

14473

No. _____

Supreme Court of Illinois

Hayes

vs.

Stiles

71641  7

State of Illinois }
2nd Judicial Circuit }
County of Ogle ss. }

At a Circuit Court begun and holden at the Court House in Oregon, in said County and State on the first Monday of November A.D. 1861. to-wit: on Tuesday the 5th day of said November A.D. 1861; then and there being present the - Honorable William W. Keaton Judge 2nd Jud Cir

Fredrick G. Petre Clerk

John A. Hughes Sheriff and

David McCartney States Attorney

Attest F. G. Petre Clk -

And afterwards to-wit: on Wednesday November 6th A.D. 1861.

was being as yet of the said November Term A.D. 1861, then and there being present the Hon. Ira O. Wilkinson Judge of the Sixth Judicial Circuit of said ~~State~~ other officers same as yesterday -

Be it remembered, that theretofore to-wit: on the 10th day of October A.D. 1861, a Praecipe and Narratio in the words & figures following, were filed in said Court to-wit: -

Praecipe

State of Illinois } Ogle County Circuit Court
County of Ogle ss. } of the November Term A.D. 1861 -

Elias B. Stiles }
vs }
Hiram Hayes } Defendant -

The Clerk of said Court will issue a Summons in the above cause, directed to the Sheriff of Ogle County, in a plea of trespass on the case on promises returnable at the November Term of said Court A.D. 1861, to the damage of the Plaintiff of Five hundred dollars -

George P. Goodwin Plaintiffs Attorney

To Fredrick G. Petre Esq. Clerk - Dixon October 8th 1861 -

Endorsed - Filed this 10th day of October 1861 - W. G. Petrie Clerk by B. F. Shurtliff

Amatic

State of Illinois of The Ogle County Circuit Court -
Ogle County vs Of the November Term A.D. 1861 -

Elias B. Stiles Plaintiff in this suit by George P. Goodwin his attorney, complains of Hiram Hayes defendant who was summoned etc. in a plea of trespass on the case on promises: For that whereas the said defendant heretofore to wit: on the twenty fifth day of January in the year of our Lord one thousand eight hundred and sixty at Lane, Ills. to wit: at Lane Ills. in said County of Ogle made his certain promissory note in writing bearing date the day and year aforesaid, and then and there deliver the same to one Harvey Morgan in and by which said note, said defendant, by the name, style and description of Hiram Hayes promised to pay to the order of the said Harvey Morgan, nine months after the date thereof One Hundred and fifty dollars for value received. And the said Harvey Morgan to whom the same was payable, then and there indorsed under his hand assigned the same to the said Plaintiff, and then there delivered the same, so indorsed, to the said Plaintiff. By means whereof, and by force of the statute in such case made and provided, the said defendant became liable to pay said plaintiff said sum of money mentioned in said note and being so liable, in consideration thereof, then and there undertook and promised to pay the same to the said plaintiff according to the tenor and effect, true intent and meaning of the said note, and of the indorsement aforesaid to wit: - at the place aforesaid

And whereas also the said defendant afterwards to wit: - on the said twenty fifth day of January in the year of our Lord one thousand eight hundred and sixty, at Lane Ills. to wit: at Lane Ills. in said County of Ogle, made his certain other promissory note in writing, bearing date the day and year last aforesaid, and then and there delivered the same to one Harvey Morgan, in and by which said last mentioned note, said

defendant by the name, style and description of Heram Hayes promised to pay to order of the said Harvey Morgan, by the first day of June 1861. (meaning thereby the first day of June in the year of our Lord eighteen hundred and sixty one) the further sum of one hundred and fifty dollars, for value received, and the said Harvey Morgan to whom or to whose order said last mentioned Note was payable, then & there indorsed, and under his hand assigned the said last mentioned Note to the said plaintiff, and then & there delivered the same, so indorsed, to the said plaintiff; by means whereof and by force of the Statute in such case made and provided, the said defendant became liable to pay said plaintiff said sum of money mentioned in said last mentioned Note and being so liable in consideration thereof, then and there undertook and promised to pay the same to the said plaintiff according to the tenor and effect, true intent and meaning of the said last mentioned note, and of the indorsement aforesaid to wit: - at the place aforesaid - And whereas, also, the said defendant afterwards to wit: on the first day of October in the year of our Lord One thousand eight hundred and sixty one to wit: at Lane in said County, became and was indebted unto the plaintiff in a large sum of money, to wit: in the sum of Five Hundred dollars, for money before that time lent and advanced to, and paid, laid out and expended for, said defendant by said plaintiff at said defendants request; and also in a like sum of money before that time had and received by said defendant to and for the use of said plaintiff and also in like sum for goods, wares and merchandise, before that time sold and delivered by said plaintiff to said defendant at like special instances and request; and also in like sum for the labor care and diligence of said plaintiff before that time done and performed by said plaintiff; for said defendant, and at the like instance and request of said defendant, and also in like sum, then and there found due and owing said plaintiff on an account stated between them, and being so indebted, said defendant in consideration thereof, then and there undertook and promised to pay said plaintiff

