

No. 13544

Supreme Court of Illinois

Davis.

vs.

Stone.

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 283.

1860

Quincy
75

James

1354

Be it remembered that on the 24th day of August AD 1855 the following Declaration was filed in the office of the Clerk of the Circuit Court of Warren County Illinois which is in the words and figures following to wit:

(Copy of Declaration)

State of Illinois } September Term AD 1858 Sch.
Warren County } S.D. of the Warren County Circuit Court,
Robert A. Davies & Alvin H. Reed by
the name & style of Davies & Reed for the use of Milton C. Manger Plaintiffs by James G. Madden their Attorney Complain of Robert Stone & George H. Harding Defendants in Custody &c of a plea of trespass on the case on promises, For that whereas the said defendants heretofore to-wit: On the ninth day of June in the year of our Lord one thousand eight hundred and fifty seven at the County aforesaid made a certain note in writing commonly called a promissory note bearing date the day and year last aforesaid and then and there delivered the said note to the said Plaintiffs by which said note the said Defendants promised to pay to the said Robert A. Davies & Alvin H. Reed by the name & style of Davies & Reed nine months after date One Hundred and Fifteen Dollars with ten per cent interest after due, By reason whereof and by force of the Statute in such case made and provided the said defendants then and there became liable to pay to the said plaintiffs the said sum of money in the said note specified according to the tenor and effect of the said

note, and being so ^{2^r} liable the said defendants
in consideration thereof, afterwards to wit: on the
same day and year and at the place aforesaid
undertook and then and then faithfully promised
the said plaintiffs well and truly to pay unto the
said plaintiffs the said sum of money in the said
note specified according to the tenor and effect of the
said note. And whereas also the said defendants
afterwards to wit on the first day of July in the
year of our Lord one thousand eight hundred and
fifty eight at the County aforesaid were indebted to
the said plaintiffs in the sum of Thun Hundred
Dollars lawful money of the United States of
America for so much money before that time
lent and advanced by the said plaintiffs to the
said defendants and at the special instance and
request of the said defendants, And for other money
by the said plaintiffs before that time paid laid out
and expended to and for ^{the} said defendants and at the
like request of the said defendants, And for other mon-
ey by the said defendants before that time had and
received to and for the use of the said plaintiffs.
And being so indebted the said defendants in con-
sideration thereof afterwards to wit: on the same
day and year last aforesaid and at the place afo-
=said undertook and then and then faithfully pro-
=mised the said plaintiffs well and truly to pay
unto the said plaintiffs the said sums of money
in this Count mentioned when the said defendants
should be thereunto afterwards requested, And whe-
=mas also the said defendants afterwards to wit:

on the same day and year last aforesaid and at the place aforesaid accounted together with the said plaintiffs of and concerning divers other sums of money before that time due and owing from the said defendants to the said plaintiffs and then and then being in arrear and unpaid and upon such accounting the said defendants then and then were found to be in arrear and indebted to the said plaintiffs in the ^{further} sum of Seven Hundred Dollars of lawful money as aforesaid. And being so found in arrear and indebted to the said plaintiffs the said defendants in consideration thereof afterwards to wit on the same day and year last aforesaid and at the place aforesaid undertook and then and then faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of money last mentioned when the said defendants should be thereunto afterwards requested.

Nevertheless the said defendants (although often requested &c to wit, at the time when the said note became due and payable according to the tenor and effect thereof and often times since to wit at the place aforesaid) have not yet paid the said several sums of money above mentioned or any or either of them or any part thereof to the said plaintiffs but to pay the same or any part thereof to the said plaintiffs, the said defendants have hitherto ~~altogether~~ neglected and refused and still doth neglect and refuse to the damage of the said plaintiff of seven hundred dollars and therefore the said plaintiffs bring suit &c.

James G. Madden
Atty for the Plaintiff

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(Copy of Note read on)

Nine Months after date We promise to pay to Davis
& Reed One Hundred and fifteen dollars, after
due ten per cent interest

June 9. 1857.

