

No. 1259

Supreme Court of Illinois

J.C.Jones, School Comm.,

vs.

J.Jones and S.A.Douglas

(379)  7

Pleas held at Jacksonville within and
for the county of Morgan and State of
Illinois before the Hon Samuel H Treat
Judge of the Eight judicial circuit sitting
in exchange with the Hon William Thomas
Judge of the first judicial circuit of the
State of Illinois on the second day of
April a & one thousand Eight hundred
and forty

John T Jones, school
Commissioner & agent for
the inhabitants of the county
of Morgan

Debt.

vs
Joseph Healep, James L James
and Stephens A Douglass

Be it remembered that on
the sixth day of February a & one thousand Eight hundred
and Thirty-nine the plaintiff in this cause filed the
following precept To wit;

The clerk of the Morgan Circuit
Court will issue a summons in this cause against
Joseph Healep & James L James directed to the Sheriff of Morgan
County and against Stephens A Douglass directed to the Sheriff
of Morgan County returnable of

Thomas & Gates

Plaintiff atty

and afterwards to wit on the same day the following sum-
mons was issued in this cause To wit;

State of Illinois }
Morgan County } ss

The People of the State of Illinois
To the Sheriff of Morgan County = Greeting

We command you to summons Joseph Heselup, James L. James and Stephen A. Douglass if they can be found in your county to be and appear before the Judge of our Circuit Court to be holden at Jacksonville within and for the County of Morgan on the Third Monday of March next to answer unto John T. Jones school commissioner and agent for the inhabitants of the County of Morgan in a plea that they render unto him in the sum of Two hundred and twelve dollars fifty cents debt which they owe and from him unjustly detain. Damages one hundred and fifty dollars. And of this writ make legal service and due return at the time and place aforesaid.



Witness Dennis Rockwell clerk of our said Court at Jacksonville this sixth day of February 1839-

Dennis Rockwell Clerk

Which summons was afterwards to wit on the 22^d day of February returned with the following endorsement To wit:

"Executed the within writ by reading ~~the~~ it to the defendants Joseph Heselup & James L. James. Feb. 22. 1839-

A. Dunlap Shff. M.C.

by A. C. Dickson dep. ty."

and afterwards to wit on the sixth day of February A.D. 1839 the following summons was issued in this cause: To wit;

State of Illinois }
Morgan County }

⁵³ The people of the State of Illinois

To the Sheriff of Sangamon County - Executing

We command you to summons Joseph Heselup, James L. James and Stephen A. Douglass. if they can be found in your county to be and appear before the Judge of our circuit Court to be holden at Jacksonville within and for the County of Morgan on the Third Monday of March next to answer unto John T. Jones school commissioner and agent for the inhabitants of the County of Morgan in a plea that they render unto him in the sum of Two hundred and twelve dollars fifty

cents debt. which to him they owe and from him unjustly detain. Damages one hundred and fifty Dollars. And of this writ make legal service and due return at the time and place aforesaid

Seal

Witness Dennis Rockwell clerk of our said Court at Jacksonville this sixth day of February 1839

Dennis Rockwell clerk

Which summons was on the fifth day of March A D 1839 returned with the following endorsement To wit:

"Executed on Stephen A Douglas by reading March 5th 1839 S Elkin Shff sc
by Wm Laverly Deputy"

And afterwards to wit: on the sixteenth day of February A D one thousand Eight hundred and thirty-nine - the following declaration was filed by the plaintiff in this cause: To wit:

State of Illinois

Morgan County

ss

In the circuit court of said County John J. Jones School Commissioner and agent for the inhabitants of the County of Morgan complains of Joseph Beesley James L James and Stephen A Douglass in the custody of in a plea that they render unto the said plaintiff the sum of Two hundred and twelve Dollars and fifty cents: which they owe to and unjustly detain from him.

For that whereas the said Defendants heretofore to wit: on the ninth day of July in the year 1836 at Jacksonville at to wit: the circuit aforesaid made then certain promissory note in writing bearing the date ~~the~~ day and year aforesaid and then and there delivered the said note to the said plaintiff and thenly then and there jointly and severally promised to pay the said plaintiff the sum of Two hundred and twelve Dollars and fifty ~~dollars~~ for value received and interest thereon at the rate of twelve

