

12305

No. _____

Supreme Court of Illinois

Morris.

vs.

Demaray.

71641  7

59
John Morris.
vs
Samuel Demaray

59

12305

1856

United States of America
State of Illinois } S.S.
County of Cook }

Now before the Honorable John
M. Wilson Judge of the Cook County Court of
Common Pleas at a regular term of said Cook
County Court of Common Pleas within and for
the County of Cook and State of Illinois began
and holden at the Court House in the City of
Chicago in said County and State on the second
Monday being the tenth day of September
in the year of our Lord one thousand eight
Hundred & fifty five and of the Independence
of the United States the Eightieth -

Present the Honorable John M. Wilson Judge
Daniel M. Gray Prosecuting Attorney
James Andrew Sheriff
Attest, Walter Kimball Clerk

Be it remembered that heretofore to wit, on
the thirteenth day of January in the year
of our Lord one thousand eight Hundred and
fifty five Samuel Demaray by his Attorneys
Scamman and McCagg filed in the Office
of the Clerk of the Cook County Court of
Common Pleas Security for costs and

and precipe for summon which security for
costs and precipe for summons are in words
and figures following to wit;

Samuel Demaray

John^{or} Morris

Cook's County Court
of Common Pleas

I do hereby enter myself
as security for costs in the above entitled
cause for costs and acknowledge myself
bound to pay or cause to be paid all costs
that may accrue in this cause either to the
opposite party or to any of the officers of this
Court under the Laws of this State -

Chicago Jan 1853

Samuel Parrish

Samuel Demaray

John^{or} Morris

Assumpsit
Dm. \$6000.00

The Clerk will please issue summons in the
above entitled cause returnable at the
next February Term of this Court -

Chicago Jan 11th 1853

Seaman & McCagg
Attys

And afterwards to wit; on the same day and
year last aforesaid there issued out of the
Office of the Clerk of the Cook County Court
of common Pleas, the Peoples Writ of Summons
in words and figures following to wit;

State of Illinois } ss
County of Cook }

The People of the State of Illinois to the Sheriff of
said County - Greeting -

We command you that you summon John
Morris if he shall be found in your County
personally to be and appear before the Cook
County Court of common Pleas of said County
on the first day of the next term thereof to be
holden at the Court House in the City of Chicago
in said County on the first Monday of
February next to answer unto Samuel
Dempray in a plea of trespass on the case
on promise to the damage of the said
plaintiff as he says in the sum of Six
Thousand Dollars - And have you then
and there this writ, with an endorsement
thereon in what manner you shall have
executed the same -

Witness Walter Kimball Clerk of our

said Court and the seal thereof at the
City of Chicago in said County this 13th
L. J. 3 day of January A.D. 1855

Matth Kimball
Clerk

Which said summons was afterwards returned
to suit; on the second day of February A.D. 1855
with the Sheriff's return thereon endorsed as
follows to wit;

The within named John Morris
is not to be found in my County. Jan'y 26 1855

James Andrew Sheriff
By A. S. Buckley Deputy

And afterwards to wit in the 33^d day of January
in the year Eighteen hundred and fifty
five Samuel Demaray by his Attorneys
Scammon & McCagg filed in the office
of the Clerk of said Court his Declara-
tion in words and figures following to wit

State of Illinois } Cook County Court of com-
Cook County ss } mon Pleas
Of February Term A.D. 1855

Samuel Demaray plaintiff in
this suit by Seaman & McCagg his attorneys
complain of John Morris defendant in
this suit in a plea of Trespass on the case
on promises -

For that whereas the said Defendant
heretofore to wit on the first day of
January in the year of our Lord one thousand
and eight hundred and fifty five at
Chicago in the County of Cook aforesaid
was indebted to the said Plaintiff in the
sum of three thousand Dollars for goods
wares Merchandise and Lumber by the said
Plaintiff before that time sold and delivered
to the said defendant and at his special
instance and request, and being so indebted
he the said defendant in consideration
thereof afterwards to wit on the day and
year aforesaid at the County aforesaid
undertook and then and there faithfully
promised the said Plaintiff to pay him
the said last mentioned sum of money
when he the said defendant should
be therunto afterwards requested &c

