

13153

No. _____

Supreme Court of Illinois

Van Duzer

vs.

Armstrong

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 68.
1860

Van Dusen
vs
Pomeroy.

Van Dusen
vs
Armstrong

1312

Pres

State of Illinois } Supreme Court.
Third Grand Division
April Term 1860.

James P. Van Dusen
impleaded with
Frederick N. Pomeroy
Plaintiff in error. } Error to Grudge
vs.
John G. Armstrong
defendant in error. }

And now comes the
said John G. Armstrong
defendant in error by
J W Newport his Attorney,
and says that there is no
error nor manner of
error in the said record
or proceedings.

Wherefore he, the said
defendant prays judgment
&c.

J W Newport
Atty for def in error.

No. 68.

Supreme Court

James P. Van Dusen
imprisoned &c.

vs.
John G. Armstrong
~~et al.~~

Order in Error.

Filed Apr 19, 1860

L. L. Loomis

Clk

New York.

Know all men by these presents that
we James P. Vandusen as Principal
and Robert Longworth as security
are held and firmly bound unto John
G. Armstrong in the penal sum of
Three Hundred Dollars to be paid to the
said John G. Armstrong which payment
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 7th
day of September 1859

Whereas the said John G. Armstrong
did at the June Term of the County
Court of the County of Grundy State
of Illinois recover a judgment on
said Court against the above bounden
James P. Vandusen for the sum
of One Hundred and fifty one ¹⁰/₁₀₀ — Dollars
and costs of said and whereas the
said Vandusen is about to sue out
a Writ of error on said Judgment
from the Supreme Court of the State of Il-
linois —

Now therefore the condition of the
above obligation is such that if the
said Judgment shall be affirmed by
the said Supreme Court and the said

Vandusen shall prosecute his said
Mist of Error with effect and pay the
Judgment so affirmed and all Costs
Interest and Damages then the above obliga-
tion to be void otherwise to remain in full
force and effect.

Jams P Vandusen Seal
~~Edw. J. Longworth~~ Seal
Edw. J. Longworth Seal

John G. Armstrong
F. H. Pomeroy et al

Super. Bond.

Filed Sept. 16. 1859
L. Leland
Clerk

State of Illinois }
County of Grundy } Robert Longworth being
duly sworn on oath saith (that he is
about 32 years of age — that he is at
present Treasurer of Grundy County —
that he is the owner of Real Estate worth
at least Fifteen Thousand Dollars —
(that he is worth clear of all indebted-
ness at least Fifteen Thousand
Dollars —

Subscribed & sworn to } R. Longworth
before me this 18th
day of September 1839
Edward Kempf
Notary Public

John G. Armstrong
vs 18
F. H. Power et al

Affidavit of
longworth security
in super bond

Filed Sept. 16, 1857
L. Letland
clerk

STATE OF ILLINOIS, } ss. The People of the State of Illinois,
SUPREME COURT,

To the Sheriff of the County of Grundy Greeting :

Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the County Court of Grundy County, before the Judge thereof, between John G. Armstrong

plaintiff, and Frederick W. Pomeroy & James P. Van Dusen

defendants, it is said that manifest error hath intervened, to the injury of the said

James P. Van Dusen

as we are informed by his complaint, the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; Therefore, We Command You, That by good and lawful men of your County, you give notice to the said

John G. Armstrong

that he be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, to hear the records and proceedings aforesaid, and the errors assigned, if he shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said

John G. Armstrong

notice, together with this writ.

Witness, The Hon. JOHN D. CATON, Chief Justice
of our said Court, and the Seal thereof, at Ottawa,
this sixteenth day of September in the
Year of Our Lord One Thousand Eight Hundred
and Fifty-nine

L. Leland

Clerk of the Supreme Court.

By J. B. Rice Deputy

I do hereby accept service of the within
Writ this 19th day of September A 1860 and
waive any service by an officer
John F. Armstrong.

James S. Vandusen
impeached with
Frederick W. Denney
by
John F. Armstrong
Sein facies

Filed April 2, 1860
J. L. Lewis
Clerk

State of Illinois, Supreme Court

Third Grand Division

James P. Van Dusen, April Term 1860
impleaded with

H. H. Pomereoy } Error to Quare

vs.
John G. Armstrong }

It is hereby stipulated
and agreed between the parties
to this action that this cause is
to be submitted to the Court on
the briefs ^{arguments} & authorities filed
in the cause, when reached
on the regular call.

