

No. 14753

Supreme Court of Illinois

Brent

vs.

Shook

77 7 21
STATE OF ILLINOIS.
SUPREME COURT,
THIRD GRAND DIVISION.

No. 183

J. W. Middleton & Co., Stationers, 196 Lake St.

Brent
75

Shook
1888

20

Be it remembered that heretofore to wit on the 9th
day of March A.D. 1864 a process was filed in
the office of the clerk of the Circuit Court of
Warren County Illinois. And upon the filing of
the same a summons was issued which is in
the words and figures following to wit:-

State of Illinois
Warren County 3^d. To the People of the State of Illinois,
To the Sheriff of Warren County, Greeting;
We Command you to summon Thomas Brown and
David C. Bunt, if to be found in your County,
personally to be and appear before the Circuit Court
of the County of Warren, on the first day of the
next term thereof, to be holden at the Court House
in Monmouth, on the third Monday in the Month
of March Instant to answer the Complaint of
Oylerman Shorro Sew. Administrator of the Estate
of Thomas Edwards of a plea of trespass on the case
on promises, to his damage, the sum of Two Hundred
Dollars, as he says; And have you there and there this
Writ, and make return thereon in what manner you
Execute the same.

Witness William Laferty, Clerk of our said
Circuit Court, and the Seal thereof at Monmouth,
(Seal) this 9th day of March, in the year of our
Lord One thousand Eight Hundred and
Sixty four

Wm Laferty Clerk

On the back of which summons is the following

(Gent. Stamp 50 c)

endorsement by the Sheriff of said County to wit:

I did, on the 11th day of Mch, 1864, serve this Writ by reading the same to the within named David L. Brent.

Dated this 11th day of Mch 1864

W. C. Riggs Sheriff of Warren County

And the following filing by the Clerk of the said Circuit Court, to wit:

Filed Mch 17th 1864

Wm Lafferty Clerk.

Afterwards to wit on the 22nd day of March A.D. 1864 a declaration was filed in the office of the Clerk of the said Circuit Court which is in the words and figures following to wit:—

State of Illinois } March Term A.D. 1864
Warren County } 3d. of the Warren County Circuit Court.

By Reman Thoro Sr Administrator of the estate of Thomas Edarcto Deceased Plaintiff by Harris & Glenn his attorneys Complains of Thomas Brown and David L. Brent Defendants who have been summoned to answer said Plaintiff of a plea of Trespass on the Case upon promises. For that whereas, the said Defendants heretofore, to wit: On the 11th day of January in the year of Our Lord One Thousand Eight Hundred and 61 at the County of Warren State of Illinois made their certain note in writing commonly called a

promissory note, bearing date a certain day and year therein mentioned, to wit; the day and year last aforesaid, and then and there delivered the said note to said Plaintiff by which said note the said Defendants by the name and style of Thomas Brown & H. C. Brent then and there jointly & severally promised to pay said Plaintiff under the name and style of Dykeman Shook Sr. Administrator of Thomas Edwards deceased twelve months after the date thereof the sum of Eighty Nine Dollars & Eighty Seven $\frac{1}{2}$ Cents for value received with legal interest after the same became due and payable to wit Six per cent interest per annum.

By reason whereof, and by force of the Statute in such cases made and provided, the said Defendants then and there became liable to pay the said Plaintiff the said sum of Money in the said note specified, according to the tenor and effect of the said note; And being so liable, the said Defendants in consideration thereof, afterwards, to wit; on the same day and year, 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 said sum of Money in the said note specified, according to the tenor and effect of the said note. And whereas, Also the said Defendants afterwards to wit; on the 1st day of March in the year of our

Lord One Thousand Eight Hundred and 66
 at the place aforesaid were indebted to the said
 plaintiff, in the sum of two Hundred dollars,
 lawful money of the United States of America,
 for money before that time 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 Plaintiff, before that time paid, laid out,
 and expended for the said defendants and at
 the like request of said defendants. And for
 other money by the said defendants before that
 time had and received to and for the use of
 said Plaintiff. And being so indebted the
 said Defendants in consideration thereof, after-
 wards, 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 said sum of money in this
 Court mentioned, when the said Defendants
 should be thereunto afterwards requested,
 And whereas, also the said Defendants afterwards
 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 arrear and unpaid
such accounting the said defendants then and
there were found to be in arrear and indebted
to the said plaintiff, in the further sum of
Two Hundred Dollars of his lawful money as
aforesaid. And being so found in arrear and
indebted to said Plaintiff, the said defendants
in consideration thereof, afterwards, 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 said sum
of money last mentioned, when the said defendants
should be thereunto afterwards requested.

Nevertheless, the said defendants (although often
requested, to wit: on the day when the said
note became due and payable, according to the
tenor and effect thereof, and of two times since, to
wit: at the place aforesaid) have not yet paid
the several sums of Money above mentioned, or
any or either of them, or any part thereof to the
said Plaintiff, but to pay the same, or any
part thereof to the said Plaintiff the said
Defendants have hitherto altogether refused,
and still do refuse, to the damage of the said
plaintiff, of Two Hundred Dollars, and
therefore the said plaintiff, bring suit, &c.