And whereas also afterwards
to wit on the day and year last aforesaid
at the County of Cook aforesaid in
consideration that the said Plaintiff

at the like special writ and request of the
said defendant had before that time
sold and delivered divers ^{of the} goods, wares
Merchandise and Cattle to the said
defendant he the said Defendant under-
took and then and there faithfully prom-
ised the said Plaintiff to pay him, so
much money as the said last mentioned
good wares Merchandise and Cattle at
the time of the sale and delivery thereof
were reasonably worth - when he the said
Defendant should see thereof afterwards
requested and the said Plaintiff avers
that the said last mentioned goods wares
Merchandise and Cattle at the time of
the said sale and delivery thereof were
reasonably worth the further sum of
Three Thousand Dollars to wit: at Chicago
in the County of Cook aforesaid whereas
the said Defendant afterwards to wit
on the day and year aforesaid had notice -

And whereas also the said
Defendant afterwards to wit on the day
and year last aforesaid at Chicago in
the County of Cook aforesaid was indebted
to the said Plaintiff in the further sum
of Five Hundred Dollars for the work
and labor, care and diligence of the

said plaintiff by the said Plaintiff
before that time done performed and bestowed
in and about the ~~business~~ business of the
said Defendant and for the said Defendant
and at his like special instance and request
and also for divers materials and other necessary
things by the said plaintiff before that
time found and provided and used and
applied in and about that work and labor
for the said defendant and at his like
special instance and request and being
so indebted to the said defendant in
consideration thereof afterwards to wit on
the day and year last aforesaid to wit at
Chicago in the County of Cook aforesaid
inducted and then and there faithfully
promised the said plaintiff to pay him
the said last mentioned sum of money
when he the said defendant should be
thereunto afterwards requested.

And whereas also afterwards
to wit on the day and year last aforesaid
to wit at Chicago in the County
of Cook aforesaid in consideration that
the said plaintiff had before that time
done performed and bestowed other his
work and labor care and diligence in
and about the business of and for

the said defendant and had also other like special assistance and request of the said defendant before that time found and provided divers other materials and necessary things and used and applied the same in and about the said last mentioned work and labor. He the said Defendant undertook, and then and there faithfully promised the said Plaintiff to pay him so much money as he therefore reasonably deemed to have of the said defendant when he the said Defendant should be thereunto afterwards requested. And the said Plaintiff avers that he therefore reasonably deserved to have of the said defendant the further sum of Five hundred Dollars to wit at Chicago in the County of Cook aforesaid - whereof he the said defendant afterwards to wit: on the day and year last aforesaid then had notice.

And whereas also the said Plaintiff Defendant afterwards to wit: on the day and year last aforesaid to wit at Chicago in the County of Cook aforesaid accounted with the said Plaintiff for and concerning divers other sums of money from the said defendant to the said

Plaintiff due and owing and then in arrears and unpaid and upon such accounting the said Defendant was then and there found to be in arrears and indebted to the said plaintiff in the further sum of Thirty five Hundred Dollars and being so found in arrears and indebted, he the said Defendant undertook and then and there faithfully promised the said plaintiff to pay him the said last mentioned sums of money when he the said defendant should be thereunto afterwards requested.

Nevertheless the said Defendant not regarding his said several promises and undertakings in that behalf, hath not yet paid the said several sums of money above demanded or any or either of them or any part thereof to the said plaintiff, 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 Six thousand (6000) Dollars and therefore he brings his suit -

Samuel McCagg
Plff. Attys

Copy of account sued on

John Morris

To Samuel Demaray & Co.

To Goods Wares Merchandise & Cattle \$3000.00

And Labor & Material 500.00

To Amount Stated \$3500.00

And afterwards to wit: on the 24 day of February A.D. 1855. then issued out of the office of the Clerk of the Cook County Court of Common Pleas, an Alias Summons in words and figures following to wit

State of Illinois } ss
County of Cook }

The people of the State of Illinois, to the Sheriff of said County, Greeting

We command you as we have before commanded you that you summons John Morris if he shall be found in your County personally to be and appear before the Cook County Court of Common Pleas of said County on the first day of the next term thereof to be holden at the Court House in the City of Chicago in said County on the first

Monday of April next to answer unto
Samuel Demaray in a plea of trespass
on the case on promise to the damage
of the said Plaintiff as he says in the sum
of Six Thousand Dollars - And have
you then and there this writ with an end-
owment thereon in what manner you shall
have executed the same.

