

No. 11959

Supreme Court of Illinois

Rose.

vs.

Dow , et al.

71641 7

McHenry -
Curry J. Rose
as
John E. Dow et al.
3
11959

1862

~~*McHenry Co.*~~
~~*Curry J. Rose*~~
~~*John E. Dow et al.*~~

United States of America

State of Illinois } of Pleas before the Hon-
McHenry County } orable Hugh Henderson
Judge of the Eleventh
Judicial Circuit of the State of Illinois and
presiding Judge of the McHenry County Circuit
Court at a Circuit Court began and held at the
Court House in Woodstock in said County on
the fourteenth day of April in the Year of our Lord
One thousand Eight Hundred and fifty one and
of the Independence of the United States the Seventy
fifth

Present the Hon Hugh Henderson
Judge

J M Platt

Attest
Joel H. Johnson John Brink
Clerk Sheriff

Be it remembered that heretofore to wit: on the third day
of January in the Year of our Lord One thousand Eight
hundred and fifty one a certain writ of Summons was
issued out of the office of the Clerk of the Circuit Court
of said County and which said Summons is in
the words and figures following, that is to say:

State of Illinois } of The People of the State of
McHenry County } Illinois to the Sheriff
of said County Greeting

We command you that you summon Legal B Anderson
Harvey B Anderson & John C. Dow if they shall
be found in your County, personally to be and
appear before the Circuit Court of said County
on the first day of the next term thereof to be holden
at the Court house in Woodstock in said County
on the Second Monday of April next to answer

unto Orrin J. Rose in a plea of Assumpsit to
the damage of the said Plaintiff as he says in the
sum of Eight Hundred Dollars, And have you
then and there this writ with an endorsement thereon
in what manner you shall have executed the
same. Witness, Joel W. Johnson Clerk of said
Court and the Seal thereof at Springfield
aforesaid this 3^d day of July 1851.
Seal.

J. W. Johnson
Clerk of the Circuit Court

And which said writ has Endorsed thereon:
Personally served by reading the within to the
within named Harry B. Anderson & John E. Bond
Loyal C. Anderson not found in the County
Jan 11th 1851

John Brink, Sheriff
Filed Jan 9th 1851
J. W. Johnson At

And thereafter to wit: on the twenty first day of March
in the Year last aforesaid the said Plaintiff filed
in the office of the Clerk of the Circuit Court of said
County his certain declaration in writing, which
said declaration is in the words and figures
following to wit:

State of Illinois, of Circuit Court of
McHenry County of the
McHenry County of the
April Term in the
Year of our Lord one thousand Eight hundred
and fifty one,

Orrin J. Rose Plaintiff in this suit by
Anson Sperry his Attorney complains of John E. Bond
Loyal C. Anderson and Harry B. Anderson
defendants in this suit, ^{in cruelty} of a plea of trespass,
on the case on premises. For that whereas, the said

Defendants on the first day of April in the Year of
our Lord One thousand Eight Hundred and fifty
at Warengo in said County made their certain
promissory Note in writing bearing date the same
day and Year aforesaid and thereby then and there
promised jointly & severally to pay Rose & Rattle or their
order Four Hundred Dollars with interest five
months from the first day of April A.D. 1850. and then
and there delivered the same to the said Rose & Rattle.
And the said Rose & Rattle to whom or to whose
order the payment of the said sum of money in the
said promissory note specified was to be made after
the making of the said promissory note and before
the payment of the said sum of money therein specified
to wit: on the day aforesaid assigned the said promissory
note by which said assignment the said Rose & Rattle
ordered and appointed the said sum of money in
the said promissory note specified to be paid to the
plaintiff and delivered said promissory note & assigned
to the plaintiff. By reason whereof and by virtue force
of the statute in such case made and provided the said
defendants became liable to pay the said Plaintiff the
said sum of money mentioned in the said note according
to the tenor and effect thereof. And being so liable and
in consideration thereof the said Defendants afterwards
to wit. on the same day and year aforesaid at the
place aforesaid undertook and then and there
faithfully promised the said Plaintiff to pay the said
sum of money mentioned in the said note according
to the tenor and effect thereof.
And whereas also the said defendants afterwards to wit:
on the Seventh day of March in the Year of our Lord
Eighteen hundred and fifty one at the place aforesaid
were indebted to the said Plaintiff in the sum of Six
Hundred Dollars for divers goods wares and merchandize
by the said plaintiff before that time sold and
delivered the said defendants and at their instance and