Robert ^{his} Stone
George ^{mark} J. Harding

(Copy of Common Counts)

To money had and received	\$300
To money had and advanced	\$300
To money paid laid out and Expended	\$300
To money due on account stated	\$300

Filed Aug 24. 1858
Wm. Laferty CLK

afterwards to wit on the same day, and year first
above mentioned a Precept for Summons was
filed in the office of the Clerk aforesaid, which
is in the words and figures following to wit:

(Copy of Precept)

State of Illinois

Warren County } ss September Term AD 1858 of
the Warren County Circuit Court.

Robert A. Davis & Alvin N. Reed
by the name & style of Davis & Reed
for the use of Milton C. Munger

vs
Robert Stone & George J. Harding } Apumpset
Damages \$300

The Clerk will please issue a summons in said

cause for the said defendants returnable to the
said Term of the said Court on the first day
thereof. One summons directed to the Sheriff of
Piana County for the said George F. Harding and
one summons to the Sheriff of Warren County for
said Robert Stone.

August 27th 1838

James G. Madden
Atty for Plffs

Filed Aug 24. 1838
Wm Safety clk

Copy of Summons in

State of Illinois

Warren County

SS. The People of the State of Illinois
To the Sheriff of Piana County, Greeting:-
We command you to summon Robert Stone & George
F. Harding if to be found in your County person-
ally to be and appear before the Circuit Court of the
County of Warren on the first day of the next term
thereof to be holden at the Court House in Mount-
mouth on the third Monday in the month of September
next to answer the Complaint of Robert A. Davies
& Alvin H. Reed by the name & style of Davies & Reed
for the use of Milton C. Manger of a plea of trespass
on the case on promises to his damage the sum
of Ten Hundred Dollars as he says and have you
there and there this writ and make return thereon
in what manner you execute the same. Witness
William Safety Clerk of our said Circuit Court at
Mountmouth this 24th day of August in the year of
our Lord one thousand eight hundred and fifty eight.
(seal)

Wm Safety clerk

On the back of the foregoing summons appears the following return made by the Sheriff which is in the words and figures following to wit:

I have served the within writ on the within named George H. Harding by reading to him the same. August 26. 1858, Robert Stone is not in my County.

H. W. Smith Sh^r

Filed Sept 1. 1858

Wm Safety Clerk

~ Copy of Summons ~

State of Illinois

Warren County

Sd. The People of the State of Illinois
To the Sheriff of Warren County on Greeting

We command you to summon Robert Stone & George H. Harding if to be found in your County personally to be and appear before the Circuit Court of the County of Warren on the first day of the next term thereof to be holden at the Court House in Mounds on the third Monday in the Month of September next to answer the Complaint of Robert A. Davies & Alvin H. Reed by the name & style of Davies & Reed for the use of Milton C. Munger on a plea of trespass on the case on premises to his damage the sum of Three Hundred Dollars as he says and have you there and then this writ and make return thereon in what manner you execute the same, Witness William

Safety Clerk of our said Circuit Court at Mounds this 24th day of August in the year of our Lord one thousand eight hundred and fifty eight.

(Seal)

Wm Safety Clerk

On the back of the foregoing Summons appears
the following return made by the Sheriff which is
in the words and figures following to wit:-
I did this day September 9th AD 1858 serve the with
-in summons by making the same to Robert Stone
the within named George F. Harding not found
in my County.

Filed Sept 11. 1858 }
Wm. Safety CLK }

C. M. Mills Shff-
per A. J. Alred Sep.

Afterwards to wit: On the 23rd day of September
AD 1858. the defendants in this cause filed in the
said Clerk's office aforesaid a certain Plea which
is in the words and figures following to wit:-

State of Illinois }

Warren County } Warren Circuit Court

September Term AD 1858.

Robert A. Davis et al }
for use &c }

vs

George F. Harding
impeached with
Robert Stone }

And said defendant comes
& defends the wrong & injury when &c and says that he
did not undertake and promise as in said decla-
-ation alleged and of this he puts himself on the
Country, &c.

And the Plaintiff }
doth likewise }

Madden for Plaintiff }

Harding & Reed
for Def.

