

No. 12735

Supreme Court of Illinois

Dewes

vs.

Elston et al.

71641  7

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Daniel Ellerton et al

vs.

Robert Dewes

96

12735

1859

United States of America }
STATE OF ILLINOIS, COUNTY OF COOK, S. S. }

Pleas, before the Honorable

George W. Munroe

Judge of the Seventh Judicial Circuit of the State of Illinois, and Sole Presiding
Judge of the Circuit Court of Cook County, in the State aforesaid, and at a ^{Special} term thereof
begun and held at the Court House in the City of Chicago, in said County, on the

Fourth Monday, (being the twenty eighth day) of

June in the year of our Lord one thousand eight hundred and

fifty eight and of the Independence of the said United States the

Eighty Second pursuant to the order of said Court heretofore
made do hereby certify that

Present, Honorable

George W. Munroe

Judge of the 7th Judicial

Circuit of the State of Illinois.

Charles H. Harn States Attorney.

John L. Wilson Sheriff of Cook County.

Attest;

John L. Church

Clerk.

Be it remembered that heretofore, to wit,
on the sixteenth day of June in the year afore
said, Robert Dewes by W. W. Drummond
Esq. his attorney, filed in the office of the
Clerk of said Court his certain petition
which is in the words and figures follow-
ing, to wit,

State of Illinois } June Special Term of
Cook County } The Cook County Circuit
Court to C. D. 1858

Robert Dewes
vs. }
Daniel T. Elston } Trespass on the case
William H. Davis } on promises—
Orin J. Rose and } damages sixteen
Otho Plummer— } Thousand Dollars

Partners doing business
under the Partnership firm, name and
style of "Daniel Elston & Co."

The Clerk of the Cook Circuit Court
will please issue a summons in favor
of the above named plaintiff and against
the above named Defendants in an ac-
tion of Trespass on the case on promises
to his damage of Sixteen Thousand Dol-
lars, directed to the Sheriff of Cook County
to execute and returnable as the law di-
rects,

Respectfully Yours.

W. W. Drummond
Plaintiff's Attorney

And afterwards, to wit, on the day and year last aforesaid, the said Robert Dewes by his attorney aforesaid filed in the office of the Clerk of said Court his certain declaration which is in the words and figures following, to wit,

State of Illinois } Cook Co. Cir. Court
County of Cook } ss. Oct. Term for A. D. 1858

Robert Dewes

vs.

Daniel T. Elston, William H. Davis, Crim J. Rose, and Otto Klemm a firm doing business under the partnership firm, name and style of Daniel Elston & Co.

Robert Dewes (by W. W. Drummond his attorney) the plaintiff in this suit, complains of Daniel T. Elston, William H. Davis, Crim J. Rose and Otto Klemm partners doing business under the firm, name and style of Daniel Elston & Co. at Chicago County of Cook and State of Illinois of a plea that they render unto the said Robert Dewes the sum of Three thousand dollars lawful money of the United States, which they owe to and unjustly detain from him. For that whereas the said Defendants, to wit, on the first day of October in the year of our Lord one

Thousand eight hundred and fifty seven
at the City of Chicago County of Cook and
State of Illinois aforesaid were indebted
to the said Plaintiff in the sum of Three
thousand dollars lawful money of the
United States. For so much money by
the said plaintiff before that time paid,
laid out and and expended to and for the
use of the said defendants at their like
special instance and request.

And whereas also the said defendants
afterwards, to wit, on the day and year last
aforesaid were indebted to the said plain-
tiff in the further sum of Three thousand
dollars of like lawful money for money
by the said Plaintiff before that time
lent to the said Defendants and at their
special instance and request, and being
so indebted they the said Defendants,
in consideration thereof, afterwards, to wit,
on the day and year last aforesaid at
Chicago, Cook County Illinois aforesaid
undertook and then and there faithfully
promised the said plaintiff to pay him
the said last mentioned sum of money
when they the said defendants should be
thereunto afterwards requested. And also
for that whereas the said defendants af-
terwards, to wit, on the day and year

Last aforesaid were indebted to the said Plaintiff for so much money before that time and then due and payable from the said defendants to the said plaintiff for interest upon and for the forbearance of divers large sums of money before then lent and advanced by the said plaintiff to the said defendants at their special instance and request, and by him the said plaintiff forbore to the said defendants for divers long spaces of time before then elapsed, at the like special instance and request of the said defendants, and also for other money before that time and then due and payable from the said defendants to the said plaintiff for interest upon and for the forbearance of divers other large sums of money before then due and owing from the said defendants to the said plaintiff, and by the said plaintiff forbore to the said defendants for divers long spaces of time before then elapsed at the like special instance and request of the said defendants, and being so indebted they the said defendants in consideration thereof afterwards, to wit, on the day and year last aforesaid, at Cook County Illinois aforesaid under look and then and there faithfully

promised the said plaintiff to pay him the said last mentioned sum of money when they the said defendants should be thereto afterwards requested.

Nevertheless the said defendants not regarding their said several promises and undertakings but contriving and fraudulently intending craftily and subtly to deceive and defraud the said plaintiff in this behalf hath not as yet paid the said several sums of money (in the several counts in this declaration 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 same hath hitherto wholly neglected and refused and still do neglect and refuse to the damage of the said plaintiff of the sum of Three thousand dollars and therefore he brings his suite.

by W. W. Drummond.
his Attorney

Account referred to in the several
Accounts of the foregoing Declaration
Daniel Estlin & Co. Dr.

