

No. 8498

Supreme Court of Illinois

Morgan & Hundley

vs.

Fallstein et al

71641  7

Know all men by these presents that we
James M. Morgan, Robert M. Hundley, William
L. Johnson and Samuel Morgan are held
and firmly bound unto Charles B. Hallenstein
and Charles W. Gauss Copartners under the
firm name of Hallenstein and Gauss in
the penal sum of twelve Hundred dollars
good and lawful money of the United
States, for the payment of which sum
we and truly to be made, we bind
ourselves our heirs, executors & administrators
jointly severally and firmly by these
presents. Witness our hands and seals
this 14th day of March A.D. 1861.

The condition of the above obligation
is such that whereas the said Charles
B. Hallenstein and Charles W. Gauss
Copartners as aforesaid, did on the
19th day of May A.D. 1860, in the Circuit
Court of Jackson County Illinois, recover
a judgment against the above bounden
James M. Morgan and Robert M. Hundley
for the sum of \$897 ⁶²/₁₀₀ dollars damages in
a certain action of Assumpsit - and
\$3 ⁷⁶/₁₀₀ dollars costs from which said
Judgment of the said Circuit Court
the said James M. Morgan and Robert M.
Hundley are about to prosecute a writ of
Error to the Supreme Court of said State

for the reversal thereof, and the said writ
of error being about to be sued out, and
by order of One of the Justices of the said
Supremes Court, when to be sued out as aforesaid,
is to be made a Supersedeas. And if the
said James M. Morgan & Robert M. Hundley
shall well and truly, and without delay,
prosecute their said writ of error with
effect - And shall pay to the said
Halliston & Gauss, their heirs and assigns,
the Amount of the said Judgment, interest,
damages and costs rendered and to be
rendered against them in case the said
Judgment shall be affirmed in the
said Supremes Court, then this obligation
to be Void, otherwise to be and remain
in full force and effect -

J. M. Morgan Seal
R. M. Hundley Seal
Samuel Morgan Seal
Wm. L. Johnson Seal

14

Morgan & Hundley

by

Hallenstein & Gauds-

Superiorian Corn-

Fitch. March 18. 1864-

A. Johnston cly

!

State of Illinois,

CLERKS OFFICE OF THE SUPREME COURT,

First Grand Division.

SS

I hereby certify that a writ of error hath issued
from this Office for the reversal of a judgment obtained by
Charles B. Hallenstein & Charles W. Gauss
Against *John M. Morgan & Robert M. Humbley*
in the Circuit Court of *Jackson* County at the
May Term, in the year of our Lord one thou-
sand eight hundred and *Sixty* in a certain action of
Trespass on the Case - ~~for~~ which writ of error
is to operate as a Supersedeas, and as such is to be obeyed by all
concerned.

Given under my hand, and the seal of the
said Supreme Court, at MOUNT VERNON, this
eighteenth day of *March*
in the year of our Lord one thousand
eight hundred and *Sixty-one* -

Noah Johnston

Clerk of the Supreme Court.

I return the within Executed by Meeting to James
 Madison and William Boy this 23rd day March 1861
 at Hyattsville
 I hereby enter the appearance of Charles B. Fallentin
 Charles W. Morgan - copartners under the firm
 name of Fallentin - Morgan - the defendants
 in this suit this 23rd day of March 1861
 C. Morgan
 at Hyattsville 23rd March 1861

14

SUPREME COURT.
 First Grand Division.

James M. Morgan &
 Robert M. Humbley.

vs

Charles B. Fallentin &
 Charles W. Morgan -

WRIT OF SUPERSEDEAS.

FILED.

\$1000
 \$200
 \$100
 \$100
 \$100

Sherriff

State of Illinois,
SUPREME COURT,
First Grand Division.

} ss

The People of the State of Illinois,

To the Clerk of the Circuit Court for the County of Jackson 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 Jackson county, before the Judge thereof between Charles B. Hallenstein & Charles H. Gauss under the firm name of Hallenstein and Gauss plaintiffs and James M. Morgan & Robert M. Humbley under the firm name of Morgan & Humbley defendants it is said manifest error hath intervened to the injury of the aforesaid Morgan and Humbley as we are informed by their 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 our 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 Sunday after the 2^d Monday of 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.