per cent per annum from the date of said note till paid - said interest to be paid semi-annually in advance. Nevertheless the said plaintiff avers that six months after ^{the} date of said promisory note ~~two~~ with on the ninth day of January 1837 there was due and payable to the said plaintiff on the said sum of two hundred and twelve Dollars and fifty cents the sum of twelve dollars and seventy-five cents interest interest in advance on said sum for six months beginning on the said ninth day July 1837 and the said plaintiff further avers that on the said ~~ninth~~ day of July 1837 one year after date of the said promisory note the said sum of Two hundred and twelve Dollars and fifty cents in said note specified because also due and payable to the plaintiff according to the tenor and effect of said promisory note and the said plaintiff further avers that said defendants or either of them did not pay to the said plaintiff either of the aforesaid sums of money by reason of which failures and breaches of the defendants they became liable to pay to the plaintiff interest on the aforesaid sum of twelve Dollars and seventy-five cents due on the ninth day of January 1837 and also on the aforesaid sum of Two hundred and twelve dollars and fifty cents due on the ninth day of July 1837 at the rate of twenty per cent per annum until paid under the provisions of the act of General assembly in such cases made and provided. Nevertheless the said plaintiff avers that said defendants or either of them have not paid the aforesaid sum of money or either of them or any part thereof or the interest at the rate of twenty per cent per annum chargeable thereon as aforesaid, but to pay the same have hitherto wholly failed and refused and still do fail and refuse to the damage of the plaintiff one hundred and fifty dollars. Therefore he sues ~~the~~

Thomas & Yates

plaintiff attorneys

Copy of note sued on above

one year after date we Joseph Heslop James L James

and Stephen A. Douglass jointly and severally promise to pay John T. Jones school commissioner and agent for the inhabitants of the County of Morgan for the use of the inhabitants of Township number 17 north Range 9 west Two hundred and twelve $\frac{57}{100}$ Dollars value received and interest thereon at the rate of twelve per cent per annum from this date till paid - payable semi-annually in advance and in case additional security be required for the payment of said sum of money or any part thereof the same shall be given to the satisfaction of the commissioner or his successor in office. Witness our hands at Jacksonville this ninth day of July 1836 -

Joseph Healep

James L. Jones

S. A. Douglas

And afterwards to wit: on the twenty-fifth day of March A. D. 1839 at the March term of the Morgan Circuit Court the following order was made To wit:

The defendants by McConnell file their pleas number one, two, three, four five & six.

The following is a copy of the pleas filed by defendants

And now the defendants by their attorneys McConnell & McDougal appear in court and for plea say the plaintiff to have and maintain this action ought not because they say that heretofore to wit immediately before the date of the note sued on (which is read to them in the words and figures following to wit: here insert a true copy said note) the said note John T. Jones and others without any lawful right or authority so to do entered upon and with force and arms took possession of section sixteen in township seventeen north and Range nine West. in the County of Morgan and State of Illinois (the same being school lands granted to the State of Illinois in trust by the United States for the use of the inhabitants of said township for the use of the schools forever) and then and there without any lawful authority whatever but decidedly against law

divided said sixteenth section into town lots streets and alleys and then and there unlawfully sold said lots upon a credit to sundry persons. And the said defendants then and there became the purchasers of a portion of said lots of the said Jones and for and in consideration of said lots so sold they the said defendants made executed and delivered the said note and for no other consideration whatever and the said defendants now aver that the said Jones did not nor could he give to said defendants any right whatever to said land or any possession of the same after making of the sale aforesaid. Wherefore the said defendants say that said note was made executed and delivered without any good or valuable consideration whatever. All of which said defendants are ready to verify &c Wherefore they pray judgment &c

McCannel & McDougal

for Defts

2^d plea

And for further plea in this behalf said defendants say that said note was made executed and delivered to said plaintiff for and in consideration of a verbal sale to a tract of school land in Township 17 N 9 West by said plaintiff to said defendants and that no memorandum in writing was ever made and signed by said Jones and delivered to said defendants or either of them evidencing said sale and no possession of said land was ever delivered to said defendants by said Jones. Wherefore they said defendants aver that said contract was not binding upon the said Jones but was void and therefore that said note was made executed and delivered without any good or valuable consideration and this they are ready to verify &c Wherefore they pray judgment &c

McCannel & McDougal

for Defts

3^d plea

And for further plea in this behalf the said defendants say the plff action is barred because they say that said note in the

plaintiffs declaration mentioned was made executed and delivered to said plaintiff for and in consideration of a verbal sale of a tract of land and a verbal promise on the part of said plaintiff to convey said land (to wit a part of S 16. T 17 N 9 W in Morgan County to said defendants and the said defendants now aver that since said verbal promise sale of said land and since the making of said promise to convey the same up to the commencement of this suit no possession of said land was ever given to them or either of them and the said Jones has totally neglected and refused though often requested so to do to make execute and deliver to said defendants and note a memorandum in writing evidencing said sale. Wherefore said defendants say that said verbal contract originally voidable has by said refusal of said plf become and is rendered void. Wherefore said defendants say that the consideration of said note has totally failed. all of which said defendants are ready to verify &c. Wherefore they pray judgment of

