power of Attorney to be his act and deed and desired the
same to be recorded as such.

Witness my hand and seal this day of November 29th A.D. 1849

J. H. Culous Notary

It was proved that it usually required from two to three months
for a letter to come from California to Ottawa

It was further proven that pending the negotiations
with John V. A. Hoos-plaintiffs occasionally consulted and
advised with defendant as to what amount they should accept.

It was further proven that John Greenburgh the person
named in said power of attorney dated April 3rd 1849
executed to plaintiffs on the 27th day of February A.D. 1850
a paper in the words and figures following:

"For value rec^d. I hereby sell assign transfer and
over to J. C. Glou & Burton C. Cook all my right title &c.

interest of in & to a certain promissory note drawn by
John V. H. Hoes payable to J. C. Glous for Glous & Co for
seventy five dollars

February 27th 1850

Isaac H. Fredinbush

By John Fredinbush

his attorney in fact.

And the consideration for said transfer of said note
was a promissory note signed by Joseph C. Glous for fifty
dollars (payable to Isaac H. Fredinbush when said Hoes
note should be collected) and delivered to John Fredinbush
aforesaid - and that John Fredinbush afterwards trans-
ferred the same to John Stettinger in payment of a note
which said Stettinger held against Isaac H. Fredinbush
& John Fredinbush.

This was all the evidence in the case

The Court at the request of Plaintiffs gave the
following instructions to the Jury viz:

1st. That if the note in question was made payable
to plaintiffs & delivered to them - this shows in them a
right to have possession of the note until a better right is
shown in some one else.

2^d - That if the plaintiffs were at the time of the
giving of the note practicing Attorneys at Law and
received this note in settlement for a claim of Isaac
H. Fredinbush which they were employed by him to adjust
and if the plaintiffs owned twenty five dollars of said
note which belonged to them for fees for transacting the
business of the aforesaid claim. Then they were entitled
to the possession of the note as against every body
whether acting by Fredinbush's authority or not till said
sum of twenty five dollars was paid or adjusted.

3^d - That if plaintiffs received this note in settlement
of a claim of Isaac H. Fudimbugh which they were
employed by him to adjust. And if after said note
was received by them when Fudimbugh produced to them
a power of Attorney executed by Isaac H. Fudimbugh which
authorized said John Fudimbugh to receive and settle for
that part of said note which belonged to I. H. Fudimbugh
then said plaintiffs were authorized to settle for said
note with John Fudimbugh unless at that time they had
notice of some subsequent power of Attorney, or of some
revocation of John Fudimbugh's authority.

4th - If the note in question was made payable and
was delivered to the Plaintiffs and twenty five dollars of
the money when collected would equitably belong to them
and fifty dollars of the money would when collected
equitably belong to Isaac H. Fudimbugh and if plaintiffs
never assigned the note and never consented to pass with the
title or possession of the same under this state of facts the
legal title to the note is in the plaintiffs.

To the giving of
each of which defendants object and except to the
decision of the Court in giving each of the same.

Defendants then asked the Court to instruct the Jury as
follows - "That if the note was given by Hoss to Glaser and
Cook in consideration of the discharge of the claim made by
Isaac H. Fudimbugh to the demand mentioned in the first
power of Attorney to Burkman and that the note was taken
by Glaser & Cook in their own names for said Isaac H.
Fudimbugh and was really his property * and if at the time
of the giving said note and during the negotiations
therefor the said plaintiffs were acting as the attorneys
at law of said Fudimbugh - (whether being in California)
under the direction of said client - then that the note

is afterwards found in the possession of Bushman and demanded by plaintiffs. or one of them and that deft. refuse to give it up is not prima facie evidence that the note came wrongfully into his possession or that he wrongfully detained the same.

2^d That upon the state of case stated in the foregoing instruction, unless the plaintiffs have proved that the note was taken from their possession against their consent - the verdict should be for defendant.