request. And also in the further sum of Six hundred
dollars for money by the said Plaintiff before that
time lent and advanced to the said defendants and at
their like instance and request and for other money
by the said Plaintiff before that time paid laid out
and expended for the said Defendants and at their
like instance and request; and for other money by
the said defendants before that time had and received
to and for the use of the said Plaintiff. And ~~not~~ being
so indebted and in consideration thereof the said
Defendant afterwards to wit, on the same day and
Year last aforesaid ^{at the place} to wit McHenry County aforesaid
undertook and faithfully promised the said Plaintiff
to pay him the said several sums of money above
mentioned when they should be thereto afterwards requested.
Yet the said Defendants have not paid to the said
Plaintiff the whole or any part of the said several
sums of money above mentioned although often requested
to pay the same or any part thereof to the said
Plaintiff & the said defendant have hitherto wholly neglected
or refused, and still do neglect and refuse to the damage
of said Plaintiff of Eight Hundred Dollars and therefore
he brings Suit, &c.

Anson Speary
Attorney for Plaintiff

Copy of Note and Accounts declared upon:
\$400. Five months from this 1st day of April 1850
"we jointly and severally promise to pay Messrs Rose
& Rattle or order Four Hundred Dollars for value"
"received with interest"

Marysville April 1st 1850

John E. Dow
S. C. Anderson
H. B. Anderson

"Pay to the order of Orrin J. Rose"

"Rose & Rattle"

John E. Dow, S. C. Anderson & H. B. Anderson

To Orrin J. Rose & Co

1851 March 7th 1851, To Goods Wares & Merchandise \$600.00
 " " " " To money lent & advanced you 600.00
 " " " " To Cash had over by you for me 600.00
 " " " " To money paid & laid out for you by me 600.00
 And which said declaration has Endorsed thereon

Filid March 21st 1851

W. Johnson CLK

And thereafter to wit on the 14th day of April in the Year
 is thing of the day of the April Term of said Court
 last aforesaid, the following order was entered of record
 that is to say:

Orrin J. Rose

Legal C. Anderson } Assumpsit
 H B Anderson }
 & John E Dow

And now comes
 Sperry Attorney for plaintiff
 and on his motion it is
 ordered that the defendants plead herein by Thursday
 Morning at Eight o'clock,

And thereafter to wit on the Seventeenth day of April in
 the Year last aforesaid the said defendant Dow filed
 in the office of the Clerk of said Court his certain
 demurrer and plea, which said demurrer and plea
 are in the words and figures following that is to say:

Orrin J. Rose

E Dowe Anderson & Anderson

And the said
 E Dowe one of the
 defendants by C M McClure his atty comes & defends the
 wrong & injury when &c, And says that by reason
 of any thing in the first counts of said declaration set
 forth in manner and form as therein pleaded are
 not sufficient in law to entitle the said plaintiff
 to recover against the said defendant and this he is ready to
 verify ^{wherefore} he prays judgment, C M McClure depts atty

And the said defendant as to the said declaration ~~as to~~
except the said first count says acted non because he says
that he did not promise and undertake as the plaintiff
has thereof alleged against him & of this he puts himself
upon the Country &c

McClure Esq Atty

Which said demurrer & plea have Endorsed thereon
Filed Apl 17, 1851
W. Johnson Clerk

And thereafter to wit on the 18th day of April in the
Year last aforesaid said Court being then in session
as aforesaid the following among other proceedings
were had to wit:

Orwin J. Ross

vs
Margus B. Anderson

& John E. Dow with

Soyal C. Anderson impleaded

} Assumpsit

And now

Come the defendant

John E. Dow by

McClure attorney for the said John E. Dow and
files his demurrer to the 1st Count of the said declaration
of the said plaintiff, ^{in which the plaintiff} says Perry his attorney joins
and the Court having heard the parties thereon,
overrules the same to the opinion of the Court in
the overruling ~~the same~~ of which demurrer the
said defendant by his counsel excepts. It is therefore
ordered and considered by the Court that the said
plaintiff have and recover of the defendant John E. Dow
his costs and charges in and about his joinder
in demurrer Expended and that he have execution
therefor And the said defendant Dow stands by his
demurrer and saying nothing further in bar to the said
plaintiffs action and the said defendants Anderson,
being solemnly called come not nor any one for him,
but fails and makes default herein which is ordered to

be Entered of record, It is therefore ordered that the plaintiff have judgement for his damages but because these are uncertain and unknown to the Court this suit being brought upon an instrument of writing for the payment of money only it is therefore ordered that the Clerk assess the same And he having assessed and reported to the Court the sum of Four hundred and twenty five dollars and seventy five cents his damages which is ordered to stand confirmed and approved by the Court It is therefore ordered and considered by the Court that the said plaintiff have and recover of the said defendants Harry B Anderson and John E Dow the two defendants several with process the sum of Four hundred and twenty dollars and seventy five cents his damages so assessed as also his costs and Charges herein Expended and that he have Execution therefor. To the rendering of which judgement by the said Court the said defendant Dow Excepts and thereupon on motion of plaintiffs attorney it is ordered that a scire facias issue herein against the said Royal C Anderson returnable to the next term of this Court.