said last mentioned sum of money, when thereunto afterwards requested
Yet the said defendant, not regarding his said promises and
undertakings, but contriving, etc. although often requested so to
do, has not paid said plaintiff either of said sums of money
above mentioned, or any part thereof, but so to do has hitherto
wholly neglected and refused, and still does neglect and refuse
to the damage of said plaintiff of Five hundred dollars, and
therefore he brings this suit etc —

George P. Goodwin
Plffs Atty —

Copy of instruments and Account sued on
#150⁰⁰ Lane Ills. Jan'y 25, 1860 —

Three months after date I promise to pay to the order of
Harvey Morgan, One hundred and fifty ⁰⁰/₁₀₀ dollars value received
at — Hiram Hayes —

on the back of which said note is indorsed — "Pay to the order
of Elias B. Stiles" — Harvey Morgan —

#150⁰⁰ Lane Ills. Jan'y 25⁰⁰ 1860

By the first day of June 1861, I promise to pay to order of
Harvey Morgan, One hundred and fifty dollars, value rec^d
Hiram Hayes

On the back of which said note is indorsed —
"Pay to the order of Elias B. Stiles" "Harvey Morgan —

Hiram Hayes — To — Elias B. Stiles Dr —

| | |
|------------------------------------|-----------|
| To money lent and advanced | \$ 500.00 |
| To money expended and paid out for | \$ 500.00 |
| To money received for use of | \$ 500.00 |
| To goods, wares and merchandise | \$ 500.00 |
| To labor and services | \$ 500.00 |
| To balance on account stated | \$ 500.00 |

Endorsed - Filed this 10th day of October 1861 - 79. Petrie Clerk by B. F. Shute dep.

And afterwards to wit: on the 10th day of October A.D. 1861,
a summons was issued out said Court in the words & figures following
to wit:-

Summons

State of Illinois } The People of the State of Illinois, to the
Ogle County ss } Sheriff of said County. Greeting: -

Use command you, that you summon Hiram
Hayes, if he shall be found in your County, personally to be and
appear before the Circuit Court of said Ogle County, on the first
day of the next term thereof, to be held at the Court
House in Oregon, in said Ogle County, on the first Monday of
November next, to answer Elias B. Stiles in a plea of Trespass
on the case on promises, to the damage of the said plaintiff, as
he says in the sum of Five hundred dollars, and have you then
and then this writ. - Witness Frederick L. Petre, Clerk of our
said Court, and the seal thereof, at his office in Oregon
in said County of Ogle, this 10th day of October
A.D. 1861 -

Seal

F. L. Petre Clerk

By B. F. Sheets Deputy

Endorsed - State of Illinois }

Ogle County ss. } I duly served the within writ on the within
named Hiram Hayes, as I am therein commanded

by reading the same in his presence and hearing, this 21st day of
October A.D. 1861 -

John A. Hughes Sheriff

By Wm R. Buser Deputy

Served 50
Return 75
1.35

Filed 2^d November 1861 - F. L. Petre Clerk -

And afterwards to wit:- on the 13th day of November A.D. 1861,
the pleas in the words & figures following, were filed in said Court
to wit: -

Plea

State of Illinois } In Ogle Circuit Court
Ogle County } Of the November Term A. D. 1861 -

Hiram Hayes }

vs

Elias B. Stiles }

And the said defendant by H. A. Miss. his Attorney comes and defends the wrong and injury when &c. and saith that he did not undertake or promise in manner & form as the said plaintiff hath thereof complained against him and of this he puts himself upon the Country &c - & said plff doth the like -

