

12899

No. _____

Supreme Court of Illinois

Swift et al

vs.

B
A
~~Heaven~~ *n*

United States of America }

STATE OF ILLINOIS, COUNTY OF COOK, S. S. }

Pleas, before the Honorable George Manierre
Judge of the Seventh Judicial Circuit of the State of Illinois, and Solo Presiding
Judge of the Circuit Court of Cook County, in the State aforesaid, and at a term thereof
begun and held at the Court House in the City of Chicago, in said County, on the
First Monday, (being the First day) of
March in the year of our Lord one thousand eight hundred and
Fifty Eight and of the Independence of the said United States the
Eighty Second

Present, Honorable George Manierre Judge of the 7th Judicial }
Circuit of the State of Illinois. }

Charles Haven States Attorney.

John S. Wilson Sheriff of Cook County.

Attest;

W. L. Church Clerk.

Be it remembered that heretofore
to wit: on the fifteenth day of February A D
1858 John Beaven by Dow and Fuller his
attorney sued out of the clerk of the court
aforesaid the People writ of summons
directed to the Sheriff of Cook county to
execute and clothed in the words and
figures following. to wit:

State of Illinois
County of Cook &c.

The People of the State of
Illinois - To the sheriff of said county, Greeting

We command you that you summon
Richard K. Swift Symon P. Swift and
James S. Johnston if they shall be found
in your county personally to be and appear
before the circuit court of Cook county
on the first day of the next term thereof
to be holden at the Court House in Chicago
in said county on the first Monday of
March next to answer unto John Beaven
in a plea of trespass on the case on promise
to the damage of the said plaintiff as
is said. in the sum of four hundred dol-
lars. - And have you then and there the
writ with an endorsement thereon in what
manner you shall have executed the same
Witness William L. Church clerk
of our said court and the seal thereof

(Seal)

at Chicago aforesaid this 15th
day of February A D 1858.
Wm L Church clerk

And afterwards, to wit: on the same day
and year last aforesaid said plaintiff
by his said attorneys filed in said court
his certain declaration against Richard K
Swift James S Johnston and Symon P
Swift defendant which is in the words
and figures following, to wit:

State of Illinois, In the Circuit Court of Cook
Cook County }^{ss} County March Term A D 1858
John Beavan

Richard K Swift Symon
P Swift & James S Johnston

John Beavan plain-
tiff in this suit by Dow and Fuller his
attorneys complains of Richard K Swift
Symon P Swift and James S Johnston
defendants who have been summoned &c
of a plea of trespass on the case upon prom-
ises. For that whereas the said defendants
heretofore, to wit: on the 4th day of November
in the year of our Lord one thousand eight
hundred and fifty seven, to wit: at said
county of Cook in consideration that the
said plaintiff had before that time

deposited with the said defendants and placed in their charge and under their custody and controll the sum of two hundred dollars in certified checks so called of the value of two hundred dollars in lawful money of the united states made their certain instrument in writing bearing date the day and year aforesaid in words and figures following. to wit "No 79" R K Swift, Brother & Johnston
Chicago November 4. 1857

Received from John Beavon two hundred dollars payable in currency to the bearer hereof for account of certified checks (Signed) R K Swift Bro & Johnston \$200⁰⁰ Per J. H. Wright
and then and there delivered the same to the said plaintiff in and by which said instrument of writing the said defendants by the name style and firm of R K Swift, Brother & Johnston acknowledged the receipt of the said sum two hundred dollars in certified checks (so called) of the value as aforesaid and promised to pay to the bearer thereof the sum of two hundred dollars in currency, to wit in bank bills current in the state of Illinois when they the said defendants should be thereunto afterwards requested

7 and although the said instrument in writing was afterwards. To wit: on the 1st day of February A.D. 1858 at Chicago. To wit: at Cook County aforesaid presented by the said plaintiff to the said defendants for payment and the said defendants were then and there by the said plaintiff requested to pay him the said sum of two hundred dollars in currency. To wit: in bank bills current in the state of Illinois according to the tenor and effect of the said instrument in writing. Yet they, the said defendants then and there refused to pay the same or any part thereof and from that time hitherto have not paid the same or any part thereof, but have hitherto wholly neglected and refused so to do. To wit: at Cook County aforesaid. By means whereof and by force of the statute in such case made and provided the said defendants became liable to pay the said plaintiff the value in money of the said sum of two hundred dollars in currency. To wit: in bank bills current in the state of Illinois mentioned in said instrument in writing and being so liable in consideration thereof then and there undertook and promised to pay the value of the same in money to the said

