

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM THEREOF, A. D. 1863.

GEORGE R. ARCHER *et al.* }
 vs. }
WILLIAM CLAFLIN *et al.* }

BRIEF FOR PLAINTIFFS IN ERROR.

1. The affidavits, both original and amended, were clearly insufficient. They were founded upon *information and belief*, which will not do.

Dyer *vs.* Flint, 21 Ill. 80.

2. The final judgment was rendered by default. If defendants were out of Court then, they may now take advantage of any error in the proceedings, as were done in the case of Dyer *vs.* Flint, 21 Ill. 80.

3. There was a motion filed below to dismiss for want of sufficient affidavit, which was overruled and plaintiff had leave to amend. He did amend, but his amended affidavit was no better than the original. The record therefore shows that the Court erred in rendering judgment without a sufficient affidavit. It had no jurisdiction.

4. The rule on defendants to plead was made on the 29th November, and the next day the plea was filed. It was also agreed by counsel that defendant might plead on that day. But it is urged the plea was in *abatement*. To this we answer, there was no stipulation as to the kind of plea which should be filed, and there was no rule of Court requiring the plea to be filed sooner.

In fact, the plaintiff on the next day (Dec. 1st) filed his amended affidavit. To this new affidavit defendant had a right to plead in abate-

meet, because as to that he was guilty of no laches. The plea stood on the record as an answer to that portion of the affidavit which asserted that Archer was about to remove his property to the injury of his creditors. The plea was rightfully on the files, it was in apt time, and the Court had no right to set it aside. Nor could the Court render judgment by default, without first making order for defendants to plead anew. A rule should have been entered for a new plea, and if not forthcoming, then perhaps a judgment might have been rendered against them. Ten days ought to have been allowed defendants after the filing of the new affidavit, to plead thereto.

5. There was a fatal variance between the note and declaration. The words "without defalcation or discount" are omitted, and the note is described in the declaration as being due on the 17th, whereas it was due on the 16th.

But even if plea was not filed in time, plaintiffs below waived their right to object by taking other steps in the cause before making the motion to strike the plea from the files.

1 Scam. 250.

2 Scam. 463.

5 Gilm. 461.

WEAD & POWELL,
Attorneys for Plaintiffs.

86

Archib

as

Chaplin

Brinf-

Filed Apr. 28-1863

Leland

Clark

STATE OF ILLINOIS, }
SUPREME COURT, } ss.

The People of the State of Illinois,

To the Clerk of the Circuit Court for the County of Henderson Greeting:

Because, In the record and proceedings, as also in the rendition of the judgments of a plea which was in the Circuit Courts of Henderson County, before the Judge thereof, between William Claflin, John A. Allen, Isaac Emerson and Nathan D. Noyes parties under the name & style of Claflin Allen & Co.

plaintiffs and George R. Archer and Marcellus Archer parties in trade under the name & style of G. Archer & Brother.

defendants, it is said manifest error hath intervened, to the injury of the aforesaid Defendants.

_____ as we are informed by their complaints _____ and we being willing that error should be corrected, if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plaints aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the first Tuesday after the third Monday in April next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 1st day of September in the Year of Our Lord One Thousand Eight Hundred and Sixty two

L. Lelan

Clerk of the Supreme Court.
J. B. Rice Deputy

76
SUPREME COURT
STATE OF ILLINOIS

To the Clerk of the

County for the County

of the County of the State of Illinois

Richer
No. *vs.*
Clapham

WRIT OF ERROR.

*This writ of Error is
Made a supersedeas
and such to be obeyed
by all concerned*

L. Leland Clerk
Sept 17 1862
FILED *Sept 17 1862* A. D. 1862

L. Leland
Gleek.



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2 Scam. 463.
5 Gilm. 461.

WEAD & POWELL,
Attorneys for Plaintiffs.

26
Archer
vs
Claplin
Brief-

Filed Apr. 28. 1863
L. Ireland
Clark

Know all Men by these Presents, That George R. Archer
& Marcellus Archer

as principals and

unto William Claflin, John A. Allen, Isaac Emerson
and Nathan D. Noyes

in the penal sum of eight hundred dollars
good and lawful money of the United States, for the payment of which, well and truly
to be made, ~~the said~~ we

bind ourselves our heirs, executors and administrators,
jointly, severally and firmly by these Presents.

Witness, our hands & seals

this twentieth day of June A. D. 1862

The Condition of the above Obligation is such, That, whereas the above named
William Claflin John A. Allen, Isaac Emerson
& Nathan D. Noyes

did, at the November Term of the Circuit Court,
held in and for the County of Henderson in the
State of Illinois, A. D. 1857 recover a judgment against the above bounden George
R. Archer and Marcellus Archer
in a certain action of Assumpsit

for the sum of four hundred
and eighty dollars and seventy two cents Damage
and Costs of suit to reverse which said judgment, the
said George R. Archer & Marcellus Archer

have sued out a Writ of Error from the Supreme Court, within and for the Third
Grand Division of said State, in which Writ of Error is made a Supersedeas. Now if the
said George R. Archer and Marcellus Archer

shall duly prosecute said Writ of Error, and pay, or cause to be paid, the amount of said
judgment, and all judgments, costs, interest and damages which the said Supreme Court
shall adjudge against them in case said judgment shall be
affirmed, and abide the order and judgment of said Su-
preme Court in this behalf, then this obligation is to be void, otherwise to remain in full
force and effect.

George R. Archer [SEAL]
Marcellus Archer [SEAL]
N. D. Noyes [SEAL]
W. C. Hartford [SEAL]
Edmund Quincy

State of Illinois }
 County of Henderson }
 I Hugh L. Thomson after
 first being duly sworn upon oath state
 that I am Clerk of the Circuit Court
 of said County that I am acquainted
 with the either named John L. Ashok
 W. S. Hartford and Edmund
 Genung and their pecuniary
 circumstances and that they
 are worth over and above their
 indebtedness of them and
 heirs

Hugh L. Thomson

Subscribed and sworn to before the undersigned Clerk of the
 County Court of said Henderson County, the Seal thereof being hereunto
 affixed at my office in Hannibal, this 13th day of July. A.D. 1862

William Hopkins Clerk

By R. S. McArthur Deputy

No.

SUPREME COURT,

THIRD GRAND DIVISION.

vs.

SUPERSEDEAS BOND.

Filed September 1st 1862

L. Leland Clerk.

I Hugh L Thomson Clerk of the Circuit
Court in and for the County of Hender-
son in the State of Illinois. do certify
that I am acquainted with John C Archer
Winfield S Hartford and Edmund Genney
of Said County and that they are worth
and Responsible for more than Six Thousand
Dollars.

Witness my Hand and Official
Seal this 13th day of June D 1862

Hugh L Thomson
Clerk