Wm. D. Sampson

Wm. D. Sampson
Att'y for Opp in Error

Supreme Court

James P. Van Dusen
 impladed &c.

vs.

John G. Armstrong

Stipulation
 Submitting Cause
 to the Court.

Filed Apr. 30. 1860
 S. Deland
 Clk.

STATE OF ILLINOIS, }
SUPREME COURT,

ss. The People of the State of Illinois,

To the Clerk of the County

Court for the County of Grundy

Greeting:

Because, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the County Court of Grundy County, before the Judge thereof, between John J. Armstrong

plaintiff, and Frederick R. U. Pomeroy & James P. Van Dusen

defendant, it is said manifest error hath intervened, to the injury of the aforesaid James P. Van Dusen

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 plea 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 sixteenth day of September in the Year of Our Lord one thousand eight hundred and fifty-nine
L. Leland

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

James P. Van Dusen
impleaded with Frederic
W. Pomeroy 18

or
John G. Armstrong

Writ of Error

This writ of Error is made
a supersedeas and as
such is to be obeyed
by all concerned.

L. Leland
Clerk
by J. M. Rice Deputy

Filed Sept. 16. 1852.
L. Leland
Clerk

James P. Van Dusen
impleaded with J. H. Pomeroy

Supreme Court of Ill.
April Term 1860

²⁰
John C. Armstrong vs. Error Error to Sundry
Argument of Plaintiffs Counsel

We would not trouble the Court with any thing beyond the brief filed by us in this case were it not from the fact that the Court might be misled if their attention was not specially called to the Record in this case.

By looking at the Record, the Court will perceive that there has been an attempt by the Clerk to falsify this whole case, and present a different state of things from what exists in fact. The Plaintiff below is the nephew of the Clerk, hence the reason why the Clerk attempted to falsify the Record.

The Pleas speak for themselves. The first is simply "non assumpsit" and the second "payment with the exception of 25¢" but the Clerk in giving an account of these Pleas on the Record and in his interpretation of them makes out another defence altogether. The Pleas form part of the Record and by them the Defendants rights are determined so far as the defence is concerned, and no interpretation put upon them by the Clerk can affect those rights. We apprehend that it is no part of the duty of the Clerk to interpret the pleadings in the case. His duty is simply to keep a journal of the proceedings of the Court.

again the Court will observe that there is an ad

tempt by the Clerk to pervert the Verdict in this Case. The verdict was simply for a certain amount; but the Court will see by looking over the Record that the Clerk has belied and falsified it in every particular - That there might be no misapprehension in reference to what the verdict was we had the Clerk attach to the Record (and which forms part of it) an exact Copy of the verdict rendered!

It is immaterial what statements the Clerk may make in the Record in reference to the facts in the Case if the actual facts of the Case are stated in the Record. The facts as they exist must take precedence of any interpretation put upon them by the Clerk. The course pursued by the Clerk in this Case is highly reprehensible, but it cannot injure the Plaintiff in error as the actual facts of the Case are made to appear in the Record - We could not very well in an "Abstract" present the features of the Case to which we here call the attention of the Court - The Abstract contains a complete and fair synopsis of the Case as it really exists. But we thought our duty to call the attention of the Court to the attempt of the Clerk to pervert the Record.

That a judgment cannot be taken by "default" by "confession" or by "nil dicit" when there is a Plea on file denying the whole cause of action is settled beyond all kind of controversy and the Plaintiffs below have taken a judgment by default for part of the claim when there was a Plea on file denying the whole cause

of action, the judgment for that cause alone must be reversed. The case of "Wells vs. Mason" 4th Decisions Page 84 decides the Law in reference to this branch of the case and we rely upon that case particularly for the reversal of this judgment.

Again the Court will observe by looking at the Record that the verdict was for a specific amount - now the Jury are supposed to have found (and which is the Law of the Case) the whole amount due upon the Note and if we add to the verdict the amount for which the Plaintiff below took judgment by confession or default the Plaintiff below would be getting a double allowance for his claim - First - "the amount found by the Jury" (being the whole amount due); and second - "the amount for which they took judgment by default." The Court by looking at the authorities referred to by us in our Brief will observe that the correct and only practice is to render a judgment for the amount found by the Jury.