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9 Plaintiff. to wit: at Cook County aforesaid
and said plaintiff further avers that the
said sum of two hundred dollars in
currency. to wit. in bank bills current
in the State of Illinois at the time pay-
ment of said instrument in writing altho
said defendants so made by them as afore-
said was demanded of the said defendants
as aforesaid. to wit: on the first day of
February A D 1858 was of the value in
money of two hundred dollars. to wit: at
Cook County aforesaid.

19 And whereas also the said
defendants. heretofore to wit: on the 4th day
of November A D 1857 at Chicago. to wit:
at said County of Cook made their certain
instrument in writing by them signed
by J W Wright their agent duly authoriz-
ed thereto bearing date the day and year
aforesaid and then and there delivered
the same to the said ^{plaintiff} instrument in and
by which said instrument in writing
the said defendants under the name style
and firm of R K Swift. Brother and
Johnston acknowledged the receipt by
them the said defendants of and from
him the said plaintiff of the sum of two
hundred dollars in certified checks lawful
money of the United States of America (so called)

and promised ^{to pay} to the bearer of said instrument the sum of two hundred dollars in currency. To wit: in bank bills current in the State of Illinois when they the said defendants should be thereunto afterwards requested, and although the said defendants were afterwards, to wit: on or about the 1st day of February A D 1858 at Chicago, to wit: alt Cook County aforesaid requested by the said plaintiff to pay him the said sum of two hundred dollars in currency to wit: in bank bills current in the state of Illinois. Yet the said defendants when so requested did not pay the same to the said plaintiff and have not from that time hitherto paid the same or any part thereof to the said plaintiff but have hitherto wholly neglected and refused so to do.

By means whereof and by force of the statute in such case made and provided the said defendants became liable to pay the said plaintiff the value of the said sum of two hundred dollars in currency to wit: in bank bills current in the state of Illinois mentioned in said instrument in writing in being so liable in consideration thereof then and there undertook and promised to

- 13 pay the value of the same in money to the said plaintiff to wit: at Cook County aforesaid. And the said plaintiff further avers that the said sum of two hundred dollars in currency to wit: in bank bills current in the state of Illinois at the time payment of the said instrument ^{in writing} was demanded of the said defendants as aforesaid. to wit: on the 1st day of February A D 1858 was of the value of two hundred dollars. to wit: at Cook County aforesaid. - And whereas also the said defendants afterwards. to wit: on the 15th day of February A D 1858. to wit: at said County of Cook aforesaid became and were indebted unto the said plaintiff in a large sum of money to wit: in the sum of four hundred dollars for four hundred dollars in currency to wit: in bank bills current in the State of Illinois before that time lent and advanced to said defendants by said plaintiff at said defendants request. and also in the like sum for the value of four hundred dollars in currency to wit: in bank bills current in the State of Illinois before that time paid laid out and expended for the said defendants by said plaintiff at the like special instance and request of said defendants and in the like
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sum for four hundred dollars in certified checks (so called) before that time had ^{and} received by said defendants to and for the use of said plaintiff and also in the like sum then and there found to be due and owing to the said plaintiff on an account stated between them and being admitted said defendants in consideration thereof. then and there undertook and promised to pay said plaintiff said several sums of money above mentioned when they should be therunto afterwards requested.