EJ

Witness. Walter Kimball clerk
of our said Court and the seal
thereof. at the City of Chicago
in said County this 24th
day of February A.D. 1855

Walter Kimball

Clerk.

Served by reading to the within named

John Morris this 13th day of March 1855

James Andrew Sheriff

By J. S. Buckley Deputy,

And afterward to wit on the 26th day of
March in the year last aforesaid John
Morris by Blackwell, Ballingall and
Underwood his Attorneys filed in the
Office of the Clerk of said Court his Plea
and Affidavit in words and figures following
to wit:

John Morris

vs

Samuel Demaray

In the Court County Court of
Common Pleas Illinois -
Of the Term of April A.D. 1855

And the said John Morris

by Blackwell Ballingall and Indenwood
his Attorneys come and defend the wrong and
injury where and prays judgment of the
Said writ and declaration because he says
that the said several supposed promises and
~~and the~~ undertakings in the said decl-
aration mentioned if any such were made
were and each of them was made by the
said John Morris to the said Samuel Demaray
and one William C. Chase jointly and
not to the said Plaintiff alone: and that
the said William C. Chase is still living
to wit: at the County aforesaid: and that he
the said defendant John Morris is ready
to verify, wherefore inasmuch as the said
William C. Chase is not named in the
said writ and declaration, together with the
said Plaintiff, he the said defendant
John Morris prays judgment of the said
writ and declaration and that the same
may be quashed &c.

John Morris
By Blackwell Ballingall Indenwood
his Attorneys

Samuel Demaray } In the Coats County
John Morris } Court of Common Pleas
Of the Term of April 1855

John Morris defendant in the above entitled
cause being duly sworn upon his oath deposes
and says that the foregoing Plea is true in
substance and in fact

John Morris
Subscribed and sworn to
before me this March
26th 1855

Walter Kimball Clerk

And afterwards to wit on the 5th day of
May in the year aforesaid Samuel Demaray
by Orammon McLagg his Attorney
filed in the Office of the Clerk of said
Court his Replication in words and figures
following to wit:

Samuel Demaray } Coats County Court
John Morris } of Common Pleas

And the said plaintiff
says that his said writ and declaration by
reason of any thing by the said defendant
in his said plea above alleged ought not

said Defendants Plea in abatement herein
it is ordered that a Jury come and thereupon
come a Jury of Good and lawful Men to wit;
William Hamilton, B. C. Sanford, M^{rs} Katten
John D. Morris, M^{rs} Will, William Spencer
J. M. Cook, S. J. Fish, L. Langdon, B. A. Brown
John Casey & John Bates who being duly
~~examined~~ elected tried & sworn well and truly to
try the issue joined on said Defendants
Plea in abatement after hearing the proofs
& allegations argument of Counsel retire to
consider of their verdict and afterwards come
into Court and say. We the Jury find the
issue on said Plea in abatement for the Plaintiff

And thereupon on motion of said Plaintiff
it is ordered that said defendant answer
over instantly and no answer being filed
by said Defendant and he being three times
called in open court and not appearing
or any person for him it is ordered that his
default be taken and entered of Record.

Wherefore the said plaintiff ought to have
and recover of said Defendant his damages
herein sustained by occasion of the premises
and which damages are hereafter to be assessed
by the Court.

And afterwards to wit on the twenty ninth

day of September in the year last aforesaid
being yet of the said September Term of said
court the following further proceedings were had
in said cause and entered of Record in said
court to wit:

Samuel Demaray }
John Morris } Spt

And now again comes the said
plaintiff by his said attorneys and ~~Exordant~~
the default of the said defendant having
been heretofore at this term entered herein.

The court now after hearing the allegations
and proofs submitted by said plaintiff
being now fully advised in the premises assayed
said Plaintiff damages to the sum of one
Thousand and one hundred dollars.