Harris & Gleason
A.P.

Copy of Note sued on.
Twelve Month after date for value Received
us or either of us promise to pay Dykeman
Shoos Sr. Administrator of Thomas Edarcto
Descend the Sum of Eightty nine Dollars
& Eightty seven $\frac{1}{2}$ Cents this 11th day of
January A.D. 1861

Thomas X Brown
L.C. Brent.

Copy of Account sued on.

1864.

Mr 1st Thomas Brown &
David L Brent

To Dykeman Shoos Sr
Administrator of the Estate of
Thomas Edarcto Dec^d Dr.

To Money lent and advanced, \$200.
To Money paid, laid out and Expended, \$200
To Money had and received, \$200
To Money on account Stated, \$200
Harris & Lewis

On the back of which Declaration is the following
filing by the Clerk of the said Circuit Court
to wit:

Filed Mch 22^d 1864
Wm Safferty Clerk

And afterwards to wit on the 24th day of October

AD 1864 a Demurrer was filed in the office
of the clerk of the said Circuit Court which
is in the words and figures following to wit:-

Wyllemans Thos
Administrator of Thomas
Edarcto decd.

Warren Circuit
Court
Oct. Term AD 1864

Thomas Brown & David C Brent

And said David C
Brent comes & defends the wrong & injury &c &
says that said several Counts of said declaration
& each of them are not sufficient in law for
said Plaintiff to have & maintain his said
action &c, nor are either or any of said Counts
sufficient in law wherefore he prays judgment
&c
Kirkpatrickes for
Brent.

And for Special Causes of demurrer said Brent
assigns the following.

- 1 For that said Plaintiff fails to set out his
letters testamentary as administrator of said
Estate of Thomas Edarcto decd.
- 2 For that perfort of the said Letters testamentary
is not made.
- 3 For that the said promises & each of them of
said Defendants are alledged to have been
made to said Plaintiff, personally & not to him
as administrator aforesaid in each & all of

Said Counts

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For that said note set forth in the first Count is alledged to have been made to said Plaintiff personally by a certain style & description & not to him as administrator aforesaid

A. G. Kirkpatrick &
J. M. Kirkpatrick
for Brent,

On the back of which Denumer is the following filing by the clerk of the Circuit Court, to wit:

Filed Oct. 24, 1864

W. L. Lafferty Ck.

And on the 21st day of March AD 1864 an order was entered upon the Records of the said Circuit Court of Warren County, which is in the words and figures following to wit:—

State of Illinois
Warren County

Pleas before the Honorable Charles D. Lawrence Judge of the tenth Judicial Circuit of the State of Illinois. At a Circuit Court begun and held at the Court House in the City of Monmouth in Warren County Illinois. On the third Monday in the month of March in the year of Our Lord One thousand Eight Hundred,

and Sixty four. It being the 21st day of said Month

Present Charles B Lawrence Judge
James H Stewart States attorney
David W Riggs Sheriff
Wm Laferly clerk.

And afterwards to wit on the 22nd day of March AD 1864 among other things the following order was entered upon the Records of the said Circuit Court of Warren County, to wit:-

By Kemau Shoss Admr of the Estate
of Thomas Edwards, Deceased
vs.
Thomas Brown & David W Brent

Assumpsit.

This day Came defendants by attorney and on his motion it is ordered by the Court that this Cause be continued until the next term of this Court at the Plaintiff Costs for want of Declaration. Therefore it is considered by the Court that the said Defendants have and recover of the said Plaintiff their Costs by them at this term of Court made, and that the same be paid in due course of administration.

Ordered that Court adjourn till Court in Course.

9 And afterwards to wit on the 24th day of October

AD 1864 an order was entered upon the records of the said Circuit Court of Warren County which is in the words and figures following to wit:-

State of Illinois }
Warren County } ss

Plas before the Honorable John S Thompson Judge of the tenth Judicial Circuit of the State of Illinois. At a Circuit Court began and held at the Court House in the City of Monmouth in Warren County Illinois. On the fourth Monday in the Month of October in the year of Our Lord One Thousand Eight Hundred and Sixty four. It being the 24th day of said month.

Present Hon John S Thompson Judge
James H Stewart States attorney
David C Riggs Sheriff
Wm Laferly Clerks.

