

12575

No. 12575

Supreme Court of Illinois

Hoes

vs.

Van Alstyne, et al

243-169

John V. A. Hoos

vs

Abraham J. Van Buren

et al

Opinion

245

12575

1858

X
Repaired

State of Illinois } Ophas before the Honorable Edwin
Sadall County } S. Island presiding judge of the
north judicial circuit of the State
of Illinois at a circuit Court commenced & held
in and for the County of Sadall and State of Illinois
at the Court House in Ottawa on the second Monday
the same being the eighth day of May in the
year of our Lord one thousand eight hundred &
eighty four and of the Independence of the United
States the seventy eighth
Present

The Honorable Edwin S. Island Presiding Judge
John Lindley Clerk
Richard Brown Sheriff
W. H. L. Wallace State Attorney

Be it remembered that on the 18th day of May
1834 the same being one of the days of the said
May term of said Court a suit was commenced
by filing with the Clerk of said Court security for
costs in the words and figures following to wit:

"Sadall County Circuit Court
Grace Van Alstine

vs. Asst.
John C. A. Hovey } Dam \$ 15 11 4

We do hereby enter ourselves
security for costs in this suit and acknowledge
ourselves bound to pay or cause to be paid all
costs that may accrue in this action either to
the opposite party or to any of the officers of this Court
in pursuance of the laws of this State.

Dated Ottawa this day of April AD 1834
Seammon & McCagg"

And afterwards to wit: on the 18th day
of May the plaintiff's bill was filed in the
said clerk's office his declaration in the words
and figures following to wit:

State of Illinois Of May term, in the year
LaSalle Circuit Court of our Lord, One thousand
Eight hundred & fifty four.

LaSalle County ss:

Isaac Van Alstyn, plaintiff in this
suit by Dickey, Wallace & Eastman, his attorneys, com-
plains of John V. A. Reed defendant in this
suit of a plea of trespass on the case on promises.

For that whereas the said defendant, heretofore
to wit, on the Twenty Seventh day of August in
the year of our Lord one thousand Eight hundred
and forty one - at Kinderhook, to wit: at the County
aforesaid, made his certain promissory note in writing,
bearing date the day and year aforesaid, and there
and there delivered the same to the said plaintiff,
in and by which said note, said Defendant prom-
ised to pay to the said plaintiff, or bearer, one year
after, ^{dates} for value received the Sum of Four hundred
Dollars with interest. And the said plaintiff avers,
that said note was made and by the terms thereof
made payable in the State of New York to wit:
at Kinderhook in the State of New York, and
that by the laws of the State of New York, at the
time said note was made, and at the time the same
became due and payable, the legal rate of interest
in said State of New York was and ever since has
been and still is Seven dollars upon one hundred
dollars for one year and at that rate for any greater
or lesser Sum or any longer or shorter time.

By means whereof, and according to the Statute
in that case made and provided, the said
defendant then and there became liable to pay
the said plaintiff the said Sum of money in the
said promissory note specified according to the
tenor and effect of said promissory note and inter-
est thereon from the day of the date of the same

to the time of payment of the same.

And being so liable he, the said defendant, in consideration thereof, afterwards to wit; on the twenty seventh day of August in the Year of Our Lord one thousand Eight hundred and forty one aforesaid, at the County aforesaid, undertook and then and there faithfully promised the said plaintiff to pay him the said sum of money, in the said promissory note specified, according to the tenor and effect of the said promissory note, to wit; at the place aforesaid.