McConnell + McDougal
for defts

4th plea

and the said defendants now at the March term of said Court in the year of our Lord 1839 by their attorneys McConnell + McDougal comes and craves aver of the said note in the plaintiffs declaration mentioned and the same being read to them in the words and figures to wit: (he insert a true copy of said note) and now for further plea in this behalf said defendants say that the consideration of said note was a tract of land belonging to the inhabitants of township seventeen north in Range nine west in the county of Morgan in which land and in which consideration the said Jones the present plaintiff had no interest whatever and said defendants now aver that said promise in said note to pay said money

was a promise to pay to the inhabitants of township 17 north
range nine West by the name and description of John T Jones
school commissioner and agent of the inhabitants of the County
of Morgan. Wherefore said defendants say that said Jones acting
as the agent of said inhabitants from whom the consideration
of said promises moved and that said Jones has no interest what
~~for~~ ever in said note wherefore said defendants say that said
Jones should be barred from having and maintaining this his said
action against them all of which the said defendants are ready
to verify. Wherefore they pray judgment &c

McConnell & McDougal
attys for &c

5th plea

And the said defendants now at the March term of
said Court in the year 1839 by McConnell & McDougal their attorneys
~~plaintiffs declaration misrepresents the same by omitting to insert~~
~~see correct and crave order of the said note in the words and~~
figures as follows To wit (here insert a true copy of said note)
and the said defendants for further plea in this behalf now say
that the said plaintiff to have and maintain this action against
them ought not because they say that the consideration of
said note and said promises was received from the inhabitants
of township seventeen north in Range nine West in the then
County of Morgan and not from the said plaintiff and that
the promise to pay said money and the promise declared on was
made to and with the inhabitants of said township by the name
and description of John T Jones school Commissioner and agent
&c and not to and with ~~the~~ said plaintiff and said plaintiff
has no interest whatever in said money or in the consideration
of said promises or in said promises and the said defendants
now aver that heretofore to wit: on the day of &c
and before the commencement of this suit the inhabitants
of said township became and was incorporated by the name
and description of the trustees of schools of
Township seventeen north in range nine West and being

so incorporated all the proper and necessary officers together with a treasurer were regularly appointed for said corporation by said corporate name ~~and~~ said inhabitants had right to sue and be sued plead and be impleaded in this honorable court and had as such corporation the exclusive right to ~~settle~~^{sue} for said money and upon said several promises in said note set fourth and therefore the said defendants say that said plaintiff Jones ought to be barred from having and maintaining his said action all of which said defendants are ready to verify. Wherefore they pray judgment of

McBennet & McDougal
attys for Deft

6th plea

And for further plea in this behalf said defendants say that the note in the plaintiffs declaration mentioned was made executed and delivered without any good or valuable consideration and this said defendants pray may be enquired of by the country

McBennet & McDougal
attys for Deft

And the plff likewise

Brown & Yates p. pr

And afterwards to wit on first day of July one thousand eight hundred and thirty nine at the July term of the Morgan Circuit Court the following order was made in this cause To wit

This day comes the plaintiff and filed his demurrer to defendants pleas No 1. 2. 3. 4. 5. and joins in to plea No 6.

The following is a copy of the demurrer filed by the plaintiffs in this cause To wit:

And the said plaintiff says that he ought not to be barred of his action aforesaid by reason of any thing contained in defendants first plea in that behalf pleaded because he says that the matters and things contained

in said plea are not sufficient in law to bar the action aforesaid and this he therefore prays judgment of. And the said plaintiff here sets down as causes and grounds of defence to said plea the following.

And the said plaintiff says that he ought not to be barred of his action aforesaid by reason of any thing contained in defendants first

First the plea sets out and relies upon three separate and distinct grounds of defence viz 1. that the note was given for land which plaintiff had no right to sell. 2. that it was given for land to which plaintiff had no title 3. that it was given for land the possession of which the plaintiff could not give to defendants. Second All the facts stated in the plea may be true and yet defendants may have a patent for the land purchased from the State of Illinois issued & made according to Law. Third. The plea is uncertain in this It alleges that plaintiff and others took possession of a section of land unlawfully and without authority of law of divided the same into lots streets and alleys and unlawfully sold the same without showing or stating whether the illegality in the proceeding consisted in selling the section or in dividing it into lots streets & alleys. Fourth. It alleges the sale of the section of land to have been unlawful without alleging any fact to justify such statement. Fifth The conclusion of the plea that it was given without any good or valuable consideration

Brown & Yates per

Joinder in defence

McCannell for Defts.