And on the day aforesaid, to wit: the 24th day of October AD 1864 an order was entered upon the Records of said Circuit Court which is in the words and figures following, to wit:-

By Herman Thoon Administrator of the Estate of Thomas Edwards dec.
vs.
Thomas Brown & David C Brown } Assumpsit

This day this cause coming on to be heard on the defendant David W Brent demurrer to Plaintiff's declaration, and after hearing the same the Court overrules the demurrer, and the defendant David W Brent abides by his demurrer. It is therefore ordered by the Court that the said Plaintiff have judgment on the demurrer for the Amount of his note and interest, And as those amounts are well known to the Court it was ordered that the Clerk assess the same, And the Clerk having assessed and reported the Plaintiff damages herein at the sum of One Hundred and four Dollars and ninety cents which being approved by the Court, It is therefore ordered by the Court that the said Plaintiff have and recover of the defendant David W Brent the aforesaid sum of One hundred and four Dollars and ninety cents the amount so assessed by the Clerk as aforesaid together with his costs by him in this suit made and may have execution therefor. Whereupon came the defendant David W Brent and prays an appeal to the Supreme Court which is allowed by the Court upon the said defendant entering into bond Conditioned according to law in the penal sum of Two Hundred Dollars with Security which by the agreement of the parties is to be approved by the Clerk of this Court. And to be filed within thirty days from this date. Ordered that Court adjourn till Court in Course.

Afterwards to wit in the 26th day of October A.D. 1864 a Bond was filed in the office of the Clerk of the Circuit Court of Warren County which is in the words and figures following to wit:

Know All men by these Presents, That we David C. Prent & William P. Prent are held: and firmly bound unto Dykeman Shook Sew Administrator of the Estate of Thomas Edwards Deceased in the penal sum of Two Hundred Dollars 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 25th day of October Anno Domini, One thousand Eight Hundred and sixty four.

The Condition of the above obligation is Such: That whereas Dykeman Shook Sew Administrator of the Estate of Thomas Edwards deceased, did on the 24th day of October, 1864 in the Circuit Court, within and for the County of Warren and State of Illinois, recover a judgment against the above bounded David C. Prent for the sum of One Hundred & four Dollars & ninety cents and costs of suit, from which judgment of said Circuit Court, the said

David C Brent has prayed for and obtained
an appeal to the Supreme Court of said State.

Now if the said David C Brent shall duly
prosecute his said appeal with effect and
shall moreover pay the amount of the judgment,
Costs, interest and damages, rendered and to be
rendered against Shorsc Lewis in case the
said judgment shall be affirmed in the
said Supreme Court, then the above obligation
to be null and void, otherwise to remain in
full force and virtue

D. C. Brent (L.S.)
Wm P Brent (L.S.)

On the back of which bond is the following
endorsement by the clerk of the said Circuit
Court, to wit:

Approved and filed Oct. 24th 1864
W. L. Luster Clerk

State of Illinois }
Warren County } Sd.

I. J. M. Luster clerk of the
Circuit Court of said County do hereby Certify
that the above and foregoing is a true and complete
transcript of the Record of said Cause as appears
from the Records and papers now on file in my
office

Witness my hand and official Seal this

6th day of February AD 1865

V M Luster Clerk

cells fees of \$3.85 Paid by Defendant.

David C. Brent
implicated with Thomas
Brown

In the Supreme
Court of Illinois
April Term 1865

appellant
& defendant

vs
Lykeman Shook senior
administrator of the
estate of Thomas Brown
decd.

appeal from same

And now comes said appellant David
C. Brent & says that in the proceedings
decision & judgment of said Circuit
Court of Macon County there is
manifest error & said appellant
assigns for the record the following

- 1 The court erred in ~~sustaining the~~ ~~demurrer~~
refusing to sustain said general
demurrer & overruling the same, to
each & all the said counts of said

declaration

2. The court erred in refusing to sustain said special ^{causes} ~~causes~~ of demurrer & each of them to said declaration & to each & all of the counts of the same
3. The court erred in rendering judgment ^{alone} against appellant when Thomas Brown his co-defendant was before the court by appearance of attorney
4. The court erred in rendering judgment against appellant alone when ~~then~~ it does not appear from the return of the sheriff whether his co-defendant Brown was served with process or not
5. The court erred in rendering a judgment upon the demurrer against appellee
6. The court erred in allowing the clerk to assess the damages upon the demurrer & rendering judgment therefor
7. The proceedings of the court upon the demurrer & the judgment thereon are informal & erroneous

whereupon said appellant prays that said judgment of said Circuit Court may be reversed for reasons held in

A. H. Mumpston
att. for appellant

State Illinois
3rd Grand Division
David C. Bunt
Impleaded &c

In the Supreme Court
April Term A.D. 1865

as
Dykeman Shook Admin-
istrator of the estate of Thomas Edwards dec'd
And the said Dykeman Shook Administrator of Appellee in the above
entitled cause now comes & says that there is no error
either in the record or proceedings aforesaid or in giving judg-
ment aforesaid in manner and form as above assigned
And therefore prays that the said judgment may
be affirmed, and that his costs may be adju-
dged to him &c
John J. Glenn
Att'y for Appellee

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David C. Bunt
impleaded &c
Dykeman Shook
administrator of
the estate of Thomas
Edwards dec'd

Filed Apr. 5. 1865
J. J. Glenn
Att'y.