

No. 13244

Supreme Court of Illinois

Campbell

vs.

Gilman

STATE OF ILLINOIS,

SUPREME COURT,

Third Grand Division.

1324
No. 206.

Campbell
vs

Keeler

1861

1861

STATE OF ILLINOIS, }
SUPREME COURT, } ss.

The People of the State of Illinois,

To the Clerk of the Circuit Court for the County of La Salle - Greeting:

Because, In the record and proceedings, as also in the rendition of the judgments of a plea which was in the Circuit - Court of La Salle County, before the Judge thereof, between

George C. Campbell

plaintiff, and

William F. Keeler and
David L. Hough

defendants, it is said manifest error hath intervened, to the injury of the aforesaid

Defendants

as we are informed by Them

complainants 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 judgments 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. Eaton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 16th day of April in the Year of Our Lord One Thousand Eight Hundred and Sixty one,

L. Island

Clerk of the Supreme Court.

206

George C. Campbell

No.

vs.

William F. Nerley &
David L. Hough

WRIT OF ERROR.

This Writ of Error is made a
Supersedeas, and as such is to be
obeyed by all concerned.

L. Keland

Clerk.

FILED

Apr. 16, A. D. 1861

L. Keland

Clerk.



Know all men by these presents
that we William. H. Keeler and David
L. Strong as principals, & Daniel Evans
as security, are held & firmly bound unto
George C. Campbell, in the penal sum of
Twelve Hundred dollars, lawful money of the
United States, for the payment of which well
struly to be made, we being ourselves, our
heirs, executors & administrators, jointly, severally
& firmly by these presents.

Witness our hands & seals this 15th day
of April A.D. 1861.

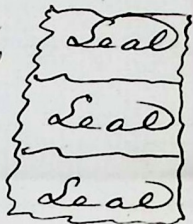
The condition of the above obligation is such
that whereas the said George C. Campbell did at
the December Term A.D. 1860, of the County Court of the
County of Adams State of Illinois receive a judgment
against the above bounden William. H. Keeler and
David L. Strong, impleaded with Hugh Benjamin,
for the sum of Seven Hundred Dollars & Thirty
Two cents, & cost of suit, from which said judgment
the said Keeler & Strong have appealed & a
writ of error, which has been ordered to be made
a supersedeas. Now therefore if the said
Keeler & Strong, shall duly prosecute their
writ of error, & shall pay or cause to be paid

the said judgment, & all costs, interest, and
damages, in case the said judgment shall
be affirmed, then this obligation to be void,
otherwise to remain in full force & virtue

William P. Kuhns

David L. Hough

Daniel Beaus.



Geo. C. Campbell

Kuhns & Hough

Suprs. Bond

Filed Sept. 16. 1861
at Helena
Clk.

the said judgment, & all costs, interest, and
damages, in case the said judgment shall
be affirmed, then this obligation to be void,
otherwise to remain in full force & virtue

William P. Kuhns

David L. Hough

Daniel Beaus.

Seal
Seal
Seal

Geo. C. Campbell

Kuhns & Hough

Suprs. Bond

Filed Sept. 16. 1861
at Helena
Clk.

State of Illinois
LaSalle County

Pleas, Proceedings, Orders
Judgments and Decrees held and taken in and
before the LaSalle County Court at a regular
term thereof commenced and held at the
Court House in Ottawa in said County, on the
first Monday (being the third day) of
December, in the year of our Lord One
Thousand Eight Hundred and Sixty, and of
the Independence of the United States of
America the Eighty fifth

Present, Hon John C. Champlin Judge

Phil Lindley Clerk

Eri L. Waterman Sheriff

Be it remembered that heretofore to wit on
the 24th day of February Eighteen Hundred
and Fifty nine a Precept was filed in the
Clerk's office of said LaSalle County Court,
in the words and figures following to wit:

before our Judge thereof, on the first day of
The next term of said Court, to be held at
The Court-house in Ottawa, on the first
Monday in March next, at ten o'clock
in The forenoon, then and There to answer
unto George C. Campbell in a plea of assump-
sit to his damage of Eight Hundred
Dollars. And have you then and there this
writ, and The manner in which you shall
have executed The same.



In witness whereof, We have caused
The seal of our said Court to be
hereto affixed and attested by
Philo Lindley our Clerk thereof
at Ottawa, this 24th day of February
1859. Philo Lindley Clerk
C. L. Merrick Deputy

And afterwards to wit on the 7th day of
March A.D. 1859. said writ was filed
in said Clerk's office, with an endorsement
thereon in the words and figures following to wit:
"Executed this writ by reading the same to
David S. Hough Feb 24th 1859
J. Warner Shiff."

