No. 12279

Supreme Court of Illinois

Castle.

vs.

Judson, et al.

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Supreme court State of Illinois Term 1855

William D. Judson and
George Ripley
vs
George Hatch and
Edmund S. Castle
Appellee.

And now comes the said E. S. Castle one of the above defendants by D. Boly & Daniels his attorneys and says that in the record and proceedings of aforesaid there is manifest error in the Vis.

1st That by said Record it appears that said Court had no Jurisdiction to render a Judgment in said cause.

2 Because by said Record it does not appear that the Defendants was served with a copy of the declaration ten days prior to the said Vacation term

3. Because it appears that said Judgment was rendered at a vacation term of said Court and that no copy of the declaration & Rule to plead was served on the Defendant ten days before the said term.

4 Because no title to the said note is shown in the said Plaintiff by said Record

5 Because the said notes were sued and Judgment rendered in the name of the Plaintiff and no endorsement of said notes to said Plaintiff is shown

6 Because it appears that there was a good and sufficient affidavit of merits to the Defendants defense in said cause together with the necessary and legal Pleas had been made and filed of record previous to the day on which the Plaintiff was entitled to Judgment in case of a default in filing said Affidavit and Pleas by the law regulating the practice of said Cook County Court of Common Pleas.

7 And also that there is error in this (Viz) that by the record of aforesaid it appears that the Judgment of aforesaid in form of aforesaid given, was given

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for the said Abijah W Pitcher against the said E. S. Castle and George Hatch - Whereas by the law of the land the said Judgment ought to have been given for the said E S Castle & George Hatch against the said William D. Ludlow and George Ripley -

And the said E S Castle prays that the Judgment aforesaid for the errors aforesaid and other ~~other~~ errors in the record & proceedings aforesaid may be reversed and annulled & altogether held for nothing

D Wolf Daniels
Atty for Deft

And now the said Edmund S. Castle, and the said George Hatch defendants in error say that in the record and proceedings hereinbefore set forth there is no error, Wherefore they the said defendants pray that the said judgment and proceedings may in all things be affirmed

By their atty
Grant Goodrich

State of Illinois }
County of Cook } S.S.

Pleas before the Honorable John M. Wilson. Judge of the Cook County Court of Common Pleas, within and for the County of Cook & State of Illinois at a Vacation Term of said Cook County Court of Common Pleas begun and holden at the Court House in the City of Chicago in said County and State on the first Monday being the fourth day of June in the year of our Lord one thousand eight hundred and fifty five and of the Independence of the United States the seventy ninth.

Present the Honorable John M. Wilson - Judge
James Andrew - Sheriff
Attest Walter Kimball. Clerk.

Be it Remembered that heretofore to wit on the fourteenth day of May in the year of our Lord one thousand eight hundred and fifty five came William D. Judson and George B. Ripley plaintiffs by Goodrich, Scoville & Seeley their Attorneys and filed in the Office of the Clerk of the Cook County Court of Common Pleas, his Bond for Cost and Precipe for Summons against George Hatch and Edmund S. Castle, defendants, which said Bond and precipe are in words and figures as follows to wit.

William D. Judson & George B. Ripley } Cook County Court of
v } Common Pleas.
George Hatch and Edmund S. Castle } I do hereby enter

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myself security for costs in this cause and acknowledge myself bound to pay or cause to be paid, all costs which may accrue in this action, either to the opposite party or to any of the Officers of this Court, in pursuance of the laws of this State.

Dated this 14th day of May A. D. 1855 . . . } Orin Sherman.

William D. Judson and George B. Ripley v George Hatch and Edmund S. Castle . . . } Common Pleas. Apt. Dam: $500.

Clerk will issue summons in above cause Apt. Dam $500.

Goodrich, Scovill & Seelye
Plaintiffs Attys.

And thereupon summons issued out of the Office of the Clerk of said Court in words and figures as follows to wit.

State of Illinois }
County of Cook } S. S.

The People of the State of Illinois to the Sheriff of said County. Greeting.

We command you that you summon George Hatch & Edmund S. Castle, if they shall be found in your County, personally to be and appear before the Cook County Court of Common Pleas of said County, on the first day of

the next term thereof to be holden at the Court House in the City of Chicago in said County on the first Monday of June next to answer unto William D. Judson and George B. Ripley in a Plea of Trespass on the case on promises to the damage of the said Plaintiffs as they say in the sum of Five hundred dollars.