And whereas also the said defendant afterwards, to wit; on the twenty eighth day of April in the year of our Lord one thousand Eight hundred and fifty four, in the County aforesaid, was indebted to the plaintiff in one thousand Dollars for the price and value of goods and Chattels then and there sold and delivered by the plaintiff to the defendant at his request, and in one thousand dollars for the price and value of work then and there done, and materials for the same provided by the plaintiff for the defendant at his request, and in one thousand dollars for money then and there lent by the plaintiff to the defendant at his request, and in one thousand dollars for money then and there paid by the plaintiff for the use of the defendant ^{at his request}, and in one thousand dollars for money then and there received by the defendant for the use of the plaintiff, and in five hundred Dollars for interest due from the said defendant to the plaintiff, for and in respect of the plaintiff having forborne and given day of payment of money due from the defendant to the plaintiff at the defendants request for a long time then elapsed, and in one thousand dollars for money found to be due from the defendant to the plaintiff, on an account then and there stated between them,

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Nevertheless the said defendant not regarding his
said promises and undertakings in this behalf
hath not as yet paid the said several sums
of money or any part thereof to the said plain-
tiff, although often requested so to do. But the
said defendant to pay him the same hath hitherto
wholly neglected and refused and still doth
neglect and refuse to the damage of the said
Plaintiff of Fifteen Hundred Dollars, and
therefore he brings this suit

Dickey, Wallace & Eastman
Plffs attys

(Copy of Note sued on)

One year from date for value received I promise
to pay Isaac Van Alstyne or bearer four hun-
dred dollars with interest

Huiderhook August 27th. 1841

John V. A. Hoos.

(Copy of a/c)

John V. A. Hoos

To Isaac Van Alstyne Dr

For Goods & Chattels	\$ 1,000,
" Work & Materials	1,000,
" Money lent you	1,000,
" Money paid for you	1,000,
" Money recd for my use	1,000,
" Interest on Money due	500,
" Money due on a/c	1,000,

And also on the same day and after the filing
of said declaration the defendant entered his
appearance in the words and figures following
to wit:

"Asaleh Lemay Leinich Court
" John B. A. Hoos
ads I do hereby enter my
Grace Van Alstine appearance in this
cause, and request the
Clerk of this Court to enter the same of record.
Attain April 11th 1834
John B. A. Hoos"

This cause having been taken to the Supreme
Court by the defendant, afterwards, to wit: on the
9th day of November A.D. 1835 a copy of the judgment
of the Supreme Court in said case was filed with
the Clerk of this Court in the words and figures
following to wit:

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At a Supreme Court, Begun and held at Ottawa, on Monday, the 11th day of June, in the Year of Our Lord one thousand eight hundred and fifty-*five* within and for the Third Grand Division of the State of Illinois,

Present, the Honorable WALTER B. SCATES, Chief Justice;

" " JOHN D. CATON, Associate Justice;

" " O. C. SKINNER, " "

Saturday Aug 4, 1855

John B. A. News

Appeal from La Salle

Grace Bon Alton

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 opinion that, in the Record and Proceedings aforesaid, and in the rendition of the *Judgment* aforesaid, there is manifest Error; THEREFORE, it is considered by the Court that, for that Error, and others in the Record and proceedings aforesaid, the *Judgment* of the *Circuit* Court in this behalf rendered, be reversed, annulled, set aside, and wholly for nothing esteemed, and that this cause be REMANDED to the *Circuit* Court for such other and further proceedings as to law and justice shall appertain. And it is further considered by the Court, that the said *Appellant* recover of and from the said *Appellee* *this* costs by *him* in this behalf expended, and that *he* 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 said 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 *26th* day of *October* in the year of our Lord one thousand eight hundred and fifty-*five*

Rec'd

L. Leland

Clerk of the Supreme Court.

And afterwards to wit: on the 10th day of November
1836 the defendant filed in said clerk's office his
plea in the words and figures following to wit:

"State of Illinois, Sadale Circuit Ct. Circuit
Court in & for said County November term 1836.

Isaac Van Alstyn

Assumpsit
John P. A. Hoar } For comes the said
defendant John P. A. Hoar
of said said his attorneys & says acts more
because he says that he did not undertake promise
in manner & form as said plaintiff hath done
things complained against him & of this he
puts himself upon the country
Isaid Isaid for Diff.