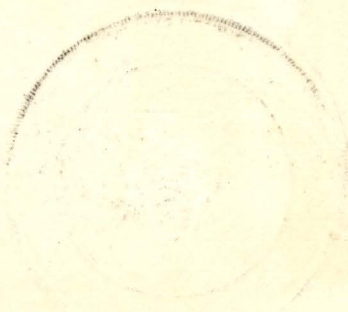
WITNESS, the Hon. John D. Catron Chief Justice of the Supreme Court and the seal thereof, at MOUNT VERNON, this eighteenth day of March in the year of our Lord one thousand eight hundred and fifty one

Noah Johnston

Clerk of the Supreme Court.

This writ of error is made a Supersederas, and is to be
obeyed accordingly -

Attest John Johnston clerk



WITNESSES: my hand and seal of office this 10th day of June 1861.

14
SUPREME COURT.
First Grand Division.

Samuel M. Thompson &
Robert M. Bradley

Plaintiffs in Error,

VS.

Charles B. Hallenstein &
Charles W. Gauss -
Defendant in Error.

WRIT OF ERROR.

Assess & made a Supersederas

and FILED W. H. Hall

1861 -

J. Johnston clerk

Carton dale March 25th 1861

Mr Noah Johnston, Clerk
Mount Vernon Ill

Dear Sir

This morning I recd the inclosed papers from Circuit
Clerk of our County served and returned with
instructions to me to send them to you

Yours truly
James M. Morgan

Castroville March 4th 1861

Mr. Noah Johnston
Capt. Superintendent

Mount Vernon Illinois

Dear Sir

yours of February 28th to hand and
contents noted

inclosed you will find bond
dated and signed legally also inclosed
you will find \$4 to pay your fees -
plus added to that immediately the execution
is out it ought to be stopped soon

yours truly
J. M. Wagner

Cairo Illinois

March 7th 1861

Noah Johnson Esq
McDonough Ill

Dear Sir

Your favor of
the 5th enclosing Judge Brewster's letter
came duly to hand to day. Have
at once attended to the suggestions
in your letter by forwarding to
plaintiffs blank affidavits
with directions to have them
perfected & mailed to you at once.
Herewith please find Judge Brewster's
letter. It may be several ~~days~~
days before the affidavits will
reach you. With reference to
the Clerkship I can assure you
that the people here have no
disposition to try a new man
and you may now write it down
in your memorandum book
that the vote of Cairo will be
for Noah Johnson and as Cairo
goes so goes the County. The City
having more votes than the balance
of the County.

Respectfully
John H. Mulkey

Conlyh March 1. 1861

Dear Sir

I have rec^d. the record sent
by Mr. Mulkey but I am
prohibited by rule 51 (22 H.)
from asking notice there is an
affidavit filed of the responsibility
of the Committee named.
The affidavit must state fully
their competency - Two of them
were accepted when the paper
order was granted in July
last but they may not be
responsible now - Affidavit
of the Sheriff, as for a Clerk
and answer -

Yrs. respy
Edw. Mearns
St. Johnston Eng.

March 2 1861
James C. Ward
Secy

In the Supreme Court, State of Illinois.

FIRST GRAND DIVISION,

At Mount Vernon----November Term, A. D., 1861.

MORGAN & HUNDLEY

vs.

FALLENSTEIN & GAUSS.

} Error to Jackson.

DEFENDANT'S BRIEF.

The demurrer to the second plea was properly sustained. The evidence that would support the plea, would vary the terms of the note. Such evidence not admissible.

"The rule is, where a contract is reduced to writing, that the writing affords the only evidence of the terms and conditions of the contract. All antecedent and cotemporaneous verbal agreements are merged in the written contract. The law will not allow that an agreement may rest partly in writing and partly in parol, so that it is equally inadmissible to add to, take from or specifically change the terms of a written agreement, by parol."