And have you then and there this Writ, with an Endorsement thereon in what manner you shall have executed the same.

Witness Walter Kimball Clerk of our said Court, and the seal thereof at the City of Chicago, in said County, this 14th day of May A. D. 1855.

Seal.

Walter Kimball. Clerk.

"Served by reading to the within named George Hatch May 23. 1855 also "by reading to Edmund S. Castle May 24th 1855." "James Andraw" "By Ira Snow Depy"

And afterwards to wit on the seventeenth day of May in the year aforesaid said Plaintiffs filed in the Office of the Clerk of said Court, their declaration in said cause in words and figures as follows to wit.

State of Illinois.
Cook County. ss. In the Cook County Court of Common Pleas, of the June Term in the year of our Lord one thousand eight hundred and fifty five.

George B. Ripley & William D. Judson, partners under the name style and firm of Ripley & Judson, Plaintiffs in this suit, by Goodrich, Scoville & Seelye, their Attorneys, complain

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of George Hatch & Edmund S. Castle (copartners under the firm name of George Hatch & Co.) defendants herein, who are summoned &c. of a plea of Trespass on the case on promises For that whereas the said defendants heretofore to wit on the first day of November in the year of our Lord one thousand eight hundred and fifty four at Chicago to wit at said County of Cook, made and executed their certain promissory Note in and by which said Note said Defendants by the name style and description of George Hatch & Co promised to pay to their own Order, six months after the date of said Note the sum of Three hundred & fifty five 27/100 dollars (Three hundred and fifty five dollars & twenty seven cents, meaning) with current rate of Exchange on N. York (the City of New York, meaning) for value received, payable at Exchange Bank, (at the Exchange Bank in the City of Chicago, in said County, meaning). And the said defendants to whose Order said Note was payable, by the name & style of George Hatch & Co then & there endorsed said Note, & under their hand Ordered the same to be paid to said Plaintiffs, by the name and description of Ripley & Judson & then & there delivered the said Note, so endorsed, to said Plaintiffs. And the Plaintiffs aver that at the time when said Note became due & payable, the current rate of Exchange on New York aforesaid, at said City of Chicago was one & one half per cent By means whereof and by force of the Statute in such case made and provided the said Defendants became liable to pay said Plaintiffs said sum of money mentioned in said Note, together with said Exchange and being so liable

in consideration thereof, then and there undertook and promised to pay the same to said Plaintiffs, according to the tenor and effect, true intent and meaning of said Note & of the endorsement aforesaid, to wit, at the said County of Cook

Yet the said defendants not regarding their said promises and undertakings, but contriving &c, have not (though often requested so to do) paid to said Plaintiffs either of said sums of money, or any part thereof, but so to do, have hitherto wholly neglected and refused and still do neglect and refuse. And also, for that whereas, afterwards, to wit, on the first day of May in the year 1855, to wit, at said County of Cook, the said defendants became & were indebted to the said Plaintiffs in the further sum of four hundred dollars, for goods wares and merchandize before that time sold and delivered to the said defendants, by said Plaintiffs at said Defendants request And in the further sum of Four hundred dollars for so much money before that time paid laid out & expended for the said defendants, & lent & advanced to them, at their request, by the said Plaintiffs; And in the further sum of Four hundred dollars, for so much money then & there found due & in arrear from said defendants to said Plaintiffs, upon an accounting then & there had and stated by & between them, of & concerning divers other debts and sums of money before then due & owing from said Defendants to said Plaintiffs & then unpaid - and being so found in arrear & indebted the said Defendants in consideration thereof, then & there undertook & promised to pay Plaintiffs the said several

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sums of money in this Count mentioned, when thereunto afterwards requested.

Yet the said Defendants, not regarding their said several promises & undertakings, but contriving &c. have not (though often requested so to do) paid to said Plaintiffs the said several sums of money, or any of them, or any part thereof, but so to have hitherto wholly neglected and refused & still do neglect & refuse, to the damage of said Plaintiffs of Five hundred dollars & therefore they bring suit &c.

Goodrich, Scoville & Selye
Plts Attys.

Copy of Note and account sued on.