At D. 1857. To Robert Devis
July To Cash lent to you \$ 3000.
Aug. & To Cash paid to you by Hugh Mohr 0000.
Sept. for me at your request \$ 3000.
Oct. To Cash paid out for you at your request \$ 3000.
Oct. To Cash paid Hugh Mohr for you \$ 3000.
Nov. To Cash paid to R. R. Swift & Co. for you \$ 3000.
Dec. Interest due on the above sums \$ 3000.

W. W. Drummond
Plffs Atty

And afterwards and on the day & year
last aforesaid, to wit, June 16th A. D. 1858
there issued from the office of the Clerk of
this Court aforesaid and under the seal
thereof the People's writ of Summons direct-
ed to the Sheriff of Cook County to execute
& clothed in the words & figures following
to wit,

State of Illinois }
County of Cook } ss

The People of the State
of Illinois to the Sheriff of said County
Greeting:
We command you that

you summon Daniel T. Elston, William H. Davis, Arin J. Rose and Etho Plenum if they shall be found in your County personally to be and appear before the Circuit Court of Cook County on the first day of the next term thereof, to be holden at the Court House, in Chicago in said County, on the fourth Monday of June inst. To answer unto Robert Deves in a plea of Trespass on the case on promises to the damage of the said plaintiff as is said in the sum of Sixteen Thousand Dollars. And have you then and there this writ, with an endorsement thereon in what manner you shall have executed the same.

Witness William Church, Clerk of our said Court, and the seal thereof at Chicago aforesaid this sixteenth day of June A.D. 1858
W^m L. Church, Clerk

And afterwards, to wit, on the 26th day of June in the year last aforesaid said writ was returned into Court by said Sheriff endorsed as follows, to wit, Served by reading to the within named Daniel T. Elston & Arin J. Rose the 18th day of June 1858 - William H. Davis & Etho Plenum not found in my County the 26th day of June 1858. Fees: 2 services, 1,00 - 6 miles, 30 - 1 Return, 10 - 1,40

Pld. by Plff. atty. John L. Wilson Sheriff
by Tho^s J. Holt Deputy

And afterwards, to wit, at the June Special term of said Court, to wit, on the thirtieth day of June in the year last aforesaid, the following, among other proceedings in said Court, were had and entered of record, to wit,

Robert Deves

vs.

Daniel T. Elston, William

H. Davis, Crim. J. Rose & Otho Klemm

} assumpsit

This day comes the said plaintiff by W. W. Drummond Esq. his attorney, and due personal service of process of summons issued in this cause having been had on the said defendants Daniel T. Elston and Crim. J. Rose only and they having been three times severally solemnly called in open Court come not nor does any person for them but herein they make default which on motion is ordered to be taken and entered of record. Wherefore said plaintiff ought to have and recover of the said defendants Daniel T. Elston & Crim. J. Rose implicated with the said William H. Davis & Otho Klemm his damages herein sustained by occasion of the premises. And the Court after hearing the allegations and proofs

submitted by said plaintiff and being fully advised in the premises assesses said plaintiff's damages herein to the sum of Ten thousand nine hundred and seventy five dollars.

Therefore it is considered by the Court that said plaintiff do have and recover of the said defendants Daniel T. Elston, and Orrin J. Rose impleaded as aforesaid, his damages of ten thousand nine hundred and seventy five Dollars in form aforesaid and by the Court assessed together with his costs and charges by him in this behalf expended and have execution therefor.

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State of Illinois, }  
COUNTY OF COOK. } S. S.

I, WILLIAM L. CHURCH, Clerk of the Circuit Court of Cook County, in the State aforesaid, do hereby certify the above and foregoing to be a true, perfect and complete copy of the Papers & Proceedings entered of Record in a certain cause pending in said Court on the Common Law side thereof, wherein Robert Deane was Plaintiff and

Daniel T. Elston Ed Imp't &c defendant.

IN WITNESS WHEREOF, I have hereunto set my hand, and affixed the seal of our said Court at Chicago, this Eleventh day of July A. D. 1858

Aug 2, 50

W. L. Church

Clerk.



Daniel L. Elston et al  
vs  
Robert Dewes

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Filed July 21. 1888  
L. Deland  
clerk

J. S. D. Clark

Supreme Court of the State of Illinois  
Third Grand Division  
of the April Term 1888  
Daniel J. Elston et al  
Plaintiff in Error } Assignment of  
Errors.  
Robert Deaves  
Defendant in Error }

And now comes the  
said Daniel J. Elston in pleaded  
re Plaintiff in Error by  
John J. Clements his attorney  
and for error assigns the  
causes following to wit -

First. That there is a variance between  
the amount of the note given  
in evidence and the note  
disputed on.

Second

That the amount of the judge  
ment is greater than the  
amount of ad damnum  
clause of the declaration,  
John J. Clements  
att. for Pl. in Error



Supreme Court

Daniel J. Elston

vs  
Plaintiff in Error

vs  
Robert Dewes  
Defendant in Error

Assignment of  
Errors

Filed March 22, 1859  
Leland  
Clerk

96  
Daniel J. Elston et al  
vs

Robert Dewes

STATE OF ILLINOIS,  
SUPREME COURT,

To the Clerk of the Circuit

ss. The People of the State of Illinois,

Court 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 Court of Cook County, before the Judge thereof, between Robert Jones -

plaintiff, and Daniel T. Elston, William H. Davis Orrin J. Rose and Otto Klemm -

defendant s, it is said manifest error hath intervened, to the injury of the aforesaid Daniel T. Elston and Orrin J. Rose -

as we are informed by their 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 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 21<sup>st</sup> day of July - in the Year of Our Lord one thousand eight hundred and fifty-eight  
J. Leland



Daniel F. Olston et al  
vs  
Robert Dewes  
Writ of Error

Filed July 21, 1858  
L. Leland  
clerk