

No. 13388

Supreme Court of Illinois

Miles et al

vs.

Waterbury

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 110.

Miller
vs

Waterbury

13388

1861

State of Illinois
Mercer County } Pleas before the Honorable John S.
Thompson Judge of the Tenth Judicial
Circuit of the State of Illinois, at a Court
begun and held at the Court House in
Kledo, in said County of Mercer, on the
first Monday of the month of September,
in the year of our Lord one thousand eight
Hundred and fiftynine, it being the fifth
day of said month in said year.

Present Honorable John S. Thompson Judge
James H. Stewart State Attorney
Harry S. Senter Clerk
James M. Mannon Sheriff

Augustus T. Waterbury for the }
use of Phebe Waterbury } Trespass on the case and
vs } Promises
Elisha Miles and Isaac H. Bassett } Damages \$1200, or

Be it remembered, that heretofore, to-wit: on the
8th day of August A.D. 1859, the Plaintiff in the above
entitled cause by his Attorney, filed, in the Circuit
Court of said County, his precipe for summons in
these words, to-wit:

State of Illinois
Mercer County }

Mercer Circuit Court
September Term A.D. 1859

Augustus T. Waterbury for }
 the use of Phebe Waterbury }
 W } Trespass on the case on
 Elisha Miles and Isaac N. Bassett } Promises,
 } Damages \$1200.00

The Clerk will issue summons for the Defendants-
 in the above case in a plea of Trespass on the case on
 promises. Damages, Twelve Hundred Dollars as he
 says
 S. M. Thompson
 Atty. for Plffs.

Thereupon a summons issued in words and
 figures following; to wit:

State of Illinois
 Mercer County

The People of the State of Illinois
 To the Sheriff of Mercer County; Greeting:

We command you to summon Elisha Miles & Isaac
 N. Bassett if to 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 held at the Court
 House in Alton, on the first Monday of September next,
 then and there to answer unto Augustus T. Waterbury
 for the use of Phebe Waterbury of a plea of Trespass
 on the case upon Promises to her damages in the sum
 of (\$1200.00) Twelve Hundred Dollars as she says, and
 have you then and there this writ, and make return
 thereon in what manner you execute the same.

(Seal)

Witness Harry Senter, Clerk of our Circuit
 Court, and the Seal thereof at Alton, this

8th day of August, in the year of our Lord one thousand
and eight hundred and fifty nine

A. S. Senter Clerk.

On the back of which summons appears the
following return made by the Sheriff of Mercer County,
to-wit:

I have served the within summons by reading
the same to the within named J. A. Bassett & Elisha
Miles this 14 day of August AD 1859

James M. Mannon Sheriff

And on the 26th day of August AD. 1859, Plaintiff
filed in said Court his Declaration in these words, to-wit:

State of Illinois
Mercer County

In the Mercer County Circuit Court,
of the September Term, of the
year eighteen hundred and fifty nine

Augustus T. Waterbury for the use of Phebe Waterbury
Plaintiff in this suit, by Lewis W. Thompson her Attorney,
comes and complains of Elisha Miles and Isaac A.
Bassett, Defendants who were summoned to, of a plea of
Trespass on the case upon promises: For that, whereas
the said Defendants heretofore, to-wit: on the seventh
day of August, in the year of our Lord one thousand
eight hundred and fifty eight, at the County of Mercer
and State of Illinois, made their certain note in
writing, commonly called a promissory note, by the
name of Elisha Miles and J. A. Bassett, bearing
date the day and year last above mentioned, and
then and there delivered the said note to the said
Augustus T. Waterbury, by the name of A. T. Waterbury

and thereby then and there promised to pay the said Augustus T. Waterbury by the name of A. T. Waterbury or his order the sum of eight Hundred Thirty Six Dollars and forty cents, with ten per. cent. interest from date, for value received, but ^{although} the said note hath become due and the said Defendants, have been requested to pay the same to the Plaintiff they have refused so to do, to wit: at the County aforesaid. And for that whereas also the said Defendants heretofore, to wit: on the Seventh day of August A.D. 1858 at the County aforesaid, in said County were indebted to the said Plaintiff in the sum of One thousand dollars for goods, wares and merchandize sold and delivered by the said Plaintiff to the said Defendants at their request.