Therefore it is considered that the said
Plaintiff do have and recover of the said
defendant his damages of one Thousand
and one hundred dollars in person aforesaid
by the court here assayed and also his costs
and charges by him about his suit in this
behalf expended and have execution
therefor.

State of Illinois }
County of Cook } S.S.

I, Walter Kimball Clerk of
the Cook County Court of Common Pleas in and
for said County do hereby certify that the above
and foregoing is a true and true transcript
of all the papers and proceedings entered of
Record in said Court in the case in which
Samuel Dymary is Plaintiff and John
Morris Defendant in an action of Assumpsit
For testimony whereof I have
hereunto subscribed my name and
affixed the seal of said Court at
the City of Chicago in said County
this 23^d day of March A.D. 1856
Walter Kimball Clerk



State of Illinois }
Supreme Court }

June Term in the year of our Lord
One thousand eight hundred and fifty six
John Morris
vs. Samuel Demaray In Error

Afterwards brought on the
day of A.D. 1856 at

comes the said John
Morris by Blackwell Thomas Roberts his attorney
and says that in the record and proceedings
aforesaid, and also in the rendition of the judg-
ment, aforesaid, there is manifest error in this
to-wit: that by the record aforesaid, it appears
that the verdict of the jury upon the issue joined
on the plea in abatement of the defendant being simply

was, that they found the said issue for the plaintiff below; whereas by the law of the land the said jury should have rendered a verdict ^{in a dispute} whether the said plaintiff below had sustained any damage, and if the plaintiff had sustained damage, then what amount of damages he had so sustained. And there is also error in this, that the damages against the said defendant below were assessed by the said court when according to the law of the land the said defendant below was entitled to have them assessed by a jury of the county. And there is also error in this that that a judgment by default was entered against the defendant below, when according to the law of the land there should have been no judgment by default, but a final verdict should have been rendered on the said issue on the plea in abatement while said defendant was in court, and a final judgment rendered on such verdict. And the said John Morris prays that the judgment aforesaid, for the error aforesaid, and for other errors apparent in the record and proceedings aforesaid, may be reversed, annulled, and altogether held for nothing, and that he may be restored to all things which he hath lost by occasion of the said judgment &c

Blackwell Thomas Roberts
Atty for Plaintiff in Error

Let a supercedas issue in the above cause upon filing bond according to law with Melancho on No Plea Surety in the penal sum of fifteen hundred dollars.

J D Catow.

Emmuel Demaray

²⁴
John. Morris

Transmitted

Filed April 10. 1856

L. Leland Clerk

By J. B. Rice Deputy

In the Sup. Court, Northern Division
John Morris Illinois
v. Appeal from Cook Common Pleas
Samuel Demaray

And now come the said
plaintiff by Blackwell Thomas and
Roberts for the plaintiff and Wiggins
Meech and Coventry for the defendant
and the said defendants in fixing the
errors in the said cause, as far back
in the proceedings as the first verdict, to
wit the verdict by the jury, it is agreed
that the judgment and proceedings in
the said court below, the Court of Common
Pleas of Cook County in the State of
Illinois, be reversed accordingly, and
that this stipulation be filed in the
said Court, and in said suit.

Blackwell Thomas & Roberts

Wiggins, Meech & Coventry,

Attys for the Defendants

59

John Munis

v.

Samuel Demaray

Confession of Error

Filed June 11, 1856

L. Leland Clerk

STATE OF ILLINOIS,

Supreme Court,

ss.

The People of the State of Illinois,

To the Clerk of the ~~Circuit~~ ^{Cook County} 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~~ ^{Cook County} court of Common Pleas of Cook county, before the Judge thereof, between Samuel Demaray

plaintiff, and John Morris

defendant it is said manifest error hath intervened, to the injury of the aforesaid John Morris

as we are informed by his 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 Second Monday in June 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. **SAMUEL H. TREAT**, Chief Justice
of our said Court, and the Seal thereof, at Ottawa, this 10th Day of April
in the Year of Our Lord One Thousand Eight Hundred and Fifty-Six

L. Leland Clerk of the Supreme Court.

By J. B. Rice Deputy Clk

John Morris
vs
Samuel Demaray
Writ of Error

This Writ of Error is to
operate as a Supersedeas
and as such is to be
obeyed by all Concerned

L. Seland Clk.
By J. B. Rice Deputy

Filed April 10. 1856
L. Seland Clk.
By J. B. Rice Deputy

Chicago, April 7. 1856
To the Clerk of the Supreme
Court of Illinois &c
Ottawa.