And for another further plea of said of course
said defendant says that the causes of action in
the declaration mentioned did not accrue within
five years next before the bringing of this suit
wherefore he prays judgment whether said action
can be had & maintained against him in
manner & form as the plaintiff hath declared
against him Isaid Isaid for Diff."

To which plea the plaintiff by his counsel filed his
reply & similitur on the 22^d day of November
1836 in the words and figures following to wit:

"Sadale Circuit Court November term 1836
Isaac Van Alstyn

Assumpsit
John P. A. Hoar } And now again comes the
said plaintiff of Waller his

Attorney And as to the first plea of said defendant
 which first was pleaded and whereof he hath put
 himself upon the Country the said plff doth
 the like;

And for replication to said defendant second plea
 by him secondly above pleaded the said plaintiff
 says forcludi'm &c because he says that after the
 making of said promissory note in said declaration
 and within five years next before the commencement
 of this suit, to wit on the first day of January A.D.
 1834, to wit at the County aforesaid in consid-
 eration of said note the said defendant promised
 the said plaintiff to pay him the said sum of
 money in said note specified and thus the said
 plaintiff is ready to verify, wherefore he prays
 judgment &c.

And for a further replication to said defendant
 second plea by him secondly above pleaded the said
 plaintiff says forcludi'm &c because he says that
 after the making of said promissory note in said
 declaration mentioned and within five years next
 before the commencement of this suit, to wit: on
 the fourteenth day of August A.D. 1831, to wit at the
 County aforesaid the said defendant made a
 payment to plaintiff on said note amounting to
 sixty dollars and thus the said plaintiff is ready to
 verify - wherefore he prays judgment &c.

W. H. L. Wallaer
 plff. atty"

And afterwards to wit, on Tuesday November 23rd
 183 to the same King em of the day of the
 November term of said Court for said year an
 order was made and entered of record in said
 cause in the words and figures following to wit:

Grace Van Alstyn
 vs Assumpsit
 John B. A. Hors On motion of the plaintiff by
 W. H. L. Wallace his attorney it
 is ordered that this cause be continued at the
 plaintiffs cost to be taxed, and that he have leave to
 file such replications to defendants second plea.

And afterwards to wit: on Monday February 9th 1837 the
 same being one of the days of the February special term
 of said Court for said year, another order was
 made and entered of record in the words and figures
 following to wit:

"Grace Van Alstyn
 vs Assumpsit
 John B. A. Hors This day W. H. L.
 Wallace comes and suggests
 the death of the plaintiff, and on his motion it is
 ordered of the Court that he have leave to make
 Abram S. Van Alstyn and Berend Van Alstyn
 executors of the last will and testament of Grace Van
 Alstyn deceased parties plaintiff to this suit. And now
 the defendants comes by Ireland Ireland his attorneys
 and on their motion it is ordered that they have leave
 to withdraw this plea of the Statute of limitations
 filed herein."

And afterwards to wit: on Friday June
 26th 1837 the same being one of the days of the June
 term of said Court for the year 1837 the following
 final order was entered of record in said cause
 viz:

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Hanna J. Van Alstine and Barnd Van Alstine
Executors of the last will & testament
of Isaac Van Alstine dec'd

Assumpsit
John W. S. Hoers

This day the plaintiffs
Carr of W. H. S. Wallace their attorney and the
defendant of E. S. Island his attorney and of agreement
of parties a jury is named and this cause submitted to
the court for trial, and after hearing the evidence
the Court find the issues for the plaintiffs and assess
their damages at five hundred and fifty four dollars
and forty four cents.

It is therefore considered by the Court that the plaintiffs
have and receive of the defendant the said sum of five
hundred and fifty four dollars and forty four cents
for their damages, also their costs and charges by them
herein expended and that they have execution therefor.

Defendants cannot bring an appeal herein
to the Supreme Court which is granted upon condition
that the defendant within thirty days from this date
file an appeal bond payable to the plaintiffs in
the penal sum of one thousand dollars with
Springer Island as his security.