"Executed this writ by reading the same to
Hugh Pennigton & William F. Keeler this
25th day of Feb. A.D. 1859. J. Warner Sheriff
by C. T. P. Buck Deputy"

Lent Ref 1.60
115 miles 2.25
\$ 3.85

And on the 24th day of February A.D. 1859
a declaration was filed in the clerk's office of
said Court in the words and figures following
to wit.

State of Illinois }
Saballe County of } And County Court thereof
To March Term A.D. 1859

George C. Campbell plaintiff in this suit
in person, complains of William F. Keeler
Hugh Pennington and David S. Hough
late partners under the name & style of
Keeler, Pennington & Co Defendants summoned
to. of a plea of assumpsit. For that
the said defendants heretofore to wit
on the 13th day of November A.D. 1857
at St Louis to wit at the County of
Saballe by their certain promissory note of
that date by them subscribed by the name
& style of Keeler, Pennington & Co promised
to pay to the order of Deatman, Robinson
& Co. Six hundred and Two ¹⁷/₁₀₀ Dollars for
value received negotiable and payable
without defalcation or discount at
Saint Louis six months after the date
of said note and afterwards to wit
on the said 13th day of November A.D. 1857
The said Deatman, Robinson & Co

assigned and delivered the said note then and still unpaid to the plaintiff of all of which the said defendants then and there had notice and then and there became liable and in consideration thereof then and there promised the said plaintiff to pay him said sum of money in said note mentioned according to the tenor and effect thereof when the said note should thereafter become due & payable, and the plaintiff avers that the said four months time limited in said note for the payment thereof has long since elapsed, and the plaintiff avers further that after said four months had elapsed as aforesaid said note being then due and payable the words "Protested for non payment March 16-1858-Antoine L. Chénier fees &c. \$1.60" were written in red ink across the face of said note - and though often requested the said defendants have never paid said note nor any part thereof.

And for that the said defendants at the County aforesaid, heretofore to wit, on the first day of January A. D. 1859, being justly indebted to the plaintiff in

the sum of Eight Hundred Dollars for
so much money before that time had and
received by said defendants to and for the
use of the said plaintiff, and in the like
sum for so much money before that time
laid out and expended by said plaintiff
to and for the use of the said defendants
at Their special instance and request;
and in the like sum for so much money
loaned by said plaintiff to said defendants
at Their request; and in the like sum for
goods wares and merchandise before that
time sold and delivered by said plaintiff
to said defendants at Their request; and
in the like sum for work and labor
before that time done and performed by
said plaintiff for said defendants at
Their request; in consideration thereof then
and there promised the said plaintiff
to pay him the said several sums of
money when they should be thereto after-
ward requested. Yet, though often re-
quested, the said defendants have never
paid the same nor any part thereof.
Whereby the plaintiff has suffered damage
in the sum of Eight Hundred dollars and
therefore he bring his suit

Geo C. Campbell. Suprem

Copy of Note sued on and which will
be offered in Evidence under the common
counts.

\$602.¹⁴

St Louis, Mo -

November 13th 1857

Four months after date we promise to
pay to the order of Peatman Robinson
& Co Six hundred & no ¹⁴/₁₀₀ Dollars for
value received negotiable and payable
without defalcation or discount at Saint
Louis
Keeler, Pennington & Co

Copy of Endorsement on said note
Peatman Robinson & Co

And afterwards to wit on the ninth day of
March A.D. 1859 a Demurrer and Plea
were filed in the Clerk's office of said
Court in the words and figures following
to wit:

George C. Campbell LaSalle County
vs Court March Term
William F. Keeler 1859
Hugh Pennington & Assumpsit
David L. Hough

And now comes the

said defendants, by D. S. Hough their
attorney & says that the first count in
said plaintiffs declaration, & the matters
& things therein contained in names &
form as the same are therein set forth
are not sufficient in law for said plain-
tiff to have & maintain his aforesaid
action against them the said defendants
& that they are not bound by law to
answer the same; wherefore they pray
judgment, &c.

D. S. Hough
Defts attorney

And for special cause of demurrer said
defendants show to the court the following
1st. Said count shows no right of action
in said plaintiff.

2^d. Said count does not show said
plaintiff to be the legal owner of the note
in said count mentioned.

