

No. 11832

Supreme Court of Illinois

Maghee

vs.

How, et al

71641  7

Lester H. Claghu &c.

vs

Calvin W. How & als.

McHenry

11832

1851

Prepaid

Lester H. Maguire
Survivor of M. Biqz
vs.

Calvin W. Now, Benja:
min W. Now, William
B. Whitaker

Supreme Court

Error to M. Henry
Circuit Court

And hereupon the said Lester
Maguire says, that in the record
aforesaid, and in
the rendition of the Judgment
aforesaid, there is manifest error
in this that before the filing of
the Declaration and Note, and
of the Power of Attorney in said
Record aforesaid that is to say before
the said 5th day of April 1850
Noah M. Biqz one of the original
makers of the said Warrant of
Attorney to confer a Judgment
in the said Cause, had depar-
ted this life, and thereby the said
Warrant of Attorney became
void & void - all which
matters & things appear upon
inspection of the said record
Wherefore & for many other errors
& insufficiencies in the said
Record apparent the said Lester
Maguire prays that the said
Court aforesaid may in all
things be revoked & altogether
held for nothing & that he may

be restored to all things he hath
lastly said Judgment

August. 17th 1850.

Loops & Hurlbut
for Plffs Error

And now before the Hon. John D
Caton one of the Justices of the Supreme
Court, in vacation of the said Court.
Cometh the said Plaintiff in error by
Loops & Hurlbut his Attorneys & Prays
that a Writ of Error may be allowed
whithin out of the Supreme Court
aforesaid directed to the Circuit
Court of said County of McHenry
& that upon filing of the Bond,
herewith, ^{of said Loops & Hurlbut} of Samuel L. Keith,
the said Writ of Error be made
to operate as a Supersedeas upon the Execution
~~heretofore issued~~ in this case from
the said Circuit Court of McHenry
County on the said Judgment
and proceedings under the same;

Filed Aug. 31st
W. Williams

Allegan vs. State
Pacific

United States of America

State of Illinois
McHenry County vs. Pluss, before the Honorable
Hugh Henderson ^{Residing} Judge of the
eleventh judicial Circuit of the State of Illinois of
which McHenry County forms a part, at a Circuit
Court begun and held at the Court house in Wood
Stock in said County on the ~~eleventh~~ ^{eight} day of April
in the year of our Lord one thousand eight hundred
and fifty and of the Independence of the said
United States the seventy fourth.

Present the Hon Hugh Henderson
Judge

Attorney
J. H. Johnson
Clerk

P. W. Platts
State Attorney.

Paul Connelly
Sheriff

And thereafter to wit on the 15th day of April A.D.
1850 it being one of the days of the late term of
said Circuit Court the plaintiffs hereinafter men-
tioned filed their certain declaration and note
power of attorney and affidavit hereinafter mentioned
and in the words and figures following that is to
say.

In the McCHenry Circuit Court of
April term A.D. 1850

State of Illinois } Calvin W. Howard Benjamin W.
County of McCHenry } Howard William B. Whitaker plaintiffs
in this Suit by their Attorney
Allen C. Fuller come and complain of Esther W
Magher Survivor of Noah W. Birge who was

summoned &c of a plea of trespass on the case upon
promises. For that whereas the said defendant and
Wmth Birge then in life since deceased on the seventh
day of March in the year eighteen hundred and fifty
at Belvidere town in Woodstock in said County
made their certain promissory note and delivered the
same to said Plaintiffs & their then and there for
value received promissid said plaintiffs to pay them
or order five hundred and eighty dollars and forty
five cents with interest one day after date which period
hath now elapsed. Yet the said defendant ~~and~~ &
the said Birge during his life time and the said
Defendant since his death have always withstood refused
and still doth neglect & refuse to pay the said Plaintiffs
the said sum of money in the said Note specified
or any part thereof to the damage of ^{the} said Plaintiffs
to the damage of six hundred Dollars and therefore
they bring suit &c

Allen C Fuller

Plaintiffs attorney

And ~~now~~ the said Sistris H. Magher by his attorney in
fact W. J. Burgess comes to defend the wrong & injury where
by, and says that he cannot deny but that he and
said Birge did undertake & promise in manner
& form as the said Plaintiffs have above therein in
their said declaration complained against him, as
such survivor as aforesaid, ~~not~~ ^{nor} but that the said
Plaintiffs have sustained damage by occasion
of the non performance thereof to the amount five hun-
dred and twenty one dollar and thirty six cents
for which he consents that Judgment may pass
against him, ~~and~~ hereby releasing all errors in
entering up judgment herein or issuing
execution thereon W. J. Burgess for Deft

\$578.45

March 7 1850

One day after date for value received we promised to pay to Calvin W. How Benjamin W. How & William B. Whittaker or order Five Hundred and Eighty four dollars with interest

Q. A. Mayher
N. M. Birge

Know all men by these Presents that we S. A. Mayher and Noah W. Birge are justly indebted to Calvin W. How, Benj. W. How & Wm. B. Whittaker upon a certain promissory note bearing even date herewith for the sum of five hundred ^{and} eighty four dollars with interest and due one day after date. Now therefore in consideration of the premises we do hereby make constitute and appoint Fayette B. Hamlin or any attorney of any Court of record to be our true and lawful attorney irrevocably and for us ^{and} in our names & place and stand to appear in any Court of Record in term time or in vacation in any of the States or Territories of the United States at any time after said note became due to waive the service of process & confess a judgment in favor of said How How & Whittaker or their assigns or assigns upon ^{the} said note for the above sum or for as much as appears to be due according to the tenor and effect of said ^{note} and interest thereon to the day of the entry of said judgment together with costs and ^{and} attorneys fees and also to file a cognovit for the amount that may be so due with an agreement therein that no writ of Error or appeal shall be prosecuted upon the judgment entered by virtue hereof nor any bill ⁱⁿ of equity filed to interfere in any manner with the operation of said judgment and to release all errors that may intervene in the entering up said judgment or issuing the Execution thereon hereby ratifying and confirming all that

our said attorney may do by virtue hereof.