Heaton for plff -

And for a further plea in this behalf, leave of the Court first had & obtained says actis non. because he says that the notes declared upon in the first & second count of said plaintiffs declaration, and which are the only cause of action declared upon in said plaintiffs declaration, were given by this defendant to one Hearsey Morgan without any consideration whatever. And the said defendant avers that the said notes & each of them were endorsed and transferred long after the money therein secured to be paid became due by the term thereof - All of which the said defendant is ready to verify, wherefore he prays judgment &c -

H. A. Miss Atty for deft

& said plff comes by Heaton & Goodwin & as to the above plea of no consideration, says precludi non. because he says said note was given for a valuable consideration, without this, that there was no consideration for the same & of this he puts himself upon the Country &c -

Heaton & Goodwin

for plff -

Endorsed - Filed Nov 13, 1861. F. Y. Petrie Clerk by B. F. Sheets deputy

And afterwards to wit: on Wednesday November 13th A.D. 1861, the same being as yet of the said November Term 1861. of said Court the following, among other, proceedings were had and entered of record to wit: -

Order 258

Elias B. Stiles } Plaintiff

vs }
Hiram Hayes } defendant by Miss his Attorney, and on his motion, leave is given him by the Court, to file additional pleas herein by Monday noon -

And afterwards to wit: on the 19th of November A.D. 1861, Amended pleas were filed in the words & figures following, in said Court to wit: -

Amended pleas

State of Illinois } In Ogle Circuit Court
Ogle County ss. } Of the November Term A.D. 1861 -

Hiram Hayes }
vs }
Elias B. Stiles }

And for a further plea in this behalf by leave of Court had and obtained, the defendant says actio non, because he says, that the votes declared upon in the plaintiffs declaration, was given, for a pretended right or interest which the payee Harvey Morgan claimed to have in and to the South West Quarter of Section (26) twenty six in township forty one (41) North and Range One East of 3. P. M. in said County of Ogle that said premises were claimed and occupied by one Emory Hayes who denied title to the same, by regular chain of title from the United States, the same having been purchased from the United States by a Land Warrant, which was located thereon, and long after said Warrant had been located thereon, the same was discovered to be a forgery, and said premises were by the United States, put up and

sold at public Auction, and one David B. Stiles became the purchaser of the same at said sale, but with funds furnished said Stiles by this defendant, and purchased for the use and benefit of this defendant, and while said Stiles so held the title to said premises, the said Harvey Morgan, represented to said Stiles, and this defendant, that he had a lien on said premises, which was a good & valid incumbrance which he threatened to enforce by some legal proceedings, if this defendant would not execute and deliver to him the notes declared upon, in the plaintiffs declaration and and the defendant being remote from the Records office of said County, and having no opportunity to examine the title, as the said pretended incumbrance which said Morgan alleged to be of record, this defendant confiding in said representations, made the notes, declared upon in plaintiffs declaration, and the defendant says that said representations were all false and untrue, and that in truth and in fact said Morgan had not any valid or subsisting lien on said premises, but each and every of the representations, &c made by Morgan, were false and untrue, wherefore this defendant says that the consideration of the notes sued upon has utterly failed, and further that said notes were assigned and endorsed after they became due, all of which this defendant is ready to verify, wherefore he prays judgment &c —

And for a further plea in this behalf by leave of Court first had & obtained, as to the first and second Count in said plaintiffs declaration says, actio non, because he says that the notes declared upon in said plaintiffs declaration were given for a pretended right or interest which the payee in said notes to wit: Harvey Morgan claimed to have on and to South West Quarter of Section 26, in Township 41, North and Range One (1) East of the 3^d P. M. in said County of Ogle, that said premises were claimed and occupied by one Emery Hayes who claimed the same by a regular chain of title from the United States, the same having been purchased from the

United States by a land Warrant located thereon, and long after said Warrant was discovered to be a forgery, and said premises were by the United States put up and sold at Public Auction, and one David B. Stiles became the purchaser of the same at said sale but with funds furnished said Stiles by said defendant and purchased the same for the use and benefit of said defendant and while said Stiles so held the title in trust for said defendant, the said Harvey Morgan falsely and fraudulently represented to the said Stiles, that he had an adverse title to said premises, which was good and valid + which he threatened to enforce by legal proceedings unless this defendant would buy up said claim or adverse title - And set defendant fearing lest he might be ejected from said premises and disturbed in the quiet enjoyment of the same, and believing the statements so made to the said Stiles to be true and fearing as aforesaid, he executed the notes declared on in said first & second counts of said plaintiffs declaration for the purpose of buying up said lien or adverse title as aforesaid -

