

12375

No. _____

Supreme Court of Illinois

Mayer, Imp.

vs.

Murphy.

71641  7

Be it remembered that heretofore, to wit, on the seventeenth day of January in the year of our Lord one thousand eight hundred and fifty five there was filed in the office of the clerk of the circuit court in and for the county of Peoria in the State of Illinois a precept, which is in the words and figures following to wit:

precept - James Murphy
vs
Elias Mayer
William Leckie } In the Circuit Court, Peoria County,
Illinois, March Term, 1855
Assumpsit. Damages \$200.
Issue Summons
Bryan for Plff.

V. G. Esq.

Whereupon the clerk of said Court issued a summons directed to the sheriff of Peoria County to serve, which was in the words and figures following, to wit:

summons - The People of the State of Illinois, To the Sheriff of Peoria County, Greeting;
We command you to summon Elias Mayer and William Leckie, if they may be found in your County to appear before our Circuit Court on the first day of the next term thereof to be held at Peoria, within and for said County of Peoria, on the first Monday of March next, there and there, in our said Court, to answer unto James Murphy of a plea of trespass on the case upon promises, to his damages two hundred dollars as he says, and make return of this writ, with an endorsement of the time and manner of serving the same, on or before the first day of the term of the said Court to be held as aforesaid. Witness, Jacob Gale, Clerk of our said Court, and the seal thereof, at Peoria this 17th day of January in the year of our Lord one thousand eight hundred and fifty five.
Jacob Gale, Clerk

Which summons was returned into the office of the clerk of

said Court, with his return thereto, thereon endorsed in the words and figures following, to wit,

Sheriff's return - Served on the within named Elias Meyer and William Leckie by reading to them this writ January 17th 1855 D. D. Jones Sheriff.

And afterwards, to wit, on the twenty first day of February A.D. 1855 there was filed in said clerk's office the declaration of the plaintiff in said suit, with a copy of the instrument & account declared on, in the words and figures following, to wit,

Declaration - State of Illinois

Peoria County } Circuit Court, March Term 1855

James Murphy complains of Elias Meyer and William Leckie late partners in business under the firm of Meyer & Leckie of a plea of trespass on the case, upon promises. For that whereas the defendants heretofore to wit on the first day of _____ A.D. 1854 at New York to wit at the County aforesaid by the name of their said firm made and delivered to the plaintiff who was then an engraver and Printer their written order or request in substance as follows to wit;

Ordered from James Murphy Engraver & Printer N.Y. the following goods	
500 Velvet Show cards size & Style as sketch now shown to be printed on assorted shades of velvet	\$ 125.00
500 Velvet Border cards filled in illuminated	100.00
Die	5.00
5000 envelopes	20.00
Hand Press	0.00
1000 Letter Press cards	3.00
Two hundred and fifty three dollars	\$ 253.00
Terms Cash on Delivery	

Meyer & Leckie
for Meyer.

and then and there in consideration that the plaintiff would manufacture, engrave, print and deliver to them the goods and chattels respectively in said written order or request mentioned at and for a certain price to wit for the sums and prices respectively in said order or

request mentioned at and for a certain price to wit for the sums and prices in writing mentioned, the defendants by the name of their said firm promised to accept said goods and chattels respectively and pay to the plaintiff the said sums or prices respectively. therefor on the delivery thereof. And the plaintiff avers that, confiding in said promise he did afterwards to wit on the day and year aforesaid, at the County aforesaid, manufacture print and engrave and deliver to the defendants the said goods and chattels respectively at and for the said prices for the sum in said order or request in writing mentioned respectively of which the defendants then and there had notice, and then and there in consideration of the premises promised the plaintiff to pay the said sums of money in said order in writing mentioned on request.

And also for that whereas heretofore to wit on the day and year and at the County aforesaid in consideration that the plaintiff at the Special request or order in writing made by the defendants in the names of their said firm (of like substance and form as in the first count above set forth) would engrave print and manufacture certain chattels to wit the goods and chattels respectively in said order in writing described at and for the prices respectively in said order mentioned and would deliver the same respectively to the defendants when so completed the defendants then and there promised to accept said chattels respectively and pay the plaintiff for the same the prices and prices respectively in said order in writing mentioned as aforesaid, and the plaintiff says that afterwards to wit on the day and year and at the County aforesaid he did engrave print and manufacture the said chattels respectively for said prices respectively and was ready and willing and then and there offered to deliver the same respectively to the defendants and requested them to accept the same respectively of all which the defendants then and there had notice. Yet the defendants did not nor would accept the same respectively nor pay the said prices and prices thereof or any part thereof respectively but refused and still refuses so to do.