And thereafter to wit: on the second day of June in the Year last aforesaid the following writ of scire facias was issued herein:

State of Illinois } p The People of the State
McHenry County } of Illinois to the Sheriff
of said County Greeting:
The command you that you summon Royal C Anderson impleaded with John E Dow and H B Anderson if he shall be found in your County personally to be and appear before the Circuit Court of said County on the first day of the next term thereof to be holden at the Court House in Woodstock in said County on the first day of the next term

to answer unto Orrin J. Rose in a plea of Assumpsit
and show cause if any you have or can why
judgement should not be rendered against you by
the Court aforesaid to the damage of ~~the~~ said Plaintiff
as he says in the sum of Eight hundred dollars.
And have you then and there this writ with an
indorsement thereon in what manner you should
have executed the same Witness Seal H. Johnson
Clerk of the said Court and the Seal
Sherrif of Woodstock aforesaid this 3^d day
of June A.D. 1851

H. Johnson
Clerk of the Circuit Court

Which said writ has endorsed thereon
Executed the within by reading to and in the hearing of
the within named Loyal C. Anderson June 28th 1851
John Brink
Sherrif

Filed June 30th 1851
H. Johnson Clerk

And thereafter to wit: on the 17th day of September
in the Year last aforesaid, said day being one of
the days of the September Term of said Court, the
following among other proceedings were had:

Orrin J. Rose

Henry B. Anderson
John E. Dow and
Loyal C. Anderson

Assumpsit

And now come
the Sperry Attorney for
the Plaintiff and the

Court having at a former term of this Court rendered
judgement against the said Henry B. Anderson
and John E. Dow and the said Loyal C. Anderson
having at this term been duly served with process
and he being solemnly called come not nor any

one for him but fail and make default him which is
ordered to be entered of record. It is therefore ordered
by the Court that the ~~said~~ Plaintiff, recover of the ^{said} defendant
Voyal C Anderson together with the said Henry B
Anderson and John O Cow the sum of Four
Hundred and twenty five Dollars, and Seventy five
cents his damages assessed as aforesaid, ^{as also by costs and charges herein ~~afforded~~} and that
he have Execution therefor.

State of Illinois } of the undersigned Clerk
McHenry County } of the Circuit Court in
and for said County in
the State aforesaid do hereby certify that the foregoing
is a true ^{and correct} copy of the Record and proceedings
in my office in the above entitled Cause.
Witness my hand & the seal of said Court
at Woodstock, in said County this
fourth day of May A.D. 1852.
Jesse H. Johnson
Clerk

Chetani
Harvey B. Anderson et als.
attys.
Orin J. Rose
Transcript

Filed May 7. 1852
L. Keland Clerk.

Sorenzo Island Egg
Marine June 18th 1852

Dr Sir

Enclosed I send you Sci. Geo in
Case of Rose or John E Dow et al duly served on How & Co.
Anderson which please file.

The reasons assigned for Error are that the Court gave
final judgment on Remuner when there was a plea of general
issue on file undisposed of.

Please file Sci. Geo. & if necessary this letter showing cause
of error & oblige

Yours truly
Amos Perry

Orrin J. Rose

Wm E. Dow et als.

Transpt. & appt.
of errors -

Filed June 19. 1852
L. Scland
Clerk.

I do hereby authorize & empower James S. Loop or any
other Attorney of the State of Illinois duly authorized to practice in the
Supreme Court of the State of Illinois to enter my appearance of record
in the cause of Orrin & Roe plff. in error vs W.B. Anderson & C.,
Anderson & John E. Dow defts. in error now pending in the Supreme
Court aforesaid & to act & do in said cause the same as I myself
would do to answer to said case when the same shall be called
for trial. In witness whereof I have hereunto set my hand &
seal this 2^d day of June AD 1882.

W.B. Anderson At

I do hereby enter the appearance of
Hawey B. Anderson on the within Warrant
of Attorney
July 2, 1852

L. A. Hurlbut

O. A. Rice
Mancus
as Attorney
John E. Dow et al

Filed July 2 - 1852
H. C. Clark Clerk.