Yet the said defendants not regarding their said promises and undertakings. but contriving &c although often requested so to do have not paid said plaintiff either of said sums of money above mentioned or any part thereof but so to do have hitherto wholly neglected and refused. and still do neglect and refuse to the damage of said plaintiff of Four Hundred dollars and therefore he brings this suit &c. Dow and Fuller
Plffs Attys

Copy of instrument & account sued on
N^o 79 R K Swift. Brother Johnston
Chicago November 4. 1857

17 " Received from John Bevan two hundred
red dollars payable in currency to the
bearer hereof for a count of certified checks

R. K. Swift Brothers Johnson per R. B. Wright
R. K. Swift Bros Johnson

To John Bevan Dr.
Do four hundred dollars in currency lent

" and advanced \$400-
" \$400 in certified checks had & recd \$400-
" bal of \$400 in currency paid laid out & expended \$400-
" amt due on a/c stated \$400-

And afterwards. to wit: on the 16th day of
February in the year last aforesaid said writ
18 was returned into the court aforesaid by said
Sheriff endorsed as follows. to wit:

Served by
reading to the within named defendants
R. K. Swift and James S. Johnson the
other defendant not found in my county
the 16th day of February 1858 fees 2 services 100
2 mile 10. return 10 = 120 Pd by Plffs attys
John S. Wilson Sheriff by George Anderson
deputy.

And afterwards. to wit: on the third day
of March in the year aforesaid said defen-
dants Richard K. Swift and James S. John-
son impleaded with Lyman P. Swift by mesne

Scates McAllister Jewett and Peabody their attorneys filed with the clerk of said court their certain demurrer to the plaintiffs declaration which is in the words and figures following - to wit:

State of Illinois, In the circuit court of said
County of Cook ss. County of the March Term A.D. 1888
Richard K Swift & James
S Johnston impleaded with
Symon P Swift
add
John Evans

And the said defendants Richard K Swift and James S Johnston impleaded with Symon P Swift by Scates McAllister Jewett and Peabody their attorneys come and defend the wrong and injury when we and say that the first and second counts of the said plaintiffs declaration and the matters therein contained in manner and form as the same are above stated and set forth are not sufficient in law for the said plaintiff to have and maintain his aforesaid action thereof against the said defendants and that they the said defendants are not bound by law to answer the same and this they are ready to verify. Wherefore by reason of the insufficiency of the said first and second

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Counts in this behalf the said defendants impleaded as aforesaid pray judgment and that the said plaintiff may be barred from having or maintaining his aforesaid action thereagainst them And the said defendants impleaded as aforesaid according to the statute in such case made and provided states and shows to the court here the following causes for Demurrer to the said first and second counts of said declaration that is to say,

1st

The said first and second counts do not show any sufficient consideration for the making and delivery of the

2nd

^{2nd} ^{2nd} The said first and second counts do not show that any consideration whatever was given by the said plaintiff or any other person for the undertakings and promises of the defendants set up in said counts.

3rd

It does not appear from said counts that the plaintiff has sustained any damage on account of the non performance of the promises in said counts mentioned by the defendants.

4th

It does not appear from said counts that the plaintiff has any right or cause of action against the defendants.

5th
23

She said counts are in other respects
uncertain informal and insufficient,
Scates M^r Allister Jewett & Peabody
Atty for R. H. Swift & Johnston

And afterwards. to wit: at the March
term of said court. to wit: on the 15th day
of March A D 1858 the following proceedings
among others in said court. were had and
entered of record therein. to wit:

John Beavans

12427

@

Asst.

Richard H. Swift

Symon P. Swift^{2d}

James S. Johnston

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This day comes the
said plaintiff and confesses the demurrer
of said defendants to his said declaration
and on motion, ordered that he have leave
~~until tomorrow~~ to amend his said
declaration herein, instanten which is done
and that the defendants plead thereto by tomorrow morning.

And afterwards. to wit: at the aforesaid
term and on the 16th day of March in the
year last aforesaid the following proceedings
among others in said court were had and
entered of record therein. to wit:

4
25 - John Beavan

12427 v

Richard K Swift
Symon P Swift^{2d}
James S Johnston

Asst.

26 This day comes the said plaintiff by his attorneys and the said defendant Richard K Swift and James S Johnston also come and they being three times severally solemnly called in open court, say nothing in bar or preclusion of of the said action of the said plaintiff whereby said defendants remain undefended against the said plaintiff. - Wherefore said plaintiff ought to have and recover of said defendants Richard K Swift^{2d} and James S Johnston impleaded with Symon P Swift his damages herein sustained by occasion of the premises and thereupon a reference is had to the court to assess the same and the court after hearing the allegations and proofs submitted by said plaintiff and being well advised in the premises now assesses said plaintiff's damages herein to the sum of two hundred and One dollars.