If there are several counts in the Declaration and a "default" on some - and others plead to; or if there are several Defendants some of whom are defaulted - and others plead to issue, the Jury trying the case must assess the damages the Damages in the case of "default" as well as upon the "issue". This principle is so well settled and under

stood that it is not necessary to refer to
authorities in support of it - the
statement of the proposition is sufficient

Lucy M. F. Chubb

68 Van Dusen
Armstrong
Ag and Opp of
Knapp & Son

Filed Apr. 30. 1860
L. Deland
Clk.

State of Illinois
Gundy County

Plas pleadings motions orders
judgments and decrees had held made orders
taken and entered of record in and before
the Gundy County Court at the June Term
thereof begun and held at the Court House
in the City of Morris in said County and State
on Monday the 6th day of June A.D. one thousand
and Eight hundred and fifty nine and
of the Independence of the United States the
Eighty Ninth

Present John H. Gundy County Judge
Jonathan A. Miller Sheriff
J. H. Gundy County Clerk

Be it remembered that on the said Term of
Court the following and other proceedings were
had to wit.

In the matter of
John H. Armstrong.

vs.

J. W. Pomeroy

James P. Van Dusen

} Appraisit

Wherefore to wit on the 5th
day of May A.D. 1859 the said Plaintiff
by J. W. Newport his Attorney filed in the office
of the Clerk of said Court a precept in the

words and figures following to wit-

2 -
" State of Illinois } Grundy County Court
Grundy County } June Term A.D. 1859

John G. Armstrong Plaintiff

vs

Frederick W. Pomeroy &

James P. Vanduse Defendant

} Assumpsit

The Clerk of said Court
will issue a subpoena in due course, directed
to the Sheriff of Grundy County, Illinois, to return
in a plea of Assumpsit returned to the
June Term of said Court at 10 o'clock to the
damage of said Plaintiff of Ten Dollars
and costs of suit and attorney's fees.

To Perry W. Armstrong Esq. Clerk of said Court
Upon which () is the following endorsement

"Filed this 5th day of June 1859
P. W. Armstrong Clerk"

Whereupon the following summons was issued
"The People of the State of Illinois, To the Sheriff
of Grundy County... Greeting

We command you that you
summon Frederick W. Pomeroy and James
P. Vanduse if they shall be found in your
County personally, to be and appear in the
Grundy County Court, before the Judge thereof on

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the first day of the next term of said Court, to be held at the Court House in Morris on the first Monday in June next, at Ten O'clock in the forenoon, then and there to answer unto John G. Armstrong in a plea of Apsumpt to the Yelffs damage as he avers \$200⁰⁰. And have you then and there this writ and the manner in which you shall have executed the same.

In witness whereof I have signed the seal of said Court to be duly attested by P. A. Armstrong Clerk of said Court this 10th day of May 1859.

Which Sheriff I have duly served with an under writ and the return thereto and figures following to wit:

"Served the within writ according to the within named James C. Webb this 10th day of May 1859 J. W. Pomeroy not found

Service	50
Fees	Mileage 50
Return	10 \$1.10

"Filed June 2nd 1859 J. R. Webber Sheriff
P. A. Armstrong Clk" By J. S. Gibbs Deputy"

And heretofore to wit the 27th day of May 1859 the Plaintiff by his said attorney filed in the office of the Clerk of said Court his Declaration

4.

which Declaration is in the words and figures following To wit-

Grundy County Court of the June Term AD 1859.
State of Illinois }
Grundy County } ss.

John L. Armstrong Plaintiff in this
suit, by E. W. Newport his Attorney, complains of
Frederick W. Pannoy and P. W. Pannoy
Defendants who are of the County of Grundy
Appropriation of the said Defendants
heretofore, To wit on the 1st day of January
in the year of our Lord one thousand eight
hundred and fifty eight at
said County of Grundy in the State of Illinois
Provisory note being due the day
and year aforesaid, the said Defendants delivered
the same to Timothy McKenna in and by
which said note so delivered by the name,
style and description of F. W. Pannoy and P. W.
Pannoy promised to pay the said Timothy
McKenna or bearer by the first day of November
next thereafter To wit, by the first day of November
AD 1858 the sum of One Hundred and Fifty
dollars with use for value received
And the said Timothy McKenna to whom
or to whose order said note was payable, afterward
to wit, on the day and year aforesaid, at
Lisbon that is to say, at the County of Grundy,

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aforsaid, endorsed said note in writing, by which
said endorsement the said Timothy McKenna
there and there ordered and appointed the
said sum of money in said Note mentioned
to be paid to said Plaintiff and there and
there delivered said Note, so indorsed to the
said Plaintiff of which the defendants there
and there had notice.