D. S. Hough
Defts attorney

And as to the remainder of said
plaintiffs declaration being the common
counts contained therein they say that
they did not undertake & promise in

manner & form as The said Plaintiff in
said Common Counts has declared against
them, & of this they put themselves upon
The Country

D. L. Hough

Defts atty

And The Plaintiff doth the like by

Glover Cook & Campbell

attys for

And afterwards to wit on the Tenth day
of March A.D. 1859 at The March Term 1859
of said Court, certain proceedings in said
Cause were had and entered of record in
said Court in the words and figures following to wit:

George C. Campbell

Assumpsit.

William F. Keeler

Hugh Pennigun &

David L. Hough

This day comes The
Plaintiff in person, and
The defendants by

David L. Hough their attorney - And after hearing
The arguments of counsel upon the demurrer
filed herein to the first Count in the declara-
tion herein - said demurrer is overruled -
to which ruling of the Court The defendants
by their said attorney then and there excepted

and abides his said demurrer. - whereupon
the defendants being each Three Times
solemnly called come not nor any one
for them but make default, and it
appearing That this cause is founded upon
an instrument of writing for the payment
of money only the clerk is directed to assess
the damages herein and report the same
to the court, which is accordingly done and
found to amount to the sum of Six
Hundred and thirty seven dollars and
Seventy Eight Cents, which is reported to and
accepted by the court.

It is therefore considered by the
court That said plaintiff have and recover
of said defendants said sum of Six Hundred
and thirty seven dollars and seventy Eight
Cents for his damages and also his costs
and charges by him herein expended and
that he have execution therefor.

And afterwards to wit on the 4th day of June A. D. 1860, a certified copy of a judgment rendered in the Supreme Court within and for the Third Grand Division of the State of Illinois, in said Cause, was filed in the Clerk's office of said LaSalle County Court in the words and figures following to wit:

At a Supreme Court, begun and held at Ottawa, on Tuesday, the Seventeenth day of April in the year of our Lord One Thousand eight hundred and sixty within and for the Third Grand Division of the State of Illinois.

Present The Honorable John D. Catton Chief Justice

" " " Sidney Preese Associate Justice

" " " Pinckney A. Walker Associate Justice,

Thursday May 31, 1860

William F. Keeler & David

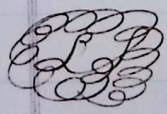
L. Hough impeached vs

George C. Campbell vs Error to LaSalle County Court.

On this day came again the said parties, and the Court having diligently examined and inspected, as well the Record and proceedings aforesaid, as the matters and things therein

assigned for Error, and being now sufficiently
advised of and Concerning the Premises, are of opin-
ion that in the Record and Proceedings aforesaid,
and in the rendition of the judgment aforesaid
There is manifest Error; Therefore it is con-
sidered by the Court that, for Error, and and
others in the Record and Proceedings afore-
said, the judgment of the County Court of
LaSalle County in this behalf rendered,
be reversed, annulled, set aside and
wholly for nothing esteemed, and that
this cause be Remanded to the County Court
of LaSalle County for such other and further
proceedings as to law and justice shall
appertain. And it is further considered
by the Court, that the said appellants recover
of and from the said appellees Their costs
by them in this behalf expended, and that
they have execution Therefor.

I Lorenzo Leland, Clerk of the Supreme
Court of the State of Illinois, do hereby certify
That the foregoing is a true copy of the final
order of the Supreme Court in the above
entitled cause, of record in my office.

 In Testimony whereof, I have set my
hand and affixed the seal of the said
Supreme Court at Ottawa this 2nd day of
June in the year of our Lord one
Thousand eight hundred and sixty
L. Leland, Clerk of the Supreme
Court by C. B. Rice Deputy.

Afterwards to wit on the Fourth day of June
A.D. 1866, at The June Term 1866 of said ^{Hassletts County} Court certain
^{further} proceedings in said cause were had and
entered of record in said court in the words
and figures following to wit

George C. Campbell
v.
William F. Keeles, Hugh
Bennigian & David S. Hough
Assumpsit
This day this
cause was continued by the court.

And afterwards to wit on the 4th day of
September A.D. 1866, at The September Term
1866 of said Court, certain further proceedings
in said cause were had and entered of
record in said court in the words and
figures following to wit:

George C. Campbell
v.
William F. Keeles, Hugh
Bennigian & David S. Hough
Assumpsit:
This day comes
The plaintiff by
Glover, Cook & Campbell his attorneys and

on Their motion This cause is continued.