$355 27/100 Chicago, Nov 1st 1854.

Six months after date we promise to pay to the Order of ourselves Three hundred fifty five 27/100 dollars with Current rate of Exchange on N. York, value received payable at Exchange Bank.

(Endorsed) George Hatch & Co.
"Pay Messrs Ripley & Judson"
"George Hatch & Co."

Messrs George Hatch & Co
To Ripley & Judson Dr.

1855 May 1.	For Goods Wares & Merchandize sold and delivered before this date	$ 400
"	Money paid, lent &c	$ 400
"	" found due on a/c stated	$ 400

And thereafter to wit on the sixth day of June in the year aforesaid the said defendants by D'Wolf & Daniels their Attorneys filed in the Office of the Clerk of said Court their Pleas in said cause, in words & figures as follows, to wit,

State of Illinois
Cook County S.S.

In the Cook County Court of Com. Pleas. May T. 1855

William D. Judson and George B. Ripley .....
vs
George Hatch and Edmund S. Castle ...

And the said defendants by D'Wolf & Daniels their Attorneys come and defend the wrong & injury when &c, and say that they did not undertake or promise in the manner and form as the said Plaintiffs have above thereof complained against them, and of this they put themselves upon the Country &c

D'Wolf & Daniels
Defts Attys.

And for a further plea in this behalf as to the said several counts in said declaration mentioned, said defendants by leave of Court first had and obtained come & defend the wrong & injury when &c and say that as to Two hundred and thirty one dollars and ninety nine cents part of the Debt in the said declaration mentioned the Plaintiffs actionem non because they say that on the twenty second day of December A. D. 1854 the Plaintiffs sold and agreed to deliver to the said Defendants in the City of Chicago and State of Illinois a certain quantity of

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goods wares and merchandize amounting in all to the sum of Seven hundred and ten dollars and fifty five cents and in consideration of which sale and agreement on the part of the said Plaintiffs the said Defendants executed the said promissory Notes mentioned in the said Plaintiffs declaration, and the said defendants aver that the said Plaintiffs have never delivered to said defendants the whole of said goods sold and agreed to be delivered by said Plaintiffs to said defendants and that the said portion of said Goods which said Plaintiffs have failed to deliver to said Defendants by said agreement was worth the sum of Two hundred and thirty one dollars and ninety nine cents Wherefore the said Defendants say that the consideration for which said Notes in said Plaintiffs declaration mentioned were given, have failed to the extent of Two hundred and thirty one dollars and ninety nine cents as aforesaid, All which they are ready to verify &c. Wherefore they pray Judgment if the said Plaintiffs ought further to maintain their aforesaid action thereof against the said defendants &c.

D. Wolf & Daniels

Attys for Defts.

And for a further Plea in this behalf as to the said Counts in said declaration said defendants by leave of Court come and defend the wrong and injury when &c. and say that as to Two hundred and thirty one dollars and ninety nine cents part of the Debt in the said Declaration mentioned the Plaintiffs, actionem non because

they say that on the twenty second day of December A. D. 1854 Halsey & Noble of the City of Newark and State of New Jersey sold and agreed to deliver to the said defendants in the City of Chicago and State of Illinois a certain quantity of Goods Wares & Merchandize amounting in all to the sum seven hundred and two dollars and fifty nine cents and in consideration of which sale and agreement on the part of the said Halsey & Noble the said defendants executed the said Promissory Notes mentioned in the said Plaintiffs declaration and the said Defendants aver that the said Halsey & Noble never delivered to said Defendants the whole of said Goods sold and agreed to be delivered to said defendants and that the said portion of said Goods which said Halsey and Noble have failed to deliver to said Defendants by said Agreement was worth the sum of Two hundred and thirty one dollars and ninety nine cents and that defendants further aver that the Plaintiffs in the above suit at the time of receiving said Notes mentioned in Plaintiffs declaration had due Notice of the consideration of said Notes and of the agreement to deliver said Goods and that said Goods had not been delivered to said Defendants according to said agreement Wherefore the said Defendants say that the consideration for which said Notes in said Plaintiffs declaration mentioned were given have failed to the extent of two hundred and thirty one dollars & ninety nine cents as aforesaid all which they are ready to verify &c. Wherefore they

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pray Judgment if the said Plaintiffs ought further to maintain their aforesaid action thereof against the said defendants.