By means whereof the said statute in
such case made and enacted, the said
Defendants became indebted to said Plaintiff
said sum of money mentioned in said Note
and being so liable in consideration thereof
there and there indebted and promised
to pay the same to said Plaintiff according
to the tenor and effect of the said Note,
and of the endorsement thereon, at
the place aforesaid.

And whereas all the said Defendants after-
wards, to wit on the first day of April in the year
of Our Lord one thousand Eight Hundred
and Fifty nine to wit, at said County, became
and were indebted to the Plaintiff in a large
sum of money to wit: Two Hundred dollars, for
money before that time lent and advanced
to the said Defendants by said Plaintiff
at said Defendants request; and also in
the like sum, for money before that time paid
lent out and expended for said Defendants

6.

by the said Plaintiff, at the like special request
of said Defendants; and in the like sum for
money before that time had and received by
said Defendants to and for the use of said
Plaintiff; and also in the like sum, for goods
wares and merchandises; before that time sold
and delivered by said Plaintiff to said Defendants
at the like special instance and request;
and also in the like sum for the labor care
and diligence of said Plaintiff before that
time done and performed by said
Plaintiff for said Defendants; and in the
the like instance and request of said Defen-
dants and also in the like sum for the
there given by said Plaintiff to said
Plaintiff; and also in the like sum for
and being due to said Defendants
in consideration of the same; and there
undertook and promised to pay said Plaintiff
said several sums of money above mentioned
when thereunto afterwards requested
But the said Defendants not regarding
their said promises and undertakings but
contriving to altho' afterwards requested so to do
have not paid said Plaintiff either of said
sums of money above mentioned, or any part thereof
but so to do have hitherto wholly neglected
and refused, and still do neglect and

7. refuse, to the damage of said Plaintiff of Two Hundred Dollars and therefore he brings this suit &c

Wentworth-Plaintiffs Attorneys

*Copy of Investment and account paid on
\$150 Given February 26th 1858*

By the first day of November next I promise
to pay to Timothy [illegible] One Hundred
and fifty Dollars [illegible] to use

Endorsed as

Without

Friedrich

James P. Henderson

Dr. J. B. C. Brown R.D.

In money lent and repaid \$ 200.00

To money paid, raised, and expended \$ 200.00

To money paid and received to and for the use of said

Marantiff 1200.00

To goods wares and merchandis sold in

and delivered \$20000

To labor and services \$ 300.00

To balance due on account \$ 200.00

Upon said Declaration is the following endorse-
ment "Filed this 27th day of May 1859"

"J. A. Armstrong Clerk."

And now to wit on the first day of the term comes the Plaintiff by W. M. Newport his Attorney and obtains a rule on James P. Vandusen the only defendant in court by service of process to plead by 9 o'clock of the second day of the term and afterwards to wit on the second day of the term again come the parties hereto the Plaintiff in person & by W. M. Newport his Attorney and the said J. P. Vandusen defendant by Wm. Seely & Sanford his Attorneys and after some time to plead until the evening of the third day of the term and yet no plea is made on the third day of the term upon which the Plaintiff the defendant was bound to appear and answer. Whereupon the Court by the Court Clerk by Wm. Seely & Sanford his Attorneys and an indictment of the Court Clerk with interest from the day of the Court Clerk's Instrument upon which this action is based and of general issue denying the validity of the amount claimed in the said Plaintiff's declaration (which Plea is in the words and figures following to wit-

J. P. Armstrong

vs

J. M. Pennington

J. P. Vandusen

} County Court of Grundy County
June Term 1854

And the said Defendant J. P. Vandusen by Seely & Sanford his Attorneys comes and defends the wrong and injury when it

9.

and saith that he did not undertake and
promise in manner & form as the said Plaintiff
truth above thereof complained against him and
of this he puts himself upon the country
And for a further Plea in this behalf the said
Defendant saith that before the bringing of
this suit to wit on the 11th day of November 1858
he said Defendant paid to the said Timothy
Kenna the original of the said Note
and before the said suit was brought and
after it became due the sum of One
Hundred and fifty dollars with interest from
date claimed by the said Plaintiff in his said
Declaration with the exception of five
dollars which said sum of five
dollars remains due and owing to the said
said Defendant by the said Plaintiff
And this the said Defendant and his
is ready to verify and the said Defendant
prays Judgment &c