And in the further sum of One thousand Dollars for money before that time lent and advanced by Plaintiff to Defendants at their request.

And in the further sum of One thousand Dollars for money then and there paid by Plaintiff for use of Defendants at their request.

And in the further sum of One thousand Dollars for money found to be due and owing from said Defendants to said plaintiffs on an account then and there had and stated between them.

And the Defendants being so indebted, afterwards, to wit: on the day and year last aforesaid, at the place aforesaid, in consideration of the promises, respectively promised the said Plaintiff to pay her the said several moneys last aforesaid, on request. Yet the Defendants although often requested, to wit: afterwards, on the day and year and at the place last aforesaid, have

disregarded their promises, and have not paid said
moneys above mentioned, or any, or either of them,
or any part thereof, to the damage of the Plaintiff
of Twelve hundred Dollars, and thereupon she brings suit,
tc.

S. W. Thompson

Atty. for Plff.

Copy of note declared on as in 1st Count in Declaration
\$800.00

Alledo Ill. Aug. 7th 1858

One year after date we promise to pay to the
order of A. T. Waterbury eight hundred & twenty six $\frac{4}{100}$
dollars value received with ten per cent. interest from
date

(Signed)

Elisha Miles

J. N. Bassett

And afterwards to wit: On the 13th day of September
A.D. 1859 Defendant filed, in said Court, his Demurrer
to first Count in Plaintiff's Declaration which demur-
rer is in these words to wit:

State of Illinois }

County of Mercer }

September Term A.D. 1859 of the
Circuit Court of said County

Augustus T. Waterbury for the
use of Phebe Waterbury

vs

Elisha Miles and Isaac N. Bassett

Trespass on the case on promises

And said Defendant comes
and defends and for Demurrer to the first Count of
said declaration, say that said Plaintiffs as to said
Count shall not have any thing by their action against
them, because they say that said Count and the

matters and things therein contained are in law
insufficient to entitle said Plaintiff to recover
thereon. Wherefore they pray that as to said Court
said Plaintiffs may be barred of their action upon
said against them

C. M. Harris

Atty. for Dft.

And afterwards, to-wit: on the 24th day of September
AD 1859, being one of the days of said Term, the
following order was made by the Court. To-wit:

It is ordered by the Court that a Special Term of this
Court be held at the Court House in the Town ofledo, in
and for the County of Mercer, for the trial of all causes
Civil, Criminal, and Chancery, commencing on the
third Monday in the month of December next ensuing
and that suits be instituted and process made returnable
at said Special Term as at a regular term of said Court

And afterwards, to-wit: on the day and year last
aforesaid the following order was made by the
Court, to-wit:

It is ordered by the Court that all Causes not
otherwise disposed of be continued.

State of Illinois
Mercer County

Please before the Honorable John S.
Thompson Judge of the Tenth Judicial
Circuit in the State of Illinois, at a

Special Term of the Circuit Court began and held
at the Court house in the Town ofledo in said
County on the Tuesday after the Third Monday in
the month of December, in the year of our Lord one
thousand eight hundred and fifty nine, being
the ~~twelfth~~^{twentyeth} day of said month said Court being
held for the trial of all causes, Civil
Criminal Chancery

When Present

Honorable John S. Thompson Judge
James H. Stewart State Attorney
James M. Mannon Sheriff
Harvey S. Bentet, Clerk

And afterwards, to-wit: on the 12th day of January
A.D. 1860, being one of the days of the said Special
December term, ¹⁸⁵⁹ the following proceedings were had
in said Cause, to-wit:

221 Augustus T. Waterbury for }
the use of Phebe Waterbury }
vs } Assumpsit
Elisha Miles & Isaac N. Bassett }

This Cause coming on to be
heard on Defendants Demurrer to Plaintiffs Declaration
and the Court being advised in the premises, overrules
said Demurrer. Thereupon came Defendants by
attorney, and withdrew their Demurrer herein, and
on his motion leave is given to plead by to-morrow
morning by verifying the same by affidavit that
Defendants have a meritorious defence to the whole
or a part of Plaintiffs Claim

The Plea filed herein not to be found

And afterwards, to-wit: On the 14th day of January A.D. 1860, being one of the days of the said Special December Term A.D. 1859, the following proceedings were had in said cause, to-wit:

221 Augustus T. Waterbury for }
the use of Phebe Waterbury }
vs } Assumpsit
Elisha Miles and Isaac N. Bassett }

This day came Plaintiff by his Attorney and entered his motion to strike Defendants Plea from the files

And afterwards, to-wit: on the 18th day of January A.D. 1860, being one of the days of the said Special December Term A.D. 1859, the following proceedings were had in said cause, to-wit:

221 Augustus T. Waterbury for }
the use of Phebe Waterbury }
vs } Assumpsit
Elisha Miles and Isaac N. Bassett }

It is ordered by the Court that Plaintiff's motion to strike Defendants Plea from the files be overruled. Thereupon came Defendants by Attorney, and on his motion leave is given to plead further ten days before the next term of this Court. And it is further ordered by the Court that this cause stand continued

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1 1 1

State of Illinois
Mercer County

Please before the Honorable John S. Thompson, Judge of the Tenth Judicial Circuit of the State of Illinois, at a Court begun and held at the Court House in Aledo in said County on the third Monday in the month of April in the year of our Lord One thousand eight hundred and Sixty, it being the sixteenth day of said Month

Present Honorable John S. Thompson Judge
James H. Stewart State Attorney
James M. Mannon Sheriff
Harvey S. Senter Clerk

And afterwards, to-wit: On the second day of May A.D. 1860 being one of the days of said April Term 1860 the following proceedings were had in said cause to-wit:

Augustus T. Waterbury for }
the use of Phebe Waterbury }
vs } Assumpsit
Elisha Miles & Isaac N. Bassett }

This day came the Parties by their Attorneys and having agreed that Defendants may be allowed to introduce any evidence that they could under a plea of Offset, and having joined issue and waived a jury, for trial put themselves upon the Court

And afterwards, to-wit: On the 5th day of May
A.D. 1860, being one of the days of said April Term 1860,
the following proceedings were had in said cause, to-wit:

83 Augustus T. Waterbury for }
the use of Phoebe Waterbury }
vs } Mumfrest
Elisha Miles & Isaac N. Bassett }

This cause coming on again
for a hearing, and the Court, having heard the evidence,
finds for Plaintiff in the sum of (\$87^{65/100}) Seven Hun-
dred eighty seven Dollars and sixty five cents damages,
and orders that judgment be rendered for that amount.

It is therefore ordered by the Court that Plaintiff
recover of Defendants the said sum of Seven Hundred
eighty seven Dollars and sixty five cents, the damages
aforesaid, together with his costs herein, and may have
execution therefor. Thereupon came Defendant by
Attorney and entered his motion for a new trial, which
the Court overruled. Whereupon the Defendants excepted
to the ruling of the Court in overruling the motion
for a new trial, and to the rendering of the judgment,
and the ordering of an execution herein, and prayed
an appeal to the Supreme Court, which is allowed, the
Bill of exceptions to be filed within thirty days from the
date hereof, and Defendant to give Bond in the sum of
Two hundred Dollars with security to be approved, by
agreement of parties herein, by the Clerk and to be
filed in ten days from the date hereof

and received said promissory note as evidence,
to all which the Defendants then and there excepted.

