

12286

No. _____

Supreme Court of Illinois

Hanna.

vs.

Yokum.

71641  7

Joseph S. Hanna
Plffs in Error

Charles Yocum
Adm^r & Sift in Error

Sup Court. Northern
Division June 7 1886
Error & Reversal

Plffs in Error come
saying that there is manifest error
in the within Record in this
Court.

1. Said Court below erred in over-
ruling the demurrer & decided
plea of defendants below.

2. Said Court erred in rendering
judgment against said plffs
upon said demurrer.

Wherefore said plffs in error
prayer, that said judgment of
said Court below may be
reversed & said cause remanded
for trial.

Maxim D. McMillan
Atty for plffs in error

Wm. J. Hanna
Clerk for Sift.

Apmt of Errors

Filed June 11 1888

S Leland
Clerk

Be it remembered that heretofore to wit: on the fourteenth day of February A.D. 1855 there was filed issued out of the clerks Office of the Circuit Court in & for Peoria County in the State of Illinois a writ of summons under the seal of said Court which

In a certain cause wherein Joseph S. Hanna, Nathan H. Stockwell & Edmund T. H. Gibson are plaintiffs and Charles Vocum administrator of the estate of Thurgood Smith deceased is defendant with the return endorsed thereon, as in the words & figures following

to wit:

The People of the State of Illinois, To the Sheriff of Peoria County Greeting. We command you to summon Charles Vocum administrator of the estate of Thurgood Smith deceased if he may be found in your County to appear before our Circuit Court on the first day of the next term thereof, to be held at Peoria, within and for the said County of Peoria on the first Monday of March next, then and there in our said Court to answer unto Joseph S. Hanna, Nathan H. Stockwell and Edmund T. H. Gibson of a plea of trespass on the case upon promises to their damage five thousand dollars as they say, and make return of this writ, with an endorsement of the time and manner of serving the same on or before the first day of the term of the said Court to be held as aforesaid. Witness Jacob Gale, Clerk of our said Court

Seal and the seal thereof at Peoria this fourteenth day of February in the year of our Lord one thousand eight hundred and fifty five

Jacob Gale, Clerk"

(Return endorsed.)

"Served on Charles Yocum by reading to him this writ
February 14th 1855

D. D. Irons, Sheriff
by A. R. Kidwell Deputy"

And on the said 14th Feby 1855 the plaintiff filed his precise declaration
in said cause which are as follows

"
Joseph S. Hanna
Nathan H. Stockwell
Edward T. H. Gibson

Peoria Circuit Court
March Term 1855

vs
Charles Yocum
administrator of the estate of
Thurrgood Smith deceased

In Assumpsit
Damages \$ 5000.

summons &c

The clerk will please issue

Manning & Merriman
Joseph S. Hanna, Nathan H. Stockwell & Edward T. H. Gibson plaintiffs in this suit complain of Charles Yocum, administrator of all and singular the goods and chattels rights and credits of the estate of Thurrgood Smith deceased who died intestate, defendant in this suit of a plea of trespass on the case or promises for that whereas the said Thurrgood Smith in his lifetime to wit on the first day of November A.D. 1849 at the County of Peoria was indebted to the said plaintiffs in the sum of five thousand dollars for so much money by the said plaintiffs before

that time lent and advanced to the said Thorrygood Smith at his special instance and request. Also in the further sum of five thousand dollars for so much money by the said plaintiffs before that time paid laid out and expended to and for the use of the said Thorrygood Smith at his like special instance and request.

Also in the further sum of five thousand dollars for so much money by the said Thorrygood Smith before that time had and received to and for the use of the said plaintiffs.

And also in the further sum of five thousand dollars for so much money before that time and then due and payable from the said Thorrygood Smith to the said plaintiffs for interest upon and for the forbearance of divers large sums of money, before that time and then due and owing from the said Thorrygood Smith to the said plaintiffs ~~forborne~~ and by them the said plaintiffs forborne to the said Thorrygood Smith for divers long spaces of time before then elapsed at the like special instance and request of the said Thorrygood Smith, and being so indebted he the said Thorrygood Smith in consideration thereof afterwards to wit on the day and year last aforesaid at the County aforesaid undertook and then and there faithfully promised the said plaintiffs to pay them the said several sums of money, when he the said Thorrygood Smith should be thereunto afterwards requested. Yet the said Thorrygood Smith in his lifetime and the said Charles Vocum administrator as aforesaid after the death

of the said Therrygood Smith, not regarding their said several promises and undertakings hath not nor hath either of them as yet paid the said several sums of money or any or either of them or any part thereof (although requested so to do) but to pay the same or any part thereof to the said plaintiffs, the said Therrygood Smith in his life time wholly refused and the said defendant, administrator as aforesaid hath ever since the death of the said Therrygood Smith hitherto wholly refused and still refuses so to do to the damage of the said plaintiffs of five thousand dollars and therefore they bring suit &c

Manning & Merriam
Plffs Atty.