Deaf & Sanford Attys for Defendants
which said Plea is endorsed

"Select June 8 1859 Armstrong atty")

Whereupon the said Plaintiff moved the court
to assign judgment pro confesso for the said \$25
and interest from date of note whereupon it
was ordered by the Court that the clerk compute

the interest on the said sum confessed which the clerk did & reported the amount due for principal and interest on the said amount confessed to be Seventy Six ⁴¹/₁₀₀ Dollars whereupon judgment was assigned by the court for that amount pro confesso and thereupon the said Plaintiff filed a replication to the remainder of the said defendants plea (which replication is in the words and figures following)

State of Illinois }
 County of }
 John C. Armstrong

vs
 James P. Vandoren

& Frederick Vandoren

Plaintiff }
 as to the said first plea of the said defendant
 James P. Vandoren who puts himself
 upon the country the Plaintiff doth the like
 And for a further replication in this behalf
 as to the said record plea of the said defendant
 James P. Vandoren whereof the said Defendant
 is ready to verify the Plaintiff puts himself
 upon the country and the defendant doth
 the like &c

Attest New York City 9th

which Replication is endorsed "Filed June 9
 1859 J.W. Armstrong clk.")

as
"John H.
v
James H.
F. H. O."

We
and
the said
allow the sum of \$5.00 for principal
and 9¢ for interest
Total \$134.64

Geo H. Newton
Foreman

11.

whereby the issue was tried and submitted
to the Court and Jury and Geo. Harper J.
Ball S. Marcellus Geo. Sellock Geo. McKiersted
S. W. Gould E. B. Hannan S. B. Bruden W. H. Hays
S. B. Jones Geo. B. Mossack & E. Pyle were duly
accepted & sworn as the Jury in said case who
having heard the evidence in the matter and
retired to consider of their verdict returned
into Court with a verdict for the Plaintiff and
assessed his damages at the sum of thirty
four 64/100 Dollars for damages and for the apportion-
ment of the aforesaid damages as assessed
in the said Decree, the Court now it is
considered and adjudged by the Court
that said Plaintiff shall recover from
the said Defendant the sum of thirty
six 93/100 Dollars and costs of suit and the
amount assessed in the said Decree
Now and for the further sum of One Hundred
and thirty four dollars and sixty four cents as
found by the verdict of the said Jury making
a total judgment of the sum of One hundred
sixty one 57/100 Dollars for the Plaintiff's damages
and his legal costs of suit and that he have
execution therefor

And afterwards tavit on the 5th day of the term
again came the parties hereto by their said
Attorneys and the said defendant moves
an arrest of Judgment for want of answer

to his said Plea and irregularity in assigning
Judgment for part and taking judgment for
balance which motion was overruled by the
court and excepted to by defendant

The defendant then moves that so much of
said judgment as was assigned pro confesso
be arrested which was denied by the court
and excepted to by the defendant and afterwards
twice on the 16th day of the term the said Plaintiff
by his said Attorney filed what purports to be
a Bill of Exceptions which Bill of Exceptions
is in the words and figures following to wit-

John G. Arnold
24
County Court of Spruce
Spruce County, Minn. 1859
James P. [unclear]

And that on the 16th day
came the said case to the court by his Attorney
Selby & Sanford and was put in arrest
of judgment in this case for the following reasons
to wit-

1st Because the Plaintiff took judgment by
confessing in the case for Twenty five Dollars with
interest from date of note when there was a Plea
on file denying the whole cause of action

2^d Because the order for judgment in the case
is for more than the amount found by the Jury

13.

which motion was granted by the court and
the said Defendant James S. Vanduser by
his said counsel then and there excepted and
ask that this his Bill of Exceptions might be
signed and sealed by the court

Colg^m Grant Seal

County Judge of Grundy County

Upon said Bill of exceptions is the following endorsement
"Filed June 14/59 P.A. Armstrong alk")

And afterwards on the 3rd day of August
A.D. 1859 the said James S. Vanduser by his counsel
J.W. Newport filed in the office of the Clerk of
said Court a Bill of Exceptions in
the words and figures following to wit