D'Wolf & Daniels
Attys for defts.

State of Illinois, } In the Cook County Court
Cook County } s.s. Com: Pleas. May T. 1855.
William D. Judson & Geo. B. Ripley }
v
George Hatch, Edmund S. Castle } E. S. Castle one of the above named defendants being duly sworn according to law deposeth and saith that he has just and legal defence to the said Plaintiffs action to the amount of two hundred and thirty one dollars and ninety nine cents and which said sum of Two hundred and thirty one dollars and ninety nine cents should be deducted from the said claim mentioned in said Plaintiffs declaration And further saith not.

Sworn and subscribed } E. S. Castle.
before me. June 6th 1855 }
W. Kimball Clerk

And thereafter to wit on the Eighth day of June, said day being one of the days of the June Vacation term of said Court, Eighteen hundred and fifty five, the following proceedings were had in said cause and entered of Record to wit.

William D. Judson & George B. Ripley
vs
George Hatch & Edmund S. Castle } Aft

And now at this day come the said Plaintiffs by Goodrich & Scoville their Attorneys and said Defendants by D'Wolf & Daniels their Attorneys also come, and on Motion of said Plaintiffs Attorneys It is Ordered that the Plea of said Defendants in this Cause be stricken from the files of this Court for want of a sufficient Affidavit of Merits to their defence herein - And thereupon said defendants saying nothing further in bar or preclusion of said Plaintiffs action herein against them It is ordered by the Court that their default be taken and entered herein for want of a Plea, Wherefore the said Plaintiffs ought to have and recover of said defendants their damages herein sustained by occasion of the Premises and the Court after hearing the allegations and proofs submitted by said Plaintiffs being now fully advised in the premises aforesaid said Plaintiffs damages to the sum of Three hundred and fifty seven dollars.

Therefore it is considered that the said Plaintiffs do have and recover of the said Defendants their damages of Three hundred and fifty seven dollars in form aforesaid by the Court here adjudged and also their costs and charges by them about their suit in this behalf expended and have execution therefor.

State of Illinois }
County of Cook } S.S.

I Walter Kimball Clerk of the Cook County Court of Common Pleas within and for said County and State Do hereby Certify that the foregoing is a full true and correct Transcript of the Original papers, and also of the Order entered of Record in said Court, now on file in my Office in the case of William D. ~~Ripley~~ Judson and George B. Ripley vs. George Hatch and Edmund S. Castle.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said Court at Chicago in said County this twenty sixth day of June A. D. 1855.

Walter Kimball Clerk

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E. L. Castle in Pltff. Er.

vs

W. D. Judson et al.

~~George Batchelor et al~~

Record

~~George D. Ripley et al~~

~~Appellees~~

Filed June 28. 1885.

L. Leland Clk.

Trans $3.50 Cert fee 50¢ paid by appellant $3.85.

Know all men by these presents that We Edmund S. Castle and E. H. Castle & Joseph Filkins of the city of Chicago County of Cook and State of Illinois are held and firmly bound unto William D. Judson & George B. Ripley in the sum of seven hundred and fourteen Dollars money of the United States of America to be paid to the said William D. Judson & George B. Ripley their executors administrators or assigns for which payment well and truly to be made we bind ourselves our heirs executors and administrators and assigns firmly by these presents sealed with our seals and dated the 12th day of June AD 1858

The condition of this obligation is such. That whereas the said William D. Judson and George B. Ripley did on the 8th day of June AD 1855 before the Cook County Court of Common Pleas recover a Judgment against the above named Edmund S. Castle (and George Hatch) (by the style and title of George Hatch & Edmund S. Castle) in said Court for the sum of three hundred and fifty seven Dollars besides costs of suit which said Judgment the said Edmund S. Castle desires to remove to the Supreme Court of the State of Illinois for decision upon writ of Error. Now if the said Edmund S. Castle shall duly prosecute said writ of error in said Supreme court to Judgment and in case said Judgment of said Cook County Court of Common Pleas shall be affirmed in said Supreme court shall pay said Judgment costs interest and damages then this obligation to be void otherwise to remain in full force and effect

Witness

L E D Wolf

E. S. Castle {Seal}

E H Castle {Seal}

Jos Filkins {Seal}

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Judson & Ripley

v.