And for that whereas also the defendants afterwards to wit on the first day of January A.D. 1855, at the County aforesaid were indebted to the plaintiff in the sum of five hundred dollars for goods and chattels sold and delivered by the plaintiff to the defendants

before that time at their request.

And in five hundred dollars for goods and chattels then and there bargained and sold by the plaintiff to the defendants at their request.

And in five hundred dollars for work done and diligences by the plaintiff then and there done and bestowed and materials for the same provided by the plaintiff for the defendants at their request.

And in five hundred dollars for money then and there found due from the defendants to the plaintiff upon an account stated between them.

And being so indebted, the defendants afterwards to wit on the day and year and at the county last aforesaid in consideration of the promises promised the plaintiff to pay him the said several moneys last above mentioned on request.

Yet the defendants have disregarded their promises and have not paid any part of either of said sums of money above mentioned, but have refused and still refuse so to do To the damage of the plaintiff

Hundred dollars and thereupon they bring suit &c.

By your gr. Off.

Copy of instrument and a/c sued on

Copy of instrument B' Ordered from James Murphy, Engraver & Printer N. Y. the following
blank and on goods

500 Velvet Show Cards size & style as sketch now shown to be printed in assorted shades of velvet	\$ 125.00
500 Velvet Border Cards filled in illuminated	100.00
Die	5.00
5000 envelopes	20.00
Hand Press	0.00
1000 Letter Press Cards	3.00
Two hundred and fifty three dollars	\$ 252.00
Terms cash on delivery	

Mayer & Leckie
for Mayer

Mayer & Lick

To James Murphy

6/27/20

For goods sold & delivered

\$ 500.00

bargained & sold

500. 00

work & materials

500.00

" monom. methyl accl. stated

550.00

And afterwards, to wit, on the twenty second day of March A.D. 1855 the defendants filed their plea to this action in the words and figures following, to wit,

Julia --

James Murphy

Ms

Elias Mayer

William Leckie



✓

Larim's Court Peoria County

March Verm A.D. 1855-6

And the said defendants by Manning,
Merriman & Powell their attorneys come and defend the wrong
and injury when &c. say that they did not undertake or promise
in manner and form as the said plaintiff hath above thereof
complained against them and of this they put themselves upon
the country &c.

Manning, Merriman & Powell
attys for Defts.

similarity = And Puff does the like

Bryan for Puff

Proceedings at a term of the Circuit Court begun and held at the Court house in the City of Peoria in and for the County of Peoria in the State of Illinois on the first Monday of March in the year of our Lord one thousand eight hundred and fifty five, it being the fifth day of said month - Present the Honorable Osborn Peters Judge of the sixteenth Judicial Circuit in the State of Illinois, to wit -

Thursday, March 22nd A.D. 1855-

James Murphy

vs

assumpsit

Elias Mayer
William Leekie

This day came the plaintiff by William H. Bryan his attorney and the defendants by Manning, Messiman & Powell their attorneys and waived a trial by jury and agreed that all matters both of law and fact arising in this cause shall be tried by the court. The court having heard the evidence and being fully advised do find that the defendants did assume and promise in manner and form as the plaintiff has in his declaration alleged against them and that the plaintiff has sustained damage by reason of the premises to the sum of one hundred and twenty eight dollars and fifty cents; whereupon the defendants entered a motion for a new trial, which motion was overruled by the court. Therefore it is considered that the said James Murphy have and recover of the said Elias Mayer and William Leekie the said sum of One hundred and twenty eight dollars and fifty cents his damages aforesaid by the court assessed and also his costs and charges by him about his suit in this behalf expended and that he have execution therefor.

The said defendant Elias Mayer prayed an appeal from this judgment to the Supreme Court of this State, which is allowed him on his filing in the office of the clerk of this court in sixty days an appeal bond payable to the plaintiff in the penalty of three hundred dollars with Napoleon B. Brandamian and Jacob Liskenstein or with George C. Bestor as surety and conditioned according to law. It is ordered by the court that the bill of exceptions in this cause may be settled in vacation.

And afterwards on the seventeenth day of September A.D. 1855 there was filed in the office of the clerk of said court a Bill of Exceptions in said cause which is in the words and figures following to wit;

James Murphy

vs

Elias Mayer

William Leckie

Promt Grant Court, March Term 1855-

Be it remembered that on this 22nd day of March A.D. 1855- this cause came on to be heard upon the issues joined, before the Court, a jury being waived by the parties. The plaintiff to sustain the issues on his part offered in evidence an order purporting to have been made by defendants as follows.