And the said defendant avers that all of said representations were utterly false and untrue, and were made with the intent and design by threats as aforesaid to extort from the said defendant the said two notes, and that the said Morgan never had any lien or title of any kind in and to said land, wherefore this defendant says that said notes were obtained from this defendant through fraud, threats and deceit, and without any consideration whatever - And the said defendant avers that that said notes were assigned and indorsed to the said plaintiff after they became due and payable - All of which the said defendant is ready to verify - Wherefore he prays judgment &c

And for a further plea in this behalf, by leave of Court first had and obtained, as to the first & second counts in said plaintiffs declaration says actio non, because he says that the notes

declared upon in said plaintiffs first & second count were given for a pretended right or interest which the payee in said notes to-wit: Harvey Morgan claimed to have in and to the South West Quarter of Section 26. in township 41. North and Range one (1) East of the 3rd P.M. that said premises were claimed and occupied by one Emory Hayes who held the same by a regular chain of title from the United States, the same having been purchased from the United States with a land Warrant located thereon and long after said Warrant was discovered to be a forgery and said premises were by the United States put up and sold at Public Auction, and one David B. Stiles became the purchaser of the same at said sale, but with funds furnished said Stiles by said defendant and purchased the same for the use and benefit of said defendant, and while said Stiles held the title to said land in trust for said defendant the said Harvey Morgan falsely and fraudulently represented to the said Stiles that he had a lien upon said premises which was a good and valid incumbrance upon said premises, and that he threatened to enforce by legal proceedings, and this defendant being deceived by the representations of the said Morgan & being the equitable owner of said land and desiring the same to be discharged of any and all incumbrances, agreed with the said Morgan to execute the said notes declared upon in the said first & second of said plaintiffs declaration & the said Morgan agreed in consideration thereof to exhibit to this defendant the lien which he had on said premises, and discharge the same - And the said defendant did execute the said notes in pursuance of said agreement, but avers and charges that the said Morgan had no lien of any nature or kind on said premises, but made such representations only with the intent to cheat and defraud this defendant in the premises -

And the said defendant avers that the said notes were given without any consideration whatever, and that said notes were endorsed and assigned to the said plaintiff after the maturity thereof. All of which the said defendant is ready to verify - wherefore he prays judgment &c

X

H. A. Clark Atty for deft -

And for a further and amended plea by leave of Court first had and obtained, says actio non because he says, that the notes declared upon in the first and second Count, of the plaintiffs declaration was given for a pretended claim, which the payee in said notes pretended to have to the South West Quarter of Section 26, Township (41) forty one North & Range One (1) East of 3. P. M. in the County of Ogle & State of Illinois, that said Harvey Morgan the payee in said notes, falsely and fraudulently represented, that he had a good and subsisting lien on said premises to the amount of said notes to wit: the sum of three hundred dollars, which duly appeared of record in the Recorder's office of Ogle County, Illinois, that said false and fraudulent representations were made, at a time and place when this defendant could not refer to said record, and confiding in said representations and being desirous of discharging all valid and subsisting liens & incumbrances on said premises, made the notes aforesaid, and this defendant further avers and charges that each and every, the representations so made by said Morgan were false and untrue, and that in truth and in fact, that said Morgan had no lien or incumbrances whatever, either of record or otherwise, wherefore this defendant says that the consideration of said notes has wholly failed and that said notes were endorsed and transferred to the plaintiffs after maturity all of which the defendant is ready - wherefore he prays judgment -

H. A. Clark for deft -

Endorsed Filed Nov 19, 1861, F. H. Petrie Clerk By B. F. Sheets Def

X Entered Filed Nov 18, 1861
F. H. Petrie clk
By B. F. Sheets Def

And afterwards to wit: on Tuesday November 19th 1861. the same being as yet of the said November Term 1861. of said Court. the following proceedings were had & entered of record to wit:—

291 Elias B. Stiles } Plaintiff

vs
Nevam Hayes } This day comes the said plaintiff
by Goodwin his Attorney, and the defendant
comes by Miss his Attorney, and now the demurrer
of the plaintiff to defendants (additional) pleas comes on to
be heard, and the Court being fully advised in the
premises, after argument of Counsel, the said demurrer is sustained
by the Court, and now on motion of the defendant, leave is given
him to amend his said plea herein.