S. Leland Esq
Esq

Maruago May 11 1852

Yours of 7th inst. was duly rec^d conty
sums in case of Rose at \$100. This suit is taken to the
Sup. Court by the plaintiff in Court below instead of defendants
& therefore the suit has been docketed wrongly. It should be
Oving Rose vs John Edward Soykal, C. & Harvey B. Anderson.
I am Rose att^y of course have not right to get the
defendants in to sup Court as plffs. in error. Please remedy
this & send me new sums to send on how it al. How & L.C.
Anderson live here but H.B. Anderson live in Wisconsin.
H.B. Anderson will be down here on business abt. the time
your answer will return so that I can get service on him.
I enclose the \$5 you requested. Let me hear by return
of mail oblige

Yours Resp
Anson Spry

Lorenzo Leland Esq
Dr Sir

Marino May 5 1852

Enclosed I send you Trans. Record in case
of Rose vs Dow Anderson & Anderson. Please put case on ^{docket} ~~docket~~
in Sup. Court & send sum. by return mail as I want to get
the case in at some time without fail. You will much oblige
me by attending to this without delay.

Respy
Anderson

Send sum. to me at this place.

Filed May 7. 1882
McKinnon Ck.

Sorenson Island Log
Chuk Sup. Court
Ottawa Ill.



Orin J. Rose
 vs
 John E. Dow
 Loyal C. Anderson
 M. P. Anderson

Supreme Court
 June Term 1852.

And the said Orin J. Rose by
 Answering his Atty comes and says
 that in the Records proceedings in this
 cause there is manifest error & for cause,
 assigns the following points.

- 1 That final Judgment is entered upon
 Demurrer ^{the Special Court of} to the Declaration, when
 there was outstanding & undisposed of
 a plea of the general issue to the Common
 Courts

July 2 1852

Answering

Amos J. Rice

no

John C. Down
Royal C. Audubon
& W. B. Audubon

Filed July 22-1852
L. Keland Clerk.

State of Illinois, sct.

WRIT OF ERROR—FREE TRADER PRINT.

The People of the State of Illinois,
To the Clerk of the Circuit Court for the County of *M^c Henry*—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 *M^c Henry* county, before the Judge thereof, between

Orrin J. Rose plaintiff and *Harvey B. Anderson*
John E. Dow & Loyal C. Anderson—

Orrin J. Rose
defendant & it is said manifest error hath intervened, to the injury of the aforesaid ~~*Harvey B. Anderson*~~
~~*John E. Dow & Loyal C. Anderson*~~
as we are informed by ~~*this*~~ complaint, and we being willing that error, if any there be, should be
corrected 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 *Second 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 *Seventh*
day of *May*— in the year of our Lord one thousand eight
hundred and fifty *two*.

S. Siland Clerk of the Supreme Court.
By P. W. Siland Depy. Clk.

Harvey B. Anderson & Co.
at.
Carroll J. Rose -

Writ of error.

Filed May 7th 1852.
L. Deland Clerk.
By J. H. Deland Deputy.

STATE OF ILLINOIS, }
Supreme Court. }

The People of the State of Illinois,

To the Sheriff of the County of *McHenry* Greeting:

BECAUSE in the record and proceedings, and also in the rendition of the judgment of a plea which was in the circuit court of *McHenry* county, before the Judge thereof, between *Orvin J. Rose* plaintiff & *John E. Dow, Harvey B. Anderson & Loyal C. Anderson*

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

plaintiff

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 E. Dow, Harvey B. Anderson & Loyal C. Anderson*

that *they* 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 *2^d* Monday in

June next, to hear the records and proceedings aforesaid, and the errors assigned, if *they* 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 *Dow, Anderson & Anderson* — notice, together with this writ.

Witness, the Hon. SAMUEL H. TREAT, Chief

Justice of our said Court, and the seal thereof, at

Ottawa, this *7th* day of *May* —

in the year of our Lord one thousand eight hundred and fifty *two*.

J. Island Clerk of the Supreme Court.

McHenry

Quinn J. Rose

vs

John E. Dowd et al.

Sci. La to Expts.

Filed June 19th 1852.
J. Ireland Clk.

Personally served the within writ as commanded by
making same to the within named Loyd C. Anderson
and John Edward H. B. Anderson not found in my County
Date May 25 1852

Fees paid

Serving summons \$1.10

Returning 10

Mileage 5 miles 25

\$1.35

John Hunt Sheriff McHenry Co
J. D. Spencer Deput Ill