New York Sep. 30/54

Ordered from James Murphy, Engraver and Printer N. Y. the following goods -

500 Velvet Show Cards, size and style as sketch now shown to be printed in assorted shades of velvet -	125.00
500 Velvet Border Cards filled in illuminated -	100.00
Die	5.00
5000 Envelopes	20.00
Hand Press	0-
1000 Letter Press Cards	3.00
(Two hundred and fifty three dollars)	\$253.00
Term's cash on delivery -	

Mayer & Leckie
pr Mayer.

Send by Parsons Dispatch. Bill per mail -

"Will remit draft on New York -"

to the introduction and reading of which paper without proof of its execution the defendants objected, which objection was by the Court overruled and the order was read in evidence.

Plaintiff then introduced William Murphy, who testified as follows. The plaintiff is a printer & engraver. I reside in New York and was there when this writing was made. The work mentioned was done and furnished as in the bill - 500 of velvet borders \$100. were executed & delivered - The die was made \$5.00 - 5000 envelopes \$20. delivered at same time. 1000 letter press cards \$3. also made & delivered.

500 velvet show cards not finished, but part of them made. Plff. laid out much expense perhaps \$60 on the job of the cards. The engraving was done: this order is yet unfinished, not yet filled - the rest of the order was filled and the goods are now in this city (Piora) and have been for some months past. I saw them yesterday: the goods to the amount of \$128.50 were forwarded to Defts. Before the order was finished we learned the firm (of Defts) was dissolved. I am the agent and superintendent of Plffs business.

Cross-examination - The order was given to me by Mayer. He said he was doing business for Mayer & Leckie - I do not know as he was a member of the firm; he was a young man, twenty eight or thirty years old. He made the order of Mayer & Leckie. I have learned since that his name was Adolphus Mayer. I only saw him. He signed the name of the firm and I considered that sufficient. The goods named in the bill, amounting to \$128.50 I shipped to Defts, they were sent by the express him & were tendered to Defts. - I drew for the amount, but the draft was not accepted, & the remaining portion of the order was not completed: I drew the draft as directed and according to the contract; forwarded by Kasson's dispatch. The value of the articles is set forth in the bills, and are the same prices as agreed upon with Mayer. I am the general superintendent of Plffs business. - I never saw either of the defts. Mayer exhibited no authority from them to act for them. I understood him to say he had authority, or else he should not have ordered (the goods) - I did not see him write the order, nor sign it. It was done by the book-keeper i.e. writing the order. I saw Mayer write & think the signature is A. Mayer's writing. (Some cards were here shown to the witness) these are specimen cards. They were forwarded by Kasson's dispatch as directed: the porter took them to the office, I assisted in boxing up the goods, & the porter then took them to the Express Office. I saw the goods yesterday at Robinson's and Dunkarn's in this city. They were sent to Mayer & Leckie. The agent (of Plff) had order on Mayer & Leckie \$40. which was for less than the amount due. The package was marked "Kasson's dispatch".

Plaintiff then introduced Columbus Dunham of firm of Robinson & Dunham, who testified as follows - We received a case of merchandize on 23^d February last by Rail Road, received at the depot on the 17th. They were for Mayer & Leckie. We put them in store and have them there still. On receiving I informed a young man at the place where Mayer & Leckie did business. We usually notify those for whom we receive goods who live out of town, by mail; and also those in town who are unknown to us. Never saw Mayer & Leckie there (out our place of business) - Murphy the witness opened the goods yesterday by my permission. Not our usual practice to allow persons to open boxes consigned to us. The defts sign had been changed before we received the goods.

Plaintiff recalled William Murphy who testified as follows, The goods were sent at the date of the bill - I received a salary for superintending plaintiffs business - The Bill is dated October 21, 1854 - A letter was received purporting to be from defendants countermanning the order to finish the work.

This was all the evidence offered by plaintiff in said cause.

Defendant offered A. L. Merriman, who testified as follows - I know the firm of Mayer & Leckie. They dissolved on the 30th of Octr or 1st of Novr last. Elias Mayer one of Defts. resided at Cincinnati. He had no actual control of the business here. Leckie managed it. Leckie was about town here most of the time last year; can not say whether he was in New York last fall. I did not miss him long enough to go to New York and back again - I was about last October about three weeks. I do not know whether Elias Mayer was in New York. Adolph Mayer was. He was the clerk, & doing business for Mayer & Leckie. He was in the store of the firm, but was not here at the time of the dissolution; I think he returned in the fall.

This was all the evidence in the case - The Court after consideration rendered judgment for the plaintiff in

the sum of One Hundred and twenty eight dollars and fifty cents against said defendants. to the rendering which judgment defendants then and there excepted and prayed this his Bill of exceptions -

Onslow Peters (Seal)

State of Illinois
Peoria County J. Jacob Gale Clerk of the Circuit Court in and for the County of Peoria in the State of Illinois do hereby certify, that the foregoing is a full and correct transcript from the record of the proceedings in said Court in a certain cause therein of James Murphy Plaintiff against Elias Mayer and William Leekie ^{defendants} as the same now remain of record and on file in my office -

In witness whereof I hereto set my hand and affix the seal of said Circuit Court at my office in Peoria this eighteenth day of September A.D. 1855 -
Jacob Gale, Clerk.