And afterwards to wit: on said 19th day of November 1861, a
demurrer was filed in said Court in the words & figures following
to wit:

Demurrer

State of Illinois } Ogle County Circuit Court—
Ogle County } Of the November Term A.D. 1861—

Elias B. Stiles }
vs } And said plff by Heaton his atty comes & as
Nevam Hayes } to the 1st & 2^d additional pleas of said deftd
filed by leave of the Court says that said
pleas & each of them are not sufficient in law to bar the
said plff in his aforesaid action & this he is ready to verify
wherefore he prays judgment &c

Heaton for plff

Endorsed— Filed Nov 19. 1861— F. H. Petrie Clerk

By B. F. Sheets Deputy

Court. the following proceedings were had and entered of record to wit

196.

Elias B. Stiles } Apurhait -

as }
Hiram Hayes }
This day come again the said parties
by their Attornies as heretofore, and on motion of
the said plaintiff leave is given him to reply
double herein - And now by agreement of parties, the intervention of a
jury herein is waived, and this cause submitted to the Court, for trial.
And the Court having heard the argument of Counsel, and the evidence
offered herein, and examined the proofs, finds the issues for the plain-
tiff, and assesses his damages to (\$159⁶²) One hundred fifty nine
and ⁶²/₁₀₀ dollars; It is therefore considered that the plaintiff have
and recover of the defendant the said sum of One hundred fifty
nine and ⁶²/₁₀₀ dollars his damages assessed as aforesaid, together
with his costs and charges in this behalf expended, and that he
have execution therefor - And thereupon comes the said defendant and
moves his motion in arrest of judgment, and for a new trial herein
which motion is by the Court overruled, and the judgment reaffirmed - And now the said
defendant prays an appeal of this cause to the Supreme Court of
this state, and the Court having considered said prayer, the appeal
is allowed upon the said defendants filing Bond with Emery Hayes
or Richard Hayes as security in the sum of Three hundred dollars
(\$300.) within thirty days from this date -

And afterwards to wit: on the 18th day of December A.D.
1861. a Bond was filed in said Court. in the words of figures
following to wit: -

Know all Men by these presents, That we Hiram Hayes
as principal and Emery C. Hayes as security both of the

bound unto Elias B. Stiles in the penal sum of Three hundred
dollars lawful money of the United States, for the payment of
which well and truly to be made we bind ourselves, our heirs
executors, administrators and assigns jointly, severally and firmly
by these presents - Witness our hands and seals this 16th day
of December A.D. 1861 - The condition of the above
obligation is such that whereas the said Elias B. Stiles, did
on the 20th day of November A.D. 1861, it being one of the
days of the November Term of said year of the Ogle Circuit
Court held in and for the County of Ogle and State of Illinois
recover in said Court a judgment against the above bounden Hiram
Hayes, for the sum of One hundred and fifty nine dollars and
sixty two cents & costs of suit, in a certain suit of trespass on the
case or promises, ~~wherein~~ ^{in which} said judgment of said Circuit Court
by the said defendant ~~has~~ ^{has} ~~been~~ ^{been} ~~made~~ ^{made} ~~an~~ ^{an} ~~appeal~~ ^{appeal} to the
Supreme Court of the State of Illinois - Now if the said
above bounden Hiram Hayes, shall prosecute his appeal with
effect, and without delay and well and truly pay whatever
judgment costs, interest and damages as may be awarded
against him in case the said judgment shall be affirmed,
then this obligation to be void, otherwise to remain in full
force and effect -

Hiram Hayes (Seal)

Emery Hayes (Seal)

Endorsed - Filed December 18th A.D. 1861 - F. H. Petrie Clerk

By B. F. Sheets Deputy

State of Illinois

Ogle County ss J. Frederick G. Petrie Clerk of the Circuit
Court, in and for said County, do hereby certify
that the foregoing is a true & correct copy and transcript of
the Record & files in said cause wherein Elias B. Stiles

is plaintiff and Heriam Hayes is defendant. as the same
remains and appears by the files & Records of my said
office ~

Witness F. G. Petrie, Clerk & the seal of said
Court, at Oregon this 22nd day of April A.D.
1863 —

F. G. Petrie Clerk
By M. E. Stinson Del



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Heriam Hayes
vs
Wm. B. Stiles

14473

W. B. Stiles

Heriam Hayes vs. 1863

J. G. and
etc

1863

M