And afterwards to wit: on said 26th day of June
last appeared the defendant filed in said
Clerks office his bill of exceptions in the words and
figures following to wit:

"State of Illinois } Circuit Court of said
LaSalle County } county - June Term, 1857

Abram J. van Alstyne, and Barent Van Alstyne
Executors of the last will and testament of
Isaac Van Alstyne deceased

vs
John V. A. Hoos

Be it remembered
that on the trial of this cause the plaintiff to maintain
the issue on their part introduced in Evidence a note
in the words & figures following viz:

"One Year from
date for value received I promise to pay Isaac
Van Alstyne or Bearer four hundred Dollars
with interest

Hinderhook August 27th 1841

John V. A. Hoos "

On the back of said note were the following endorse-
ments of payments which were also read in Evidence.

"27th August 1842 Rec^d of John V. A. Hoos Esq
Twenty Eight Dollars for one Years Interest on this note."

"10th August 1843 Rec^d of Peter S. Hoos for John V. A.
Hoos Twenty Eight Dollars for one Years Int^r upto 27th Aug.
on this note & my Receipt to P. S. H. L. Hoos "

"Nov 7. 1844 Received on the within note twenty eight dollars
By Peter S. Hoos "

"October 10th 1845 Received on the within note Twenty
Eight Dollars - "

"1849 June 2^d M. Van Buren deposited in
Bank of N. \$100 to apply on this note, to credit of Barent V. A
who p^d it to Isaac v. a. 25 June 1849 "

" 1837 Aug. 14 Rec of J. V. A. Hoes for Mary E. V. p 60: in full of Int. to 15 May 1838 & and \$13 for compound Int p. cat of 20s. "

" Recd of Lewis Hoes Twenty Eight Dollars leg and, recd by him of J. V. A. Hoes 16: Augt M. - Augt 16. 1843 - Isaac Van Alstyne "

" I guarantee the payment of the within note and dispense with notice of non payment
W. Van Buren "

" The plaintiff then Called Joseph O. Glover as a witness who testified that he resided in the State of New York prior to the Year 1835 & that when he left there to move to this State & which was in 1835, the rate of interest according to the Statute of New York where no rate of interest was mentioned in a note, was Seven per cent per annum.

The plaintiff also introduced Washington Bushnell who testified that he was an attorney at Law & that he was acquainted with the Statute law of New York - that by said Statute law of New York in 1835, & also in 1846 when no rate was mentioned in a note, it was Seven per cent per annum.

To the competency of the evidence of said Glover & Bushnell to prove the facts by them testified to, the defendant at the time objected - the Court Overruled the objection, & to the opinion of the Court in overruling the objection, the defendant then & there as said trial Excepted. "

The above was all the evidence in the cause - The Court found for the Plaintiff & allowed interest on said note at the rate of Seven per cent per annum.

The defendant moved for a new trial -

The Court overruled the motion & to the opinion of the Court in overruling the motion for a new trial the defendant then & there Excepted - and prays the Court to sign & seal this his bill of Exceptions, which is done in open Court,

Mo. C. Hollister *Edo.*

And afterwards to wit: on the 29th day of June 1857 the defendant filed with the office of the Clerk of the Circuit Court, an Appeal bond, in the words and figures following to wit:

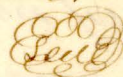
"Know all men by these presents that We John V. A. Does and Lorenzo Leland of the County of LaSalle and State of Illinois are held and firmly bound unto Abram J. Van Alstyne and Barrant Van Alstyne Executors of the last will & testament of Isaac Van Alstyne deceased in the special sum of One thousand dollars current money of the United States for the payment of which well & truly to be made, we bind ourselves, our heirs, Executors and administrators jointly, severally and firmly by these presents.

Witness our hands & Seals this 29th day of June A.D. 1857."