Filed Sept 23. 1858
Wm. Safety CLK }

State of Illinois

Warren County

Sh. Pleas before the Honorable
John S. Thompson Judge of the
tenth Judicial Circuit of the State of Illinois, At
a Circuit Court began and held at the Court
House in Mountz in the County of Warren
& State of Illinois; On the third Monday in the
month of March, in the year of our Lord One
Thousand eight hundred and fifty nine, It
being the twenty first day of said month,
Present the

Hon John S Thompson Judge
James H. Stewart State Attorney
Wm Laferty Clerk
Sette Smith Sheriff

Afterwards to wit: On the 15th day of April AD 1859, it
being at the same term of said Court then being held
the following order was entered upon the records of
said Court which is in the words and figures
following to wit:

Robert A. Davis & Alvin H. Reed
partners by the name & style of
Davis & Reed for the use of
Milton C. Manger

vs

Robert Stone & George H. Harding

Appears

This day came
the plaintiffs by their Attorney and also came
George H. Harding one of the defendants by his
attorney and if no being joined as to the said

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George F. Harding the parties waive a jury and for trial put themselves upon the Court, and after hearing the evidence the Court finds the issue for the plaintiffs and assesses their damages at the sum of "One Hundred and twenty seven Dollars and sixty six cent" And thereupon the said defendant Robert Stone was ordered to be called having been duly served with process. And the said Robert Stone having been three times solemnly called came not nor any person for him to defend this suit but made default. It is therefore ordered by the Court that the plaintiffs recover of the said defendant Robert Stone their damages. Thereupon came the defendant George F. Harding by Philo E. Reed his Attorney and moves the Court in arrest of judgment and after being advised of and concerning the premises it is ordered by the Court that the motion be overruled. Thereupon it is considered by the Court that the plaintiffs recover of the defendant the sum of One Hundred and twenty seven Dollars and sixty six cents the amount so found by the Court as aforesaid together with their costs by them in this suit expended and may have execution therefor. Thereupon comes the defendant George F. Harding and prays an Appeal to the Supreme Court which is allowed by the Court upon the said defendant entering into Bond with Chauncy Hardin as security in the sum of \$300 - Bond to be filed in 30 days from the date hereof.

Afterwards to wit: On the 22^d day of April A.D. 1859 the said George H. Harding filed in the office of the Clerk of the Circuit Court of Warren County Illinois an Appeal Bond which is in the words and figures following to wit:

Copy of Bonds

Know all men by these presents that We George H. Harding & Chaney Hardin are held and firmly bound unto Robert A. Davis & Alvin H. Reed for the use of Milton C. Munger in the penal sum of One Hundred Dollars for the payment of which well and truly to be made we bind ourselves our heirs executors and administrators jointly severally and firmly by these presents. Witness our hands and seals this 15th day of April Anno Domini one thousand eight hundred and fifty nine, The Condition of the above obligation is such: That whereas the said Robert A. Davis & Alvin H. Reed for the use of Milton C. Munger did on the 15th day of April 1859, in the Circuit Court within and for the County of Warren and State of Illinois recover a judgment against the above bounden George H. Harding for the sum of One Hundred Twenty seven ⁶⁶/₁₀₀ dollars and costs of suit from which Judgment of said Court the said George H. Harding has prayed for and obtained an appeal to the Supreme Court of said State, Now if the said George H. Harding shall duly prosecute his said Appeal 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 null and void otherwise to remain in full force and virtue,

Held April 22nd 1859 } Geo. L. Harding (S.S.)
McLaferty Ck } Chauncy Harding (S.S.)

State of Illinois
Warren County } I McLaferty Clerk of
the Circuit Court in and for said County and
State do hereby certify, that the foregoing is a
true copy of the Proceedings in the foregoing
case as fully as the same appears from the
files and records of my office

Witness my hand and the Seal of our
said Circuit Court at my office in
Monmouth this 16th day of April
A D 1860

McLaferty Clerk

Supreme Court of Illinois
April Term 1860
30 Grand Jurors
George H. Howard
vs
Impleaded &c

vs
Appeal from Illinois
Robert A. Davis & Alvin
H Reed for the use of
Milton C. Chandler

And the said
appellant says that manifest
error hath intervened in the
proceedings whereof the foregoing
is a record & for ever therein he affirms
that the Circuit Court erred in overruling
his motion in arrest of judgment, & in
rendering judgment for the plaintiff
not for defendant - & wherefore he prays judgment, Geo. H. Howard

Davis & Reed
vs
H. Reed

vs

B. S. Lane &c

Record

Filed April 22 1860
L. Deland
Clerk

\$2.50

288 288