Lane vs. Sharpe 3 Scam. 573.	2 Phillips Evidence 358.
Hoare vs. Graham 3 Camp. 56.	4 " " 594.
Graves vs. Clark 6 Blackf. 183.	Harlow vs. Boswell 15 Ill. 57
Mahan vs. Sherman 7 do. 379.	Abrams vs Pomroy 13 Ill 133

Parol evidence is admissible to impeach the consideration of a note, provided always that it does not vary the terms of the note.—12 Ill. 288-9.

"Our statute allowing the failure or want of consideration of a note to be proved by parol; never intended to allow parol proof to change the terms of a note which has been delivered and become operative. The rule that the writing must speak the intention of the parties, is as applicable to a note as to any other written instrument."

Walters vs. Smith 23 Ill. 345.

CORNELIUS S. WARD,

For Defendant.

IN THE SUPREME COURT OF ILLINOIS,

FIRST GRAND DIVISION-----NOVEMBER TERM, 1861.

ABSTRACT.

Morgan & Hundley,
VS.
Fallenstein & Gauss.

} ERROR TO JACKSON.

- 1 The record in this case shows that an action of Assumpsit was brought in Jackson Circuit Court, at May Term, 1860, by the Appellees against the Appellants. The Declaration counts first upon a promissory note for \$886.55, with the usual money counts added.
- 4 The Defendants pleaded first the general issue, and secondly, a plea of partial failure of consideration to the first count; the 2d plea alleging that the "sum of fifty-nine dollars was included in said note, and in consideration of the agreement and promise of the said plaintiff at the time of making said note, and contemporaneously therewith that they, the said plaintiffs, would not institute a suit upon said note, or attempt by legal process, to collect it of said defendants or demand payment thereof of them, until after the first day of June, 1860, and which said time has not yet elapsed, and plaintiffs have instituted this suit and demanded payment of the said sum of \$59 before the said first day of June, 1860, by means
- 5 whereof, the consideration of the said note has failed and this they are ready to verify; wherefore they pray judgment, &c.
- To this 2d plea a general demurrer was filed and the court sustained the demurrer. A trial was then
- 7 had upon the general issue, and the jury returned a verdict against the Appellants, for \$897.62. Motion for new trial overruled by the court, and judgment rendered upon the verdict of the jury. From this judgment, Morgan & Hundley appealed to this Court.
- The Errors assigned are:—1st, That the Court erred in sustaining demurrer to 2d plea. 2d, That the Court erred in overruling motion for new trial, and entering judgment upon the verdict.
- 10 The main question raised and relied on is, that the Court should have overruled appellees demurrer to appellant's 2d plea, that plea being good as a plea of part failure of consideration.

—See Hill ET AL vs. Enders ET AL 19th Ill., 163.

WILLIAM J. ALLEN,
Attorney for Appellants.

14

Morgan & Handley
by
Fuller, Newman & Jones

abstract & brief

Office

Filed Nov. 14 - 1861

A. S. Johnston Clerk

In the Supreme
Nov Jan 1861

Morgan & Handley
vs
Hollenstein & Camp

Error to
Jackson

State of Illinois
Jackson County

On this day person

ally came before the undersigned
a justice of the peace within and
for the County and State of said
Samuel Morgan one of the Defendants
of the plaintiffs to the appeal bond
in the above entitled Cause who
after being first duly sworn upon his
oath states that he is residing at this
time and for more than twelve months
past has been a resident of Jackson
County Illinois that he is the owner
in fee simple of a farm in Perry
County Illinois which is clear
of incumbrances of any kind and
is worth Two Thousand

Dollars. He further states
that his personal estate including
all debts that are due him and
moneys on hand amount to at least
Two Hundred Dollars
That his debts of every kind and

Acception whatsoever do not exceed
Fifty — — — Dollars & further
saith not — Samuel Meyer

Subscribed & sworn to before me
this 11th day of March 1861
John C. Patton J.P.

State of Illinois
Jackson County J.P.