State of Illinois, Grundy County Court

Grundy County vs James S. Vanduser

John G. Armstrong Plaintiff
vs
James S. Vanduser Defendant

James S. Vanduser Answer

You will please into execution
in the above entitled cause, directed to the Sheriff
of Randall County Dated the 3rd day of August A.D. 1859
J. W. Newport

J.W. Armstrong

J.W. Newport Plffs Atty

Upon which Precept is the following endorsement
Filed this 3rd day of August A.D. 1859

J.W. Armstrong alk

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Whereupon on the 14th day of August AD 1859
an Execution in the usual form was issued
and directed to the Sheriff of Kendall County Ill
to execute which Execution was not been
returned and that afterward being on
1st day of August AD 1859 the said
defendant applied for a copy of the record

State of Illinois /
Grundy County

within and from the records of said State
to Henry C. [unclear] in a full
and correct manner of the said proceeding
had in said [unclear] in and before
said County

Henry C. [unclear] seal
at Morris in said [unclear] State
this 19th day of August AD 1859

Jerry A. Armstrong

Fee for copy of record. \$3-

John G. Armstrong }
 as } Supreme Court of the
 H. H. Comstock } State of Illinois
 J. O. Vandusen } April Term 1860

Assignment of Errors

And now comes the said Defendant
 Jas. P. Vandusen by his Attorney & Counsel
 his Attorney for error
 on the Record as
 follows to wit

1st The Court erred in rendering
 Judgement in this case
 the Life of the Defendant there
 was a complete acquittal
 cause of.

2nd The Court erred in rendering
 Judgement for more than what was
 found for the Jury.

3^d The Court erred in not setting aside
 the verdict and arresting the Judg-
 ment.

4th The Court erred in not setting aside
 the Judgement taken by default as
 termed by the Plaintiff "Confession"

Sealed & Signed Attorney for Jas. P. Vandusen

John G. Armstrong
vs
H. H. Pomeroy et al

Record & Assignment
of Enos

Filed & taken per 16. 1859
a. Leland
CLK

Appn for Supercedas

Let a supersedeas issue in this cause
toward the sum of three hundred dollars
with interest say more it desires
W. H. Pomeroy

State of Illinois. Supreme Court.
Third Grand Division
April Term 1860.

James P. Van Dusen
impeached &c. } Error to Grand Jury
vs. }
John G. Armstrong } Argument for
 } Offt in error.

To the Hon. the Judges of the
Supreme Court.

As the Counsel for
plaintiff in error have presented
no new points or authorities,
the defendant in error still
relies upon the points and
authorities presented in his
printed brief, upon which
he deems it unnecessary
to enlarge.

The Counsel for defendant
in error; scarcely thinks it
necessary to refer to the strictures
of counsel for plaintiff in
error, in regard to the alleged
falsification of the Record by
the Clerk of the Court below.
To those who are acquainted

with the Clerk, it is unnecessary to vindicate him against such a charge. That he has intentionally and willfully falsified and corrupted the record in this case, no one who knows him can believe. Nor does the record in the judgment of counsel for defendant in error sustain such a charge. It never was thought of by ~~defendants~~ ^{counsel} until made. It may be that it was unnecessary for the Clerk to have undertaken at all, to set forth the substance of any of the pleadings, or the verdict of the jury. That in so far as he did this he was correct, ~~as~~ the pleadings and proceedings themselves show. The abstract of the record filed by the plaintiff in error shows the same thing. The charge therefore against the Clerk would seem to be wholly gratuitous & unnecessary. If he had done as charged, the remedy against him is ample, and this is not the time or place to bring the matter up. It is only alluded

to in reply, because of the desire of the counsel for defendant in error to vindicate him against groundless charges, calling in question his honor & integrity.

The counsel for plaintiff in error persist in stating that judgment was taken by default, for the \$25. and int., when the record and their own abstract of it show that it was by confession. We think it makes a difference in this case. It is doubtless an oversight however, as the counsel for plaintiff in error certainly cannot intend to mislead the Court as to the facts in the record.

We again beg leave to refer your Honors to the printed brief of the defendant in error, as embracing all the points raised in this case.

J. W. Newport

Att'y for Def in error

Supreme Court.
April Term 1860.

James P. Van Dusen
impleaded &c.

vs.

John G. Armstrong.
~~vs.~~

Argument for
Defendant in error.

Filed May 1st 1860
L. Leland
Clerk