

8519

No. _____

Supreme Court of Illinois

Wm. L. Henderson

vs.

Jesse Barbre

71641  7

State of Illinois } ss
Clay County }

Pleas had before the honorable justice Hardin Judge of the fourth Judicial Circuit, in the State of Illinois including the County of Clay, at a term of the Circuit Court began and held at the Court-house in the town of Louisville on Monday the fourth day of May A.D. one thousand eight hundred and fifty seven.

People State of Illinois } ss;
Clay County } Hardin term of the Clay
Circuit Court A.D. 1856

The Clerk will issue a summons against William S. Henderson & George W. Henderson in favor of Jefe Barbe, in an action of trespass on the case on promises, retainer &c. to the damage of the plaintiff of \$500.00 as he saith E. S. Howet
atty for Plff

Summons State of Illinois }
Clay County } &c

The People of the State of Illinois to the Sheriff of said County Greeting: We command you that you summon William S. Henderson & George W. Henderson 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 Louisville on the fourth Monday ~~in~~ the
over

month of March next to answer Jesse Bar-
bee of a plea of trespass on the case on prom-
ises to his damage of five hundred dol-
lars as he saith And have you there and
there this writ, and make return there-
on in what manner you see fit the same
Whitney, J. P. Mungate Clerk
of our Said Court at Louis-
ville this 22^d day of Novem-
ber in the year of our Lord one
thousand eight hundred and
fifty six.

CLSD

J. P. Mungate Clerk

Upon the facts of which were the
following endorsements
March term 1857

74.

Jesse Barbee

vs.

Wm L. Henderson

George W. Henderson

Summon defendants.

Return - Served by reading this the 23^d Decr
1856 -

H. Phelps
Shriff.

Serving 100

Returning 20
120.

Declaration, State of Illinois } March Term of the Clay
Clay County } Circuit Court A.D. 1857 -

Declaration. Jesse Barber Plaintiff in this suit Com-
plains of William L. Henderson and
George W. Henderson of a plea of
Laches on the case in promises
for that whereas the said defendants
hitherto to wit, on the ninth day of
October, in the year of our Lord, one
Thousand eight hundred and fifty
six, at Louisville, at and within the
County aforesaid, made this certain
promissory note in writing, bearing
date a certain day and year therein
mentioned to wit, the day and year
aforesaid, and thereby then and
there promised to pay one day after
the date thereof to the order of the
said Plaintiff the sum of two hun-
dred and fifty dollars for valuable
received with interest from matur-
ity at the rate of ten per cent per
annum and then and there and there deliv-
ered the said promissory note to the said plain-
tiff by means whereof and by force of the Statute
in such case made and provided the said
defendants then and there became liable to pay
to the said plaintiff the said sum of money
in the said promissory note specified accord-
ing to the tenor and effect of the said promissory
note and being so liable, they the said def-
endants in consideration thereof afterwards
on the day and year aforesaid at the County
aforesaid undertook and then and there faith-
fully promised the said Plaintiff to pay the

the him the said sum of money in the
said promissory note specified according
to the tenor and effect thereof together with
interest at the rate of ten percent from maturity.
And for that whereas the said defendants
heretofore to wit on the first day of November
in the year of our Lord one thousand eight hun-
dred and fifty six at the County of Clay
aforesaid was indebted to the said plaintiff
in the sum of five hundred dollars for
the price and value of goods then sold and de-
livered by the said plaintiff to the said defenda-
nts and at their special instance and request.
And also in an other like sum of money for
so much money by the said plaintiff before
that time lent and advanced to the said
defendants at their special instance and
request; And also in an other like sum
of money for so much money by the said
defendants before that time had and received
to and for the use of the said plaintiff and
being so indebted, they the said defendants
in consideration thereof afterwards to wit
on the day and year last aforesaid at the
County aforesaid, undertook and then and
there faithfully promised the said plaintiff
to pay him the said several sums of money
when they the said defendants should
thereunto afterwards be requested and also to pay
him the interest on said note at the rate
of ten percent from maturity nevertheless
the said defendants not regarding their
several promises and undertakings but
contriving and fraudulently intending

Craftily & Sileetly to deceive and defraud
the said plaintiff in this behalf hath not
as yet paid the said sum of money in the
said Special Count of this declaration
mentioned nor have they paid the interest
at the rate of ten percent which has ac-
rued on said note from maturity nor have
they paid the said several sums of money
in the Common Counts of this declarati-
on mentioned or any or either of them or
any part thereof to the said plaintiff
although often requested so to do but the
said defendants to pay him the said sev-
eral sums of money for either of them hath
therto wholly neglected and refused and
still neglect and refuse to the damage
of the said plaintiff of five hundred
dollars and therefore he brings his suit
&c.