The Plaintiff then and there admitted a payment
by Defendants on said note, on 19th November A.D. 1859
of One Hundred and Thirty dollars. Defendants
then and there on their part proved by Luke H.
Bassett, that he and said Elisha Miles, furnished
the two Waterburys aforesaid, sixty ⁶⁴/₁₀₀ Dollars worth
of goods from Miles and Bassett's Store on an
understanding between him, ~~and~~ the two Waterburys
aforesaid, and said Miles, that what goods they,
said Waterburys should get from said store, should
be paid for by said Miles and credited on said
promissory note. That this was in the month
of November A.D. 1858, and that said Phebe Waterbury
then told him and said Miles, that said Augustus
T. Waterbury could pay them for what goods they might
get of them with the borrowed money that Defendants
owed him on said promissory note. And that
in July or August A.D. 1859 she told him not to let said
Augustus T. Waterbury have any more goods, but not
to tell him, said Augustus T. Waterbury.

Plaintiff's then proved by Mrs. Boroff that she
saw said promissory note in the possession of said
Phebe Waterbury about a year, or a little more ago.

And by Mrs. McCarty that she saw said Phebe Waterbury
have it in January A.D. 1859. And Defendants then
and there proved by both of the witnesses last aforesaid
that for some time before and after, and at the res-
pective times of which they testified, said Phebe Water-
bury and Augustus T. Waterbury lived together.

(4)

This was all the evidence, agreement or admission in the case. The Court then and there found the issues for the Plaintiff, and rendered a judgment on such finding against Defendants for (\$787⁶⁵/₁₀₀) Seven Hundred eighty Seven Dollars and Sixty five cents and costs of suit, to all which said Defendants then and there excepted. All the evidence was given, all the admissions and agreements were made, and all the exceptions were taken in open Court, and on the trial of said cause. Wherefore it is ordered that the matters aforesaid be made a part of the record in this case, and that this Bill of Exceptions be signed & stated Given under my hand and seal

John S. Thompson (Sd)

And afterwards, to-wit: On the 10th day of May A.D. 1860, came the Defendants herein by their attorney, and filed, in the Office of the Clerk of the Circuit Court of said County, his Bond, which is in words and figures following, to-wit:

Know all men by these Presents, That we, Elisha Miles and Isaac N. Bassett, J. A. Reed and Joseph Hogan are held and firmly bound unto Augustus T. Waterbury, for the use of Phebe Waterbury in the penal sum of Twelve Hundred (\$1200) Dollars lawful money of the United States for the payment of which, will and truly to be made, we bind ourselves, our heirs and administrators jointly, severally and firmly by these presents

Witness our hands and seals this 10th day of May A.D. 1860

The condition of the above obligation is such that, Whereas, the said Augustus T. Waterbury for the use of Phebe Waterbury did, on the 5th day of May A.D. 1860, in the Circuit Court of Mercer County, in the State of Illinois, record a judgment against the above bounden Elisha Miles and Isaac N. Bassett for the sum of Seven Hundred and eighty seven and ⁶⁵/₁₀₀ (\$787 ⁶⁵/₁₀₀) Dollars, from which judgment the said Elisha Miles and Isaac N. Bassett have taken an appeal to the Supreme Court of the State of Illinois.

Now if the said Elisha Miles and Isaac N. Bassett shall pay the judgments, costs, interest and damages in case said judgment shall be affirmed, and shall duly prosecute said appeal without unnecessary delay, this obligation is void, otherwise to remain in full force

Elisha Miles (Seal)
J. A. Reed (Seal)
Joseph Hogan (Seal)

Approved by me this 10th day of May
A.D. 1860

A. S. Senter Clerk

State of Illinois
Mercer County J. S. Senter
Circuit Clerk in and
for said County do hereby certify that the
foregoing is a true and perfect transcript of
the Preamble, the Summons, the Pleadings
(except the first plea filed by defendants, which

cannot be found) the judgment of the Court
and all the orders made in said Cause,
the Bill of Exceptions and the Bond
in the Case of Augustus F. Waterbury for
the use of Phoebe Waterbury vs Elisha Miles
and Isaac N. Bassett.

In testimony whereof I hereto
sign my name and affix
the seal of said Court this
25th day of August A.D. 1860
H. S. Senter
Clerk

Elisha Miller
Dals 118
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Augustus T. Waterbury
Transcript of Record

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Filed September 3^d 1860
L. Leland
Clerk

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