And afterwards to wit on the Third day of December A.D. 1860, at the December Term 1860 of said Court certain further proceedings in said cause were had and entered of record in said Court in the words and figures following to wit:

George C. Campbell

Assumpsit:
William F. Keeler, Hugh
Benniquin and David S. Hough.

This day comes
The said Plaintiff
Tiff by Glover, Cook and Campbell his attorneys
and enter a Verdict Prosequi, as to the
Common Counts in the said Plaintiff's decla-
ration herein. And the said defendants
being Three times solemnly called. Come
not nor any one for them but make de-
fault herein. And it appearing to the
Court that said defendants were each duly
served with process herein ten days before
the first day of the present term of this
Court. It is therefore considered and
ordered by the Court that said Plaintiff
have judgment by default against the
said defendants for his damages herein.

And it appearing that this suit is brought upon an instrument of writing for the payment of money only, it is ordered by the court that the clerk assess compute and report the said damages. Whereupon the clerk proceeded to make ~~to make~~ the assessment and computation aforesaid, and reported to the court the sum of (\$700³²/₁₀₀) Seven Hundred and ³²/₁₀₀ Dollars as the amount of the plaintiffs damages herein, which assessment and computation upon examination by the court, appearing to be just and correct, is by the court approved and allowed.

It is therefore considered and ordered by the court that said plaintiff have and recover of the said defendants the said sum of (\$700³²/₁₀₀) Seven Hundred and ³²/₁₀₀ Dollars, being the amount of the damages assessed and computed as aforesaid together with his costs and charges herein expended, and that he have execution therefor against the said defendants.

Whereupon the defendants come by Hugh their attorney and pray an appeal herein to the Supreme Court of this state, which is allowed upon their entering into an appeal in the sum of One Thousand

Dallary with Daniel Evans as security, conditioned and payable as the statute requires and leave is given to file said bond within twenty five days from the last day of the present term of this court.

State of Illinois
LaSalle County, ss

I. Philo Lindley

Clerk of The County Court in and for the County
aforesaid hereby Certify that The foregoing is
a true full and complete Transcript of
The Record and Proceedings in The Cause
wherein George C. Campbell is Plaintiff
and William F. Keeler, Hugh Benni-
gin and David L. Hough are defendants
as The same appear on file and of
record in my office.



Witness my hand and the seal
of seal of said Court hereto
affixed, at Ottawa this 13th
day of April A.D. 1861

Philo Lindley Clerk
Frank J. Crawford
Deputy

Clerk's fees on this }
Transcript \$4.00 }

Paid by D. L. Hough.

Lindley, CLK
Crawford

Let the writ of ~~sequestration~~ ^{sequestration} now be
made a ~~sequestration~~ ^{sequestration} upon plaintiffs
in now entering into bond with
Daniel Evans as security in the penal
sum of ~~\$4~~ ^{\$4} ~~thousand~~ ^{thousand} dol
= lars, conditioned according to law
Ottawa April 15 1861

J. H. Walker
"

William H. Keeler &
David L. Conybe,
impleaded with Hugh Benjamin
vs
George C. Campbell

Supreme Court
3^d Grand Division
April Term AD 1861

And now come William H. Keeler
& David L. Conybe, the above named
plaintiffs in Error, & say there is manifest
Error in the foregoing record in that to wit
1st The Court Erred in overruling the demurrer
of defendants below, to the first Count of
declaration of plaintiff below.

2^d The Court Erred in rendering judgment
by default against defendants below & in favor
of plaintiff below, said defendants demurred
to the first Count of the declaration
of said plaintiff, remaining in full force,
and said Count being in no respect
amended, and remaining as originally
filed

D. L. Conybe
Atty for ~~plffs~~ in Error

State of Illinois }
LaSalle County } ss

David L. Cony
being first duly sworn, on oath deposes
& says, that he is personally acquainted
with Daniel Evans, of the city of
LaSalle, in the County of LaSalle,
& State of Illinois, & is acquainted
with his pecuniary circumstances, &
has reason to believe, & does fully
believe him to be worth, over, and
above all just debts, ^{realities & legal exemptions} the full sum
of Twelve Hundred dollars

Subscribed & sworn David L. Cony
to before me this
18th day of April
AD 1861.

A. Delaur Clerk
by A. Delaur Deputy

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Geo. C. Campbell
7
Richard Hough
Record

Filed April 16, 1861
L. Delaine
Ch.

\$5.00. Ch. S. C.,
by D. L. Hough -