I Thomas S
Hall Clerk of the County Court of
Jackson County Illinois do
hereby Certify that

by and before whom the fore
going affidavit was taken was
at the time thereof & now is an
acting Justice of the Peace within
and for the County of Jackson and
State of Illinois duly commis
sioned & qualified and that his signa
ture as appears above is genuine

In witness whereof I have
hereunto set my hand and
affixed the seal of my said
office this 11th day of
March A.D. 1861

Thomas S. Hall, Clerk
J. H. Clark now & p. 11



In the Long Cause

124

Morgan & Hundley

by E

Wallerstein & Gump

Appelavit

Filed March 18. 1861-

N. Schuster cly

Handwritten notes in left margin:
Hundley & Morgan
Fallenstein & Gauss
11/1/31

In the Supreme Court, State of Illinois.

FIRST GRAND DIVISION,

At Mount Vernon----November Term, A. D., 1861.

MORGAN & HUNDLEY

vs.

FALLENSTEIN & GAUSS.

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Walters vs. Smith 23 Ill. 345.

CORNELIUS S. WARD,

For Defendants.

For Defendant

CONFESSION & WAIVER

Whereas the Statute 2d Ill. 312

is applicable to a note as to any other written instrument.

The rule that the writing must show the intention of the parties is the basis of a note which has been collected and become operative to be proved by parol, never intended to allow parol proof to change

Our statute allowing the failure or want of consideration of a note

15 Ill. 388-9.

note, provided always that it does not vary the terms of the note.

Parol evidence is admissible to impeach the consideration of a

Whereas the Statute 1st Ill. 312

Whereas the Statute 1st Ill. 123

Whereas the Statute 1st Ill. 123

Whereas the Statute 1st Ill. 21

Whereas the Statute 1st Ill. 21

Whereas the Statute 1st Ill. 21

Whereas the Statute 1st Ill. 21

Whereas the Statute 1st Ill. 21

the terms of a written agreement, by parol.

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DEFENDANT'S BRIEF.

MUTGENSTEIN & CLARK

vs.

Error to Jackson.

MORRIS & HUNTER

At Mount Vernon----November Term, A. D. 1861

FIRST GRAND DIVISION

In the Supreme Court, State of Illinois.

14
Morgan & Handley
vs
Fallenstein & Gaup
Defts Brief

IN THE SUPREME COURT OF ILLINOIS,
FIRST GRAND DIVISION-----NOVEMBER TERM, 1861,

ABSTRACT.

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VS.
Fallenstein & Gauss.

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To this 2d plea a general demurrer was filed and the court sustained the demurrer. A trial was then
7 had upon the general issue, and the jury returned a verdict against the Appellants, for \$897.62. Motion for new trial overruled by the court, and judgment rendered upon the verdict of the jury. From this judgment, Morgan & Hundley appealed to this Court.

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10 The main question raised and relied on is, that the Court should have overruled appellees demurrer to appellant's 2d plea, that plea being good as a plea of part failure of consideration.

—See Hill ET AL vs. Enders ET AL 19th Ill., 163.

WILLIAM J. ALLEN,
Attorney for Appellants.

14-17

Morgan & Bentley
by

Fallensten & Goun

Abstract & brief

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528

22
20

420

428
20

528

Filed Nov-14-1861.
St. Johnstone City

Morgan & Hundley
 by
 Fallenstein & Gauss } In the Supreme Court
 at Mt Vernon Hc, Nov
 Term 1861
 Error to Jackson

It is hereby agreed & stipulated
 in the above styled Cause that the
 record in the same be so amended
 on page 14 that upon the
 overruling of the motion for
 a new trial by the Court the
 defendants then and there excep-
 ted, also that the Court gave
 judgment upon the verdict of
 the jury for \$892 ~~00~~ to which
 defendants then & there excepted,
 this to be made by Consent a
 part of the record
 Oct 14 1861 William G. Allen atty
 for appellants,
 Cornelius S. Ward
 for defendants

Morgan & Shindly
as

Fallenstein & Gours

Ernst & Jackson

Stipulations

Filed Nov. 14-1864.

A. Johnston Clerk

14 . 17

Morgan & Hambley
m

Gallenstein & C
1861

Carthage in Page 480-

Copy of final order

Sent C S Wain Jan'y
17. 62.

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