The condition of the above obligation is such, that whereas the said Abram & Barent Van Alstyne Executors &c did on the 26th day of June A.D. 1857 in the Circuit Court, in & for the County & State aforesaid, recover a judgment against the above bounden John V. A. Does for the sum of Five hundred & fifty four Dollars and forty four cents.

and Costs from which said judgment of the said Circuit Court the said John V. A. Does has prayed for, and obtained an appeal to the Supreme Court of said State. Now if the said John V. A. Does shall duly prosecute his said appeal with effect & shall moreover pay the amount of the judgment

costs, interest & damages rendered & to be rendered against him in case the said judgment shall be affirmed in the said Supreme Court, then the above obligation to be void, otherwise to remain in full force & virtue.

John V. A. Hoos 
Lorenzo Leland 

State of Illinois, I John F. Stark, Clerk of the
Sasalle County 3^d Circuit Court in and for said
County and State do hereby certify
that the above and foregoing is a true full perfect
and complete record in the case of Tom Alstyn vs
John B. A. Hoos as the same appears of record and
on file in my office.

In Testimony Whereof I have hereunto set my
hand and the seal of said Court at Ottawa
this 29th day of March A.D. 1838.

J. F. Stark Clerk

State of Illinois Supreme Court 3^d Division

Tom Alstyn vs

Hoos

And now comes the Appellants
by Leland Leland his attorneys & says
that on the record & proceedings in said cause
there is manifest error in this behalf

- 1 The Court erred in admitting into evidence
deposited on the part of the plaintiffs below
- 2 The Court Erred in rendering the judgment

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held an without an amendment of the
ration making the parties in whose names
the judgment was rendered parties plain
tiff therein

3 The judgment was against the law &
the evidence

The Court erred in overruling the motion
for a new trial & rendering judgment
on the findings

The finding of the Court was for too much
on the evidence
Judgment is prayed
of reversal of the
Judgment and
for Appellate only

John V. A. Moss
 Messrs J. Van Alstyne
 & Barnd Van Alstyne
 Executors of last will &c
 of Isaac Van Alstyne
 dec^d

Recd

Apple from Lu Sallee

Filed April 22. 1858
 L. Leland
 clk

Leis \$4.85 paid
 by J. V. A. Moss

Supreme court - April term 1858 -

John N. A. Hoos, appellant c.

vs
Abram J. Van Alstine et al.
appellees } Appeal from LaSalle.

Points for appellees -

II. Pending the suit, the original plaintiff Isaac Van Alstine died - His death was suggested on the record and Abram J. Van Alstine & Barent Van Alstine his executors were made parties plaintiff in the cause, as the record shows - but no new or amended declaration was filed - Whether this is error depends on the construction of sec 7 of the statute of "abatement" R. S. 184, sec 7 - That statute does not require the declaration to be amended - The record shows the order of the court substituting the present appellees as plaintiffs in the suit - and that, we insist, is as effectual & effectual for the purpose of making them parties as though a new declaration had been filed -

IIIo.

It is objected that the court permitted parole evidence of the statute law of New York in relation to the rate of interest - This is allowable - The relations of the several states, are those of foreign states in close friendship - *Mills v. Duryea* 7. Cranch 481 - *Hampton vs Mc Connell* 3 Wheat. 234. - and ~~the~~ it is now settled in England upon consideration, that a foreign ~~law~~ written law, may be proved by parole evidence of a witness learned in the laws of the country, without first attempting to obtain a copy of the law itself - 1 Green. Ev. p. 625 - note 2 - 7 Ed.

The court may proceed on its own knowledge of the foreign law, without the aid of other proof - and its judgment will not be reversed for that cause unless it should appear that the court was mistaken as to the law ~~itself~~. *State v. Rood* 12 Vermont 396 - In this case the judge, to whom this cause was submitted by the agreement of the parties, & a jury waived, may have known & probably did know that the statute laws of New York allowed seven per cent interest in such cases as this - and unless it is shown here that the court was mistaken, this judgment cannot for that cause be reversed.

W. H. Wallace
for appellants.

245.

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Hacc

no

Van Alstine et al

Points &c for
appelles —

Filed May 24. 1858

J Leland

Clk.