Clerk's fees: for transcripts \$3.75 - Received of atty for diff
Jacob Gale.

The plaintiff ^{in error} assigns the following errors in the within Record -

- 1 The Court Erred in admitting the order specified therein in evidence without proof of its execution -
- 2 The Court Erred in rendering judgment upon the evidence against plaintiffs in Error -
- 3 The Evidence does not show that the order was filled by defendant in Error
- 4 The Evidence does not show that the plffs in Error gave any order for the goods charged, or that they received the same -
- 5 The judgment is contrary to Law
- 6 The verdict & judgment is contrary to the Evidence
- 7 The judgment exceeds the damages claimed in the declaration

Manning & Merriam
Attorneys for plaintiffs in Error

I do hereby supersede as true on the above record
on the plea in error being a bond in the usual form
in the penal sum of three hundred dollars with
Napoleon Bonaparte as his security.

J. D. Cairns

48
Elias Mayes
James Murphy
Record & Co

Feb. 28/28, 1888
J. D. Cairns

Alvin S. Cole } Sup Court
The City of Peoria } Jan. 7. 1856

It is agreed that this case
be continued to the next term

Wm. J. Ryan
for Plff
Manning & Mearns
for Def & Appell

Elias Mayer } Sup Court of Ills
James Murphy } Jan. Term 1856

It is agreed that this
case be dismissed with ~~prejudice~~
here & plaintiff be allowed
his Bond & filed herein

Manning & Mearns
Attys for Plaintiff
Wm. J. Ryan
for Def in Error

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Mayer & Murphy
Stipulation

Filed June 27, 1886
L. Selove
Clerk

STATE OF ILLINOIS,

Supreme Court,

ss.

The People of the State of Illinois,

To the Clerk of the Circuit Court for the county of *Peria* - Greeting:

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which was in the circuit court of *Peria* - county, before the Judge thereof, between

James Murphy

plaintiff, and

Elias Clayer & William Leckie

defendants it is said manifest error hath intervened, to the injury of the aforesaid *Clayer*

as we are informed by *his* complaint, 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 plaint, 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 *Monday in June* - 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.

~~SAMUEL H. TREAT~~

Chief Justice

of our said Court, and the Seal thereof, at Ottawa, this *28th* day of *September*
in the Year of Our Lord One Thousand Eight Hundred and Fifty-five.

L. Ireland

Clerk of the Supreme Court.

Elias Clayton mpt. a.

James Murphy

Wit of Enar

This wit of Enar is
made a supersedeas
as such should be obeyed
by all concerned.

X. Leland Clk.

Filed Sept. 28. 1855,
X. Leland Clk.

Reverie Sept 18/35-

Leland

Sir

Enclosed find with
of error in Case of Elias Mayer ^{imprudent}
or with William Lister & James Murphy
for filing - also \$5. per for filing do -
also Bond for supersedeas, which is
all O.K. as we have the form of atty.
in our possession & Brandamon is
perfectly good -

Please submit the Record & Judge
Caton & inform him that Mayer's
real estate is advertised for sale
upon this judgment on Saturday
next (22nd inst) & that we wish
the writ to reach here before then

I leave it to this with your
prompt attention &
oblye Yrs or

Manning & Minner

Know all men by these presents that
we Elias Mager as principal and
Napoleon B. Brondamour
as securities are held and firmly bound
unto James Murphy in the penal
sum of three Hundred Dollars for
the payment of which well and
truly to be made we bind ourselves
firmly jointly & severally by these
presents. Witness our hands and
seals this 18th day of September 1855.

The Condition of the foregoing
obligation is such that whereas
the above named James Murphy
did at the March Term 1855 of the
Reona Circuit Court recover
judgment against the above
bondmen Elias Mager & William
Licker in the sum of one hundred
twenty eight Dollars & fifty Cents
besides Costs of suit from which
judgment said Mager has prosecuted
a writ of error to the Supreme Court
of the State of Illinois - and has
upon which writ of error a writ of
superseadeas is about to issue.

Now if said Mager shall pay the
said judgment interest. Costs and
damages in case the judgment be
affirmed then this Bond to be void
else to be & remain in full force & effect.

Elias Mager
N B Brondamour Attorney at Law

N B Brondamour

48
Maya & Murphy
Bond.

Fili Sept. 28, 1885.
L. Island Ohi.

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Elias Mayer implor
vs
James Murphy.
1856

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