E. S. Howet

atty for Plff

And the said plaintiff herewith files a
copy of the note sued on together with his
account

Copy of
note \$250.00 Louisville Ill Oct 9th 1856
On any after date we promise to pay to
the order of Jefe Barbre the sum of two
hundred and fifty Dollars for value recei-
ved negotiable and payable without
deduction or discount and with inter-
est from maturity at the rate of ten pe-
cent per annum
Signed  M. S. Henderson
George M. Henderson

account

Wm L. Henderson & George W. Henderson

vs
Geo Jefe Barbe &

Go goods sold & delivered \$500.00

Go money lent

500.00

Money had and received by the
said defendants for the use of
the plaintiff

500.00

On the back of which declaration is
the following (viz)

Geo Jefe Barbe

vs
Wm L. Henderson
George W. Henderson

Declaration

Filed February 6th 1857

J. P. Mungate clerk

Plaint Atty

Order

Geo Jefe Barbe

vs

William L. Henderson

George W. Henderson

} assumpsit

Now at this fifth
day of the term comes the said plaintiff by
C. L. Howet his attorney and the defendants
being three times solemnly called come not
but make default and this suit being brought
on a promissory note only. It is con-
sidered by the court that the plaintiff have

judgment and that the clerk compute the damages herein and report. And the clerk having computed the damages herein reports the same to be two hundred and sixty four dollars and fifty eight cents damages.

It is therefore considered by the Court that the plaintiff have judgment for the sum of two hundred and sixty four dollars and fifty eight cents. It is finally considered and ordered by the Court that the plaintiff herein have and recover of the said defendants the said sum of two hundred and sixty four dollars and fifty eight cents and the cost, that he has expended in and about his suit and that he have execution therefor &c. J. P.

State of Illinois ss;

Clay County J. Jackson P. Mungate
Clerk of the Circuit Court in and for the
said County do hereby certify that the fore-
going is a true & correct copy of all the
papers on file in the aforesaid cause in
my office as said Clerk & also a copy of
the order of said Court as appears of re-
cord in said office &c

Witness my hand and seal of
office at Louisville this the 9th
day of May A.D. 1854.
J. P. Mungate Clerk

Mr. L. Henderson
George W. Henderson
vs
Jesse Barber

Cells fees \$4.00

John J. Kelley 1857.
N. Johnston Atk
Repaid \$5.00 -

Wm. L. Henderson
Geo. W. Henderson
Plaintiffs in error
as
Jesse Barber
Defendant in error

Assignment of errors
from Pleas had before the
Honorable Justice Horlans of the
4th Judicial Circuit including
Clay County Ill. at the May
Term thereof A. D. 1857.

And now comes the said Plaintiffs
in error, by Stephen C. Goff, their attorneys
and assigns the following errors upon
the foregoing record to wit:

First. The Circuit Court erred in und-
erstanding a judgment by default against
the Plaintiffs in error.

First, Because it doth not appear
from the record that the Defendants
below, were served with process.

Second. Because it doth not
appear of record, what the date
of service was.

Third. Because the Sheriff's return
on the writ of summons, was wholly
insufficient to give the Circuit Court
any jurisdiction of the person of the
Defendants below, as appear by the record.

Fourth. Because the Sheriff's return
on the writ of summons was wholly
insufficient to authorize a judgment
by default as appear by the record.

Fifth - Because there is no legal return on the writ of summons as appears by the record -

Sixth - The Circuit Court erred in admitting the promissory ^{in evidence} note declared on, under the special Count of the declaration in this - That the said promissory note was miss-described, because it contained after the promise to pay ~~in~~ the words "Negotiable & payable without defalcation or discount," which words were altogether omitted in the declaration, as appears by the record -

Seventh - The Circuit Court erred in rendering judgment for the Plaintiffs below, Because the declaration was drawn in a loose awkward and informal manner, and would have been obnoxious to general demurrer.

Stephenson Cooper
Atty for Plffs in error

Forinder in error,

Constable & Howet
for Defendants &c.