Dear Sir.

In the suit
of Samuel Demaray v. John Morris, in the Cook
County Court of Common Pleas, we sent on behalf
of the defendant, the record, with an assignment ~~and~~
affidavits and a brief, and one of the Sup. Judges
in your city, granted a supersedeas, a con-
sented to it, do, on our filing the requisite bond.

This bond we herewith enclose, and
take the liberty of requesting that you will
accommodate us so much, as to see the judge
and procure his order on the record, which
our messenger left with Judge Caton, & his
approval of the bond, and do for us whatever
else may be necessary to insure at your hands,
the immediate transmission to us of the supersedeas.

We observe two blanks in the bond, but the
judgment is sufficiently described, you may if
you please fill them up from the record.

We enclose \$5 instead of security for costs,
as Mr. Blackwell informs that is not unusual.

Very truly,
Blackwell Thomas Roberts

Know all men by these presents, that we
John Morris and Melancthon W Bliss of Cook
County in the State of Illinois are held and
firmly bound unto Samuel Demaray in the
just and full sum of Fifteen Hundred Dollars
lawful money of the United States of America
for which payment well and truly to be made
we bind ourselves our heirs executors and
administrators jointly severally and firmly by
these presents. Dated this 4th day of April
in the year of our Lord one thousand eight hundred
and fifty six.

The condition of the above obligation is
such, that whereas the said Samuel Demaray
did on the 29th day of September AD 1855
in the Cook County Court of Common Pleas in
and for the County of Cook and State of Illinois
in a certain action of Assumpsit recover a
judgment against the said John Morris for
the sum of Eleven Hundred Dollars damages
and dollars costs of suit to which
said judgment the said John Morris has brought
a writ of Error out of the Supreme Court of
said State and prayed that the same shall
operate as a Supersedeas and the Honorable
John D. Caton one of the associate Justices of
said Supreme Court having inspected the said
record and ordered that the said writ operate
as a Supersedeas upon condition that said
John Morris file bond in pursuance of law &c

Now if the said John Morris shall duly
prosecute his said Writ of Error with effect
and shall moreover pay the amount of the
judgment, costs interest and damages.

rendered and 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 and virtue in law.

Witness our hands and seals this 4th day of April A.D. 1856

J. L. Morris
Melancthon W. Bliss

State of Illinois }
Cook County } S.S.
City of Chicago }

On this 4th day of April A.D. 1856 before me the undersigned George A. Ingalls a Notary Public in and for the City of Chicago in said County personally appeared Melancthon W. Bliss who security to the above written bonds, and being sworn according to law, on oath says, that over and above all the debts and liabilities against him he is worth not less than seven thousand dollars, and further saith not.

Subscribed and sworn to before me by the above named Melancthon W. Bliss and my hands and notarial seal affixed this 4th day of April A.D. 1856.

George A. Ingalls
Notary Public



John Morris
vs
Samuel Demaray
Bond

Filed April 10. 1856

Leland Clerk
By J. B. Rice Deputy

City of Chicago

Kelly.

1 Chet. Pl. 339

2 Samd Pl. & Ev. 1025

Onus probandi Jackson v. Evans
6 T.R. 57

14 Allmos. 101 Melzer v. The People

Promisor to be enticed in distance

11 M. 330. Jury v. The People.

Same principle

As to interest of witnesses

Gravel. on Evidence. sec. [§]396 & [§]417, 393, 394[§]

also 4 Mass. 654 Emerton v. Andrews, &

7 C & P. 16 Holston v. Marshall

De Symonds v. De La Cour 2 New Reports 374

Referred to 394.

Captain in case of Innocence, can prove the original
destination, but if case turns upon question of deviation he
cannot prove that

City of Chicago
vs. of State

v.

Patrick W. Kelly

Mem. of some authorities