3^d That upon the state of case set out in the first instruction above - the said defendant was lawfully entitled to the possession of said note - unless the plaintiffs - being attorneys at law - claimed that they had a lien upon it for their fees and insisted upon retaining possession of the same as a means of securing the payment of their fees or because they had such a lien upon it & that the burden of proof in this case is upon plaintiffs to prove that they claimed to retain possession by virtue of their having such a lien.

4th = That the power of attorney given by Isaac H. Fiedinbush to John Fiedinbush did not authorize him to interfere with the actings and doings of said Bushman in relation to said claim of five hundred dollars - mentioned in said Bushman's power of attorney & that he had no authority under his power of attorney to sell any interest of Isaac H. Fiedinbush in said note to the plaintiffs and that they claimed no title or right to the possession of said note by said sale as against said Bushman.

5th = Unless the plaintiffs demanded the note in question of defendant before the commencement of this suit or deft. took the note from the possession of plaintiffs without their consent and the plaintiffs have a right to the possession of the same the verdict should be for the defendant.

The Court ~~refused~~ refused to give the first and second instructions in the ~~terms~~ terms asked by defendants but modified the same by inserting in the first instruction just after the word "property" marked by a * the words "and plaintiffs had no interest in the same" and then gave said instructions to modify - and defendants excepted to the decision of the Court in thus refusing to give such instructions as asked & in modifying said 1st & 2d instructions.

The Court then refused to give the third and fourth instructions asked for by defendants - but in lieu of the said 4th - gave the following instruction viz:

The power of attorney to John Fiedinbush does not make or in any way qualify the power of attorney to deft. but nevertheless (had the ^{same} right to act for Isaac W. Fiedinbush under his power of attorney after the power to John Fiedinbush was executed, that he had before the execution thereof - Each of the agents had power to act for the principal & bind him thereby to the extent of his power of attorney.

To which decision in refusing to give said 3d & 4th instructions & in giving said substitute for said fourth instruction defendants excepted.

The Court gave the fifth instruction as asked - after which deft. moved for a new trial which motion the Court overruled - to which decision of the Court deft. excepted - & prayed that this his bill of exceptions be signed sealed & made part of the record which is done.

J. L. Pickey - Judge of the Court

State of Illinois
Circuit Court of
J. Philo Lindsay, Clerk of the
Circuit Court in and for said County, do
herby that the foregoing is a true and
correct Copy of the Transcript, and a summons
bill of exceptions & all the orders of Court as the
same appear on file and of record in
my office.

In Testimony Whereof I have hereunto
set my hand and affixed the seal of
said Court at my office in Ottawa
this 8th day of July, A.D. 1850
P. Lindsay Clerk

State of Illinois Supreme Court of said State
for the third division June term A.D. 1850

And now comes the said plaintiff in error by
S. S. Kel and his attorney & saith that there is man-
ifest error in the record & proceedings in this case in
this to wit

- 1st The Court erred in refusing ^{to sustain} the motion for
a new trial
- 2^d The Court erred in rendering judgments for the
plaintiffs below.
- 3^d The verdict of the jury was against the law
& the evidence

- 4th The verdict was *excess*
- 5th The Court erred in refusing the third & fourth instructions asked for ~~for~~^{by} the defendants
- 6th The Court erred in ~~giving~~^{modifying} the first & second instructions asked for by the defendants & in refusing to give them as asked for
- 7th The Court erred in giving the instructions given in lieu of defendants fourth instruction
- 8th The Court erred in giving each of the instructions asked for by the plaintiffs below

B. S. Ireland for P^lffs in error

And now comes the said defendants in error & says that in the record aforesaid is no error ^{sum} ~~they~~ ^{as affirmed} ~~they~~ ^{they} pray that said judgment be in all things affirmed

Wm. Cook
per

LaSalle County Circuit Court
Glover & Cook

W. W. Bushman

Filed June 13. 1850.
L. Vel and CLK.
+ joining
Appt of Amos, filed June
14. 1850. L. Vel and CLK.

Feet = 5.6

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W. H. W. Cushman

vs

Joseph B. Glover et al.

12027

Prepared

E. L.

1850