Therefore it is considered that said plaintiff do have and recover of said defendants Richard K Swift and

27 And James S Johnston mispleaded with
Symon P Swift his damages of two hun-
dred and one dollars in form as aforesaid
assessed together with his costs and charges
by him in this behalf expended and that
he have execution therefor.

And afterwards to wit: at the term
last aforesaid and on the 29th day of March
A D 1858 the following proceedings among
others in said Court were had and entered
of record therein to wit:

28 12427 ✓	John Beavan	Assumpsit
	Richard K Swift	
	Symon P Swift ^{2d}	
	James S Johnston	

This day come the said
defendants and pray an appeal to the
Supreme Court of the State of Illinois
which is granted on condition that said
defendants enter into and file their Bond
in the penal sum of Four hundred^{2d}
two dollars conditioned according to law
with Van H Biggins as surety thereon.

And afterwards to wit: on the second
day of April said defendants R K Swift
and James S Johnston mispleaded as aforesaid

filed with the clerk of said court their appeal Bond which is in the words and figures following. to wit:

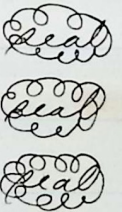
Know all men by these presents that we Richard K Swift James S Johnston and Van H Higgins are held and firmly bound unto John Beavens in the penal sum of four hundred and two dollars for payment of which well and truly to be made to said John Beavens his heirs or assigns. we bind ourselves jointly and severally, our heirs executors and administrators, firmly by these presents, sealed with our seals and dated this twenty ninth day of March A D 1858

29
This condition of this obligation is such that whereas in a certain suit in the Cook county Circuit Court wherein said John Beavens was plaintiff and said Richard K Swift and James S Johnston impleaded with Synow P Swift were defendants, the said plaintiff on the eighteenth day of March A D 1858 recovered a judgment against the said defendants Richard K Swift and James S Johnston for the sum of two hundred and one dollars damages, besides costs of suit from which said judgment Richard K

30 Swift and James S Johnston said last named defendants have prayed an appeal to the Supreme Court of the State of Illinois which appeal has been granted upon said defendants giving this Bond.

Now if the said above bounden defendants shall well and truly pay the judgment, costs interest and damages in case the said judgment shall be affirmed by said Supreme Court and shall duly prosecute their said appeal then the above obligation to be void otherwise of force

31 R H Swift
J. S Johnston.



State of Illinois, }
COUNTY OF COOK. } S. S.

J. WILLIAM L. CHURCH, Clerk of the Circuit Court of Cook County, in the State aforesaid, do hereby certify the above and foregoing, to be a true, perfect and complete copy of the with papers & proceedings and Appeal Bond in a certain cause lately pending in said Court on the Common Law side thereof, wherein John Brown was plaintiff

Richard H Swift et al defendants

IN WITNESS WHEREOF, I have hereunto set my hand, and affixed the seal of our said Court at Chicago, this 19 th day of April A. D. 1859

ms #4 25

J. W. L. Church
Clerk.

The State of Illinois
Supreme Court
James S. Johnston et al.
John Beavan

And now comes
the plaintiff in error and says
that there is here an error
in the record and proceedings in
this among other things
I. There is a demurrer in
the case undisposed of
II. The Court erred in permitting
an amendment to the
declaration and allowing the
defendant to plead the
same terms
III. It is error to permit a
declaration to be amended
by alterations or omissions
IV. The Court erred in
decisions given during
the progress of the case
V. The case was not in
a situation to take judgment
against the defendant
For these and other causes
the ~~case~~ Plaintiff in error

asks a reversal of said judgment
Shumway Water Dome
Atty for Plaintiff in error

In writ of error

Wm Fuller
Atty

for Deft in error

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Richard R. Swift &
James S. Johnston
~~and~~

vs

John Beavan
— " — " —
Respondent

Filed April 21, 1839
L. Leland
Clerk

Wait p.d. \$5.00

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