Hatch & Castle

Bond

Filed July 25. 1855.
L. Leland Clk.

E. S. Leaste
vs
Wilson & Tipley

1st We ~~will~~ move to dismiss this cause because no bond is filed with the conditions required by the statute

a This is a collection case & we may be entitled to damages - as well courts the bond in this cause should contain the statute requisitions, as if it were a case where the court might award damages

b By the 47 sec. of the Practice act, it is provided that in cases of appeal, ~~the~~ the conditions of the bond required ~~by~~ then on affirmance of judgt. defdt. & his security shall pay judgt. costs, interest & damages

B By the 47 sec of the same act, the bond in case of writ of error is required to contain the same condition as bond ~~to~~ required in appeal cases

A II Both there is no error in the record

S/2279-10

Pr. The aff't. of merits was not such an one as is required by the 3d sec. of the act regulating practice in the Court of Common Pleas by act of Feb. 12. 1833

This sec. requires that default may be taken, unless def't or some one for him will file an aff't. setting forth that he believes he has a good defence upon the merits

The aff't. in this case states no such thing - the most he does is defence to part of the action - but he does not say it is on the merits. He may be entirely a legal defence, without any reference to the merits

The uniform construction of this statute by both the judges of the Circuit & Common Pleas, has been that the aff't. must state that the defence is on upon the merits ~~must negative that it is a legal defence~~ - it will not avoid if not so stated

IIII By the 5th section of the act last cited it is provided that proof of declaration on def't as well as process must be made, to enable pltff to judgt at execution term - This includes actions of tort as well as on contracts -

By the 14 section, it is provided that in all suits arising on contracts brought to recover, pltff. shall be entitled to judgt. by the facts such as Pla to merits shall be filed —

I suppose the point, ought to be made is, that in this case no declaration or rule to plead was served —

Our Courts have had this question repeatedly & decided uniformly that in cases on contracts, no form of declaration or rule was necessary — and then have judgment to the amount of his claim entered in the same way under this ruling —

We insist that the 3d section applies to actions of tort & contract — The 14th is confined to actions on contracts alone —

Effect must be given to both sections, it can not be done without admitting the right prescribed in the 14th sec. to be judgt. in cases ~~in~~ in actions on contracts at a vacation term

Besides if either sec. must fail the subsequent one must control & modify the 3d, it being later

These are all the points, I can see by pltff

Respt. Goodrich
Defts Atty

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Creditor
vs
Replevin &c
Ass't - of Def't

WRIT OF ERROR.

STATE OF ILLINOIS, } ss. **The People of the State of Illinois,**
Supreme Court,

To the Clerk of the ~~Circuit~~ Cook County Court of Common Pleas for the county of Cook — **Greeting:**

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which was in the ~~circuit~~ Sir court of Common Pleas of Cook county, before the Judge thereof, between William D. Judson & George B. Ripley —

plaintiffs and Edmund S. Castle & George Walsh

defendants it is said manifest error hath intervened, to the injury of the aforesaid Castle 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 withot 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 2d Monday in June — next, that the record and proceedings, being inspeted, 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,**~~ Walter B. Scates Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 25th day of July in the Year of Our Lord One Thousand Eigh. Hundred and Fifty-five.

L. Leland
Clerk of the Supreme Court.

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Castle vs Judson et al.

Writ of Error

Filed July 25. 1855.
L. Leland Clk.

This Writ of Error is made a Supersedeas as such must be obeyed by all concerned —
L. Leland Clk.

State of Illinois } In the Sup Court Illinois
Cook County }

Wm D Judson stat } Bond
vs
E S Castle et al

L E D Wolf being duly sworn according to Law Deposeth and saith that he is acquainted with E S Castle & Joseph Filkins the security named in the obligation for costs on the appeal in this case and that he is well acquainted with the circumstances of said bail and should say that they are worth at least five thousand Dollars clear of all incumbrances that they are citizens of the State of Illinois residing in the County of Cook and doing business in said County as permanent residents. Deponent further State that he has been acquainted with said ~~bail~~ Sureties some four or five years.

Sworn & subscribed
before me July 25 1855
L. Leland Clerk.

L E D Wolf

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Castle vs Judson

affdt. - justification

Filed July 20. 1855.

L. Selam Clk.