Proceedings at a term of the Circuit Court begun and held at the Court house in the City of Peoria in and for the County of Peoria in the State of Illinois on the first Monday of March in the year of our Lord one thousand eight hundred and fifty five it being the fifth day of said month. Present the Honorable Caslow Peters, Judge of the sixteenth Judicial Circuit in the State of Illinois to wit:

Thursday March 22nd A.D. 1855

Joseph L. Hanna .

Nathan W. Stockwell

Edward T. W. Gibson

vs

Charles Yocum admr. of
Estate Therrygood Smith deceased

Assumpsit

On motion of the defendant by N. H. Purple
his attorney it is ordered that this cause be continued to
next term at the costs of the plaintiffs because no copy
of the instrument declared on has been filed in this cause.

And on the 18th May 1855 the defendant filed his plea in said
cause which is as follows

Joseph L. Hanna
Nathan H. Stockwell
Edward T. H. Gibson

vs

Charles Yocum
administrator of the Estate of
Therrygood Smith decd

Peoria Circuit Court
March Term 1855
Assumpsit

And now comes the said defendant and defends the
wrong and injury when &c, and says that the said several
causes of action in the several counts of the plaintiffs declaration
mentioned are one and the same and not other or different
and that the said plaintiff on the 13th day of December 1851
in the County Court of Peoria County at a Court then and
there in session pursuant to law, then & there in said Court
impleaded the said defendant of and for and then and there
filed against the said defendant the same identical claim
and cause of action in the said plaintiffs declaration
mentioned and declared for in this suit and such proceed-
ings were thereupon had in said Court that afterwards
to wit at a term of said Court held in the month

of October A.D. 1854, the said claim or cause came on to be tried upon the evidence of the parties and the arguments of counsel, and was then and there tried upon its merits, and the said Court, then & there upon the trial of the said cause & claim upon the hearing aforesaid decided ordered and adjudged that the said account & claim was not due from said defendant to said plaintiffs, and that the same should be disallowed and ejected & then and there upon said trial and hearing gave judgment in favor of the said defendant all which by the records and proceedings in said Court now to the Court here shown will fully appear. And the said defendant avers that the said County Court had jurisdiction of the subject matter aforesaid and of the parties aforesaid & that the same judgment and decision remains in full force not set aside annulled nor in any manner reversed & this the said defendant is ready to verify wherefore he prays judgment &c.

Purple Sanger & Pratt
for the Deft.

Proceedings at a term of the Circuit Court begun and held at the Court house at the City of Peoria in and for the County of Peoria, in the State of Illinois, on the third Monday of November in the year of our Lord, one thousand eight hundred and fifty five, it being the nineteenth day of said month. Present the Honorable Emulow Peters Judge of the sixteenth Judicial Circuit in the State of Illinois to wit

Friday November 30th A.D. 1855

Joseph S. Hanna & others

vs

Charles Yocum admr &c

} Assumpsit

This day came the defendant by Lorin G. Pratt his attorney and on his motion it is ordered that the plaintiffs file their replication to the defendants plea by to morrow morning.

And on the 1st day of December 1855 the plaintiffs filed their demurrer to defendants plea which are as follows

"State of Illinois } Peoria Circuit Court
Peoria County. } November term A.D. 1855

Joseph S. Hanna

Nathan H. Stockwell

Edward T. H. Gibson

vs

Charles Yocum

administrator of the estate
of Cherrygood Smith dec'd

And now come the said plaintiffs by their attorney and crave oyer of the said records and proceedings of the said County Court of Peoria County in the said plea of the said defendants above mentioned which records and proceedings are read to them in the words and figures

following:

State of Illinois }
Peoria County }

In the County Court
November Term A.D. 1854

Gibson Stockwell vls
vs
Estate of Cherrygood } for allowance of claim

Claim filed December 13th 1851 being
an account, this day came the parties by their Attorneys and
also the administrator in person & by his attorney, whereupon
testimony was introduced, upon the hearing of which, the
Court find that the sum of \$ 3292 ⁸¹/₁₀₀ claimed as due from
said estate being a balance due upon said account, is not due
to said claimants. It is therefore ordered by the Court that
said claim be disallowed and is therefore rejected.

State of Illinois

Peoria County } I, Charles Kettelle, Clerk of the County
Court of said Court do hereby that the foregoing is a copy
of the record in the above named cause as appears of record
Seal Given under my hand & official seal this 30th day
of November A.D. 1855

Charles Kettelle, Clerk "

which said records and proceedings being read the said
plaintiffs say that the said plea and the matters and things
therein contained upon the said records and proceedings, is
not and are not as above pleaded and set forth good and
sufficient in law to bar the said plaintiffs action thereof

against the said defendant: and thus the said plaintiffs
are ready to verify, wherefore they pray judgment &c

Manning & Merriman

Attys for plfs

Def't joins in demurrer

Purple & Pratt

Proceedings at a term of the Circuit Court begun and held
at the Court house at the City of Peoria in and for the County
of Peoria in the State of Illinois on the third Monday of November
in the year of our Lord, one thousand eight hundred and fifty
five, it being the nineteenth day of said month, Present the
Honorable Onslow Peters Judge of the sixteenth Judicial
Circuit: to wit:

Tuesday December 11th A.D. 1855

Joseph L. Hanna
Nathan H. Stackwell
Edward T. H. Gibson

vs

Charles Vocum, administrator of
the estate of Cherrygood Smith deceased

Assumpsit

This day this cause came on to be heard on the de-
murrer of the plaintiffs to the plea of the defendant, on con-
sideration whereof the Court being fully advised in the premises
is of opinion that said plea and the matters therein contained
are sufficient in law to bar this action, and the plaintiffs
abiding by their said demurrer it is considered that the

defendant go hence without day and have and recover of the
plaintiffs his costs and charges by him about his defense in
this behalf expended and that he have execution therefor.

State of Illinois,
County of Peoria, J. I. James S. Batman, clerk
of the Circuit Court in and for Peoria County in the
State of Illinois do hereby certify that the foregoing is
a correct transcript from the Record of the proceedings in
a certain cause wherein Joseph S. Hanna, Nathan H.
Stockwell and Edward J. H. Gibben are plaintiffs and
Charles Yocum administrator of the estate of Sherrygood
Smith, deceased ~~and~~ is defendant, as the same appears of
Record and on file in my office.

In witness whereof I hereto set my hand &
affix the seal of said Court at my office at
Peoria this 16th day of June A.D. 1856,
James S. Batman, clerk.

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Joseph S. Hanna
Nathan H. Stockwell
Edward J. H. Gibben
Charles Yocum adminr
of the estate of Sherrygood Smith
Record

Filed June 12 1856.
L. Leland
Clerk

Joseph K Hanna.
vs

Charles Socum
ad. &c.

} Error & Plead

I am at a loss to know upon
what grounds the Plaintiff expects to
reverse this Judgment.

The Plea sets up a complete and
perfect bar to the Suit, that the same
Subject Matter had been tried and deci-
ded by a Court of Competent, and original
Jurisdiction

The County Court has original
and Exclusive Jurisdiction to hear and
allow or reject all Claims against Estates.

This action is Judicial - There may
in case of Contest be a Jury empanelled
and on appeal lies from the decision
or Judgment in such cases to the Circuit
Court. This Claim was tried there, upon
a Contest, the Court decided upon a
hearing that it was not due and owing
and refused to allow it, and gave
Judgment for the defendant.

The Plea (to which, as set out
in the Record I call the attention of the
Court), must be taken as true as pleaded

The Character can not be changed or force
weakened, by an attempt to erase Copy
of the Record and set it out in
the demurr.

Copy of a Record can not be
made.

1 Chitty's Plead. (431)

The demurr admits the plea to be true
without regards to the statements relating
to the Record introduced into the demurr.

We have no such Speaking demurrs
in the Practice in this State.

If the Plea is admitted it is a
bar to the Suit.

But the Record set out in the
demurr is a good and valid Judgment
in law in Bar of the Plaintiffs action.

It is a distinct adjudication of the rights
of the parties upon the claim in controversy
and I can not conceive an possible
grounds for reversing this Judgment.

J
Triple

JOSEPH S. HANNA,
NATHAN H. STOCKWELL,
EDWARD T. H. GIBSON,
Plaintiffs in Error,
vs.
CHARLES YOCUM, Adm'r & c.
of Estate of Therrygood Smith.
Defendant in Error.

SUPREME COURT,
Northern Division,
June Term, 1856.
Error to Peoria.
Abstract.

This was a suit brought on account for damages as laid in declaration for \$5,000, declaration contained the common Counts, by said plaintiffs in error against defendant in error.

Defendant pleaded former Judgment in bar, in this that plaintiffs filed their account December 13th, 1851, in the County Court of Peoria County, upon which account a trial was had in said Court in October, 1854, upon which trial the said Court decided that said account and claim was not due from said defendant to plaintiffs, and that the same should be disallowed and rejected, and judgement was given in favor of defendant, and that said County Court had jurisdiction.

Plaintiffs craveoyer of the record and proceedings in said County Court, which is as follows: "Gibson, Stockwell & Co., vs. Estate of Therrygood Smith, claim filed December 13th, 1851. Being an account, this day came the parties by their attorneys, and also the administrator in person, and by his attorney whereupon testimony was introduced, upon the hearing of which the Court said that the sum of \$3,292 81 claimed as due from said estate, being a balance due upon said account, is not due to said claimants. It is therefore ordered by the Court that such claim be disallowed, and is therefore rejected," and upon suchoyer demur to said ples, which demurrer was overruled by said Court, and which is the cause assigned for error on the record.

MANNING & MERRILMAN, Plaintiffs' Attorneys.

Kenner vs Locum

Abstract

and argument

A. M. P. Rupte

Order of Record

Filed June 23 1856
L. Leland
Clerk

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Joseph A. Hanna

by

Charles G. Green

114

1856

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X