Witness our hands and seals this Seventh day of March
A.D. 1850

In presence of

S. H. Magher Seal
N. W. Birge Seal

State of Illinois }
County of Missouri }

of Allen C. Fuller of Boone County

being duly sworn doth depose and
say that he knows the signature of

Lester H. Magher & Noah W. Birge & that their signatures
to the within Note of Attorney are genuine &
of their own proper handwriting and that said Noah
W. Birge has since the making of said note & power
of Attorney departed this life & said Magher is still
living

Dated April 15th 1850 W. Johnson cl^{er} Allen C. Fuller

And thereupon to wit on the day and year last aforesaid
the said Plaintiff filed in the Clerk's office of said
County the following security for costs

Calvin W. How
Benjamin W. How
William B. Whittaker

Lester H. Magher
Survivor of Noah W. Birge

I do hereby enter myself
security for costs in this cause and acknowledge myself
bound to pay or cause to be paid all costs which 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 April 15th 1850

Allen C. Fuller

Filed April 15th 1850

W. Johnson cl^{er}

The following is the Judgement in the said Cause
Calvin W. Koro
Benjamin W. Dow
William B. Whittaker

vs
Lester W. Magher
Survivor of W. W. Birge

Logansport

And now came the plain-
tiffs by Fuller his attorney and
file his declaration herein and
thereupon comes Burges defendant.

Attorney and files the power of attorney of the said defendant
the execution of which is duly proved to the Court and
says that he cannot deny but that they did promise and
undertake in manner and form as the said plaintiffs
have ^{thereof} alleged against him and waives service of process
and all errors and manner of errors herein and confesses a
Judgment for the sum of five hundred and twenty one
Dollars and thirty six cents against the said Defendant
Magher survivor of W. W. Birge. It is thereupon ordered
and considered by the Court that the plaintiffs have and
recover of the defendant Lester W. Magher survivor of
W. W. Birge the sum of five hundred and twenty one
Dollars and thirty six cents his damages so confessed
as also his costs and charges herein expended and
that they have Execution therefor

State of Illinois
Madison County

I the undersigned Clerk of the Circuit
Court in and for the said County
and State aforesaid do hereby certify

that the foregoing is a true and complete copy of the
record and papers on file in this office in the above
entitled Cause. Witness my hand and the Seal thereof at Newbuck
this 17th day of August A.D. 1857

J. S. Johnson
Clerk

Lester H. Mayhew
Survivor &c.

vs }

Calvin W. How-stal

Revd & appt. of suns

Filed Aug. 31. 1850.
L. Heland Clk.

State of Illinois, }
Supreme Court, } SS.

The People of the State of Illinois

TO THE SHERIFF OF *McHenry* County.

Because in the record and proceedings, and also in the rendition of the judgment, of a plea which was in the circuit court of *McHenry* county, before the Judge thereof, between *Calvin N. How Benjamin N. How & William B. Whitaker*, plaintiffs & *Carter H. Magher* survivor of *Coak N. Rige-* defendant, it is said that manifest error hath intervened to the injury of the said *Magher*

as we are informed by *his* complaint, the record and proceedings of which said judgment, we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said *Calvin N. How, Benjamin N. How & William B. Whitaker*

that *they* be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the *second* Monday in *June* next, to hear the records and proceedings aforesaid, and the errors assigned, if *they* shall think fit; and further to do and receive what the said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said *How et al.* notice, together with this writ.

WITNESS, the Hon. *Samuel H. Treat*
Chief Justice of our said Court, and the seal thereof,
at Ottawa, this *10th* day of *September*
in the year of our Lord, one thousand eight hundred
and *forty-fifty*.

H. Keland Clerk of the Supreme Court.

John H. Mayhew

Calvin N. Howells

Sci. Fa.

To June Term 1854.

Filed Nov. 18. 1854.
S. Deland Clk.

Loops & Aulbut attys.
for Mayhew

The within one appearance
for被告 in the Court.

Nov. 16. 1854. S. Deland

WITNESS the Hon. J. M. ...
Chief Justice of our said Court, and the seal thereof.

TO THE SHERIFF OF ...
County, Illinois

the judgment of a plea which was in the circuit court of ...
because in the record and proceedings, and also in the rendition of

State of Illinois

Belvidue Nov 16 1850.

L. Seland Esq
Clerk Supreme Court

The enclosy Sci. No. in case of
L. Hellapher }
vs }
C. W. How et al }
}

with appearance entered
for Defts by Fuller & Bump

Have any proceedings been
had in Stovens vs Crosby dismissed
by stipulations of last Term.

Yours Obt Servts

Loopt Hulbert

Alaghu. w. How