State of New York
 The Clerk with make
 the work of her office in this case a
 list of names who are entitled to a
 a bond with the amount of five hundred
 dollars with Attorney General as surety
 conditioned on the law clerk
 given under my hand this 25th day
 of May A.D. 1857
 Matthew Stewart
 Chief Justice

Wm. J. Henderson
 George W. Henderson
 Office in Error
 Wm. J. Henderson
 Office in Error
 Wm. J. Henderson
 Office in Error
 Record & Assignment
 of Errors

Recd 30th May 1857
 A. J. Henderson Clerk
 Paid \$5-00-

Settlement of
 for paper in Error

State of Illinois } ss

Clay County } L. Jackson P. Thurgate Clerk
of the Circuit Court & Ex officio Recorder of said
County do hereby certify that Francis Apperson a res-
ident of this county is the owner of real and
personal property ^{unimproved} in said Clay County
of the value of about three or four thousand
dollars as appears from the ^{tax} Collector's book & the records
which records are in my office &c

Given under my hand and seal of
office this the 11th day of June 1854
J. P. Thurgate Clerk

No 22

Wm. L. Henderson and
Geo. W. Henderson

by

Isaac Barber

Filed for May 1857

A. Johnston Clerk

STATE OF ILLINOIS
SUPREME COURT,

{ SS. THE PEOPLE OF THE STATE OF ILLINOIS;

WRIT OF ERROR.

To the Clerk of the Circuit Court for the county of *Clay*

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 *Clay* county, before the Judge thereof, between

Jesse Barber

plaintiff, and

William L. Henderson and

George W. Henderson

defendant, it is said manifest error hath intervened, to the injury of the aforesaid *William*
L. Henderson and George W. Henderson

as we are informed by *this*

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

Mount Vernon, in the county of jefferson, on the *first Tuesday after the next Monday in*

November 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. WALTER B. SCATES Chief Justice
of our said court, and the seal thereof, at Mount Vernon this

Thirtieth day of *May*

in the year of Our Lord One Thousand Eight Hundred
and Fifty-*Seven*.

Wah Johnston
Clerk Supreme Court.

Wm. L. Henderson and
George W. Henderson
as { Writ of error
Issued Barbe

Issued and filed
30th May 1857.
A. Johnston Ck
11

This writ of error is made a Supersedeas, and
is to be charge accordingly.
A. Johnston Ck

Louisville Clay County, Missouri
May 12th 1857

Hon. W. B. Seate

Judge Supreme Court
St. Louis Mo.

Dear Sir, Please find enclosed record of a
cause, together with assignment of errors,
and Certificate of Clerk &c.

We send also docket fee \$5⁰⁰ as required
by rule. We wish the writ to operate as
a supersedeas. If any thing more is required
before the supersedeas issues, we will supply
at once the deficiency on receiving any
suggestion of the same.

We are most truly yours
Yours truly

Stephenson Cooper

~~St. Louis~~

Know all men by these presents that
in William S. Henderson, George W. Henderson
and Francis Apperson are held and
firmly bound unto Jesse Barbre in the
sum of Five Hundred Dollars for the payment
of which well and truly to be paid made
we bind ourselves our executors Administrators
and assigns jointly severally & firmly by
these presents

The condition of the above obligation
is such that whereas the said Jesse Barbre
did at the May Term AD 1857 of the Clay County
Circuit Court recover a judgment against the
above bounden William S. Henderson and George
W. Henderson for the sum of Two Hundred and
Sixty Four Dollars and Fifty Eight cents and
cost of suit from which judgment they have
prosecuted a writ of error & have prayed that
the same ^{to} operate as a supersedeas

Now if the said William S. Henderson and George
W. Henderson shall prosecute said writ of Error
with effect and shall pay such judgment costs
interest and damages in case such judgment
shall be affirmed then this obligation to
be void otherwise of full force and effect

Witness our hands & seals this 11th day

of May AD 1857

Approved by me this { William S. Henderson
12th day of May 1857 { George W. Henderson
J. P. Hingate { Francis Apperson
clerk }

Seal
Seal
Seal

Approved 30th May 1857. {
Book Schmitz CM }

W. L. Henderson and
 George W. Henderson
 as } Bonds for
 Supervisors
 L. B. Barber

Filed 20. May 1857
A. Johnston Ck

The Brown & filia in this case is this day
taken from the file, on objections to a subpoena
from the Clay Circuit Court, and to be used
there, and delivered to Judge Proctor for
the purpose, and his receipt taken therefor,
and to be returned here at next Court.

N 22

Wm. L. Henderson &
George W. Henderson

vs

Jesse Barber

8519

Rec'd a bond filed -
Paid for - Will of John
Made a Supersedeas -
Issued a file - See for
to Shiff - A Certificate
to Clerk - Clay County
30 May 1857 -

Dismissed