And the said plaintiff says that he ought not to be barred of the action aforesaid by reason of any matter or thing contained in defendants second plea in that behalf pleaded because he says the matters & things contained in said plea are not sufficient in law & this he therefore prays

judgment H. And the said plaintiff here sits down as causes of demurrer the following. First. The plea does not shew that the Land sold was the plaintiffs ^{own} estate or that the plaintiff sold in his own right or as an officer or agent nor does it shew but that the defendants received all the evidences of the sale to which they were entitled ~~under~~ according to Law and all that are requisite to the obtaining a good title to the land. Second. It does not shew but that defts have obtained the title to the land purchased since the sale. Third. It does not shew that according to the terms of sale the plaintiff ever was bound to deliver possession of the Land to defendants. Fourth. It is inconsistent in itself showing that the note was made as the consideration agreed to be paid for Land and yet alleging that it was made without any good or valuable consideration. Fifth. It does not appear from any thing in the plea that it was ever necessary or proper that the plaintiff Jones should be barred by any writing evidencing the sale of land for which the note was given

Gates p. q. r.

Grounds in demurrer

McConnell for defts

And the said plaintiff for reply to the third plea of defendant in that behalf pleaded says that he ought not to be barred of the action aforesaid by reason of any ~~strong~~ matter or thing contained in said plea because he says the matters and things therein contained are not sufficient in Law and thus he is ready to verify H. Wherefore he prays judgment H. and the said plaintiff here sets down as causes of demurrer the following. First. The plea does not shew the terms of the ^{sale} alleged to have been made nor wheather the sale was made by plff in his own right or as an agent nor does it shew wheather or not the plff was ever bound by the terms of the sale to make

any title or deliver any possession. Second. It does not show any offer on the part of the defendants to comply with the terms of sale nor does it shew any fact authorizing the conclusion that the contract was originally voidable and by the refusal of plff Jones has become paid and is rendered void

Gates for p p

Joinder in demurrer

McCannell for Deft

and the said plaintiff says that he ought not to be barred of his action by reason of any matters or things contained in the defendants fourth plea in that behalf because he says the matters and things contained in said plea are not sufficient in law. Wherefore he prays judgment of

Gates p q

and the said plaintiff for replication to the defendants fifth plea says that the matters and things contained in said plea are not sufficient in Law to bar the action aforesaid and this he prays judgment of

Gates

Joinder in demurrer

McCannell for Defts

And afterwards to wit on the 2^d day of April A D 1840 at the March term of the Morgan Circuit Court the following order was made To wit;

The defendants having at a former term of the court filed pleas numbered one, two, three, four five and six and the plaintiff his several demurrers to all of said pleas except the sixth. to which he filed his joinder and the said demurrers having also been joined and the matters of law arising thereon being argued and submitted to the court for decision and the court being sufficiently advised thereon is of the opinion that said pleas are severally insufficient and doth therefore order that said demurrers be sustained and the parties agree

that the questions of law and fact arising upon the issue joined may be tried by the court and the cause being heard. It is considered and adjudged by the court that the plaintiff recover of the said defendants the sum of Two hundred and twelve Dollars and fifty cents the debt in the declaration mentioned also the sum of one hundred and thirty-five Dollars for his damages sustained by reason of the detention together with his costs herein expended.

And afterwards to wit: on the same day at the March term of the Morgan Circuit Court the following order was made To wit:

This day came the defendant Heslop and on his motion an appeal is allowed him from the judgement in this cause ^{upon his} entering into bond with Dennis Rockwell as his security in the penalty of six hundred Dollars to be perfected in twenty days.

And afterwards to wit on the twentieth day of April A.D. 1840 the defendant Heslop in this cause entered into and filed this bond in the office of the clerk of the Circuit Court with Dennis Rockwell as his security in the penalty of six hundred Dollars conditioned as the law directs ~~~~~

State of Illinois }
Morgan County } 53

I Dennis Rockwell clerk of
the Circuit Court within and for the county aforesaid
do hereby certify that the foregoing pages contain a
true and perfect copy of all the proceedings had in
the cause of John I Jones school commissioner and agent
of the inhabitants of Morgan County against Joseph Heshp
James L James and Stephen A Sanglass as fully and
completely made as the same remain of record and on
file in my office —

In testimony whereof I have hereunto
set my hand and caused the seal of
said court to be hereunto affixed at
Jacksonville this twenty-second day of
May A D one thousand Eight hundred
and forty —

Dennis Rockwell clerk

Supreme Court

Joseph H. Hildes et al app^{rs}

John S. Jones et al Com^{rs}

appeal from Morgan

~~This case was argued at~~

And now comes the said plea & says
that in the record & proceedings in this cause there
is manifest error in this to wit:

The Court below erred in sustaining
the demands of the plea below to the several pleas of the
def^t below herein -

for which & for divers other errors & misapprehensions
apparent on the face of the Record said plea prays judgment
of Reversal &c

McLennan & McVeyall

for Appellants

Morgan Circuit Court

John E. Baugh school
Commissioner, &c

ad 3 Appeal

Joseph W. Baugh, James L.
James, & Stephen S. Douglas

Copy of Record

125

Filed 7.00

Filed June 3. 1860

Jm Duncan

1254

Asleep }
Drowsy }

In this case I can not perceive any
difference between this case, and that
of Parker v. Jones, on the
principles laid down in that case, therefore,
the judgment in this case is
affirmed with costs.

Resle et al
G. T. Jones et al

Opinion, Simple
Justice

Filed 2nd March 1843.

Week

1843.

compared

J. H. H. H.

or

J. H. H. H. School board

{

Appellant

Appeal from Morgan

Appella

And the said Appella comes &
says that there is no error in the Record
Proceedings of the Court below in this case
& this is

Hardin Smith
for Appella

J. H. H. H.
as E. H. H. in E. H.
J. H. H. H. H.

Feb 2 Dec. 24
1840- J. H. H. H.

Supreme Court

Joseph Hestup et al

John J. Jones School Commissioner &c

This was an action of debt brought in the Morgan Circuit Court to recover the amount of a certain note given by Hestup et al to Jones School Commissioner &c the note is in the usual form of School Notes & the declaration a common declaration in debt setting out the note &c -

The defts below Hestup et al filed
Six pleas -

The first - Sets out that before the date of the date of the note made on the said Jones without any lawful right entered upon & took possession of certain premises (a part of Section 16) School lands, granted to this State in trust for the use of schools & being unlawfully in possession fraudulently represented that he had a right thereto & without authority & against Law proceeded to divide the premises into town lots &c & pretended to have a right to sell the same & Hestup et al relying upon their false & fraudulent representations then & there purchased several of said town lots from Jones & for & in consideration thereof made the note in question - That Jones could not lawfully & then did give possession of premises - that he did not & could not convey to them any title thereto & that there was therefore no consideration -

The second states note was made as consideration for a verbal sale of a certain portion of School land - that no note or memorandum in writing was made by Jones evidencing said sale - that possession was never delivered or taken - that contract was not binding upon Jones but void & avers no consideration -

The third is the same with second with the additional averments that the consideration was a verbal promise to convey - that Jones had not at any

time executed any note or memorandum in writing evidencing sale or in any way complied with his promise to convey although the request & possession of premises had not been taken or delivered & that therefore the consideration had wholly failed -

The Fourth given by the note - was that it was given in consideration of a tract of land belonging to the State of Illinois & held in trust for the use of schools that Jones had no interest therein & that the promise was not to him but to the inhabitants of the township by the name of that Jones only acted as agent for the township from which the consideration moved & that therefore Jones should be banded.

The Fifth given by the note - was that the consideration was received from the inhabitants of the township & not from J. Jones - that the promise was not made to Jones but to the township - that Jones had no interest in the note or consideration but acted only as agent - that before the commencement of this suit the inhabitants of the township became incorporated by the name of trustees &c. - That trustees were duly elected &c. Treasurer appointed according to law & that by their separate name said corporation had a right to sue &c. & that as such corporation they had the sole & exclusive power to sue on said note - that therefore Jones should be banded -

The Sixth is a plea of No Consideration
Plea below demanded to plead 1. 2. 3. 4 & 5
and joined plea No 6 -

The Court sustained the several demands filed and the decision of the Court upon the pleas is assigned for error -

Wm. C. Connelley
for appellants

Sapientia Cant

"
Joseph Herdick et al

"
John J. Jones School for

Abstract, }

~~Filed for 21st 1841~~

Jan³ 21. 1841

Jas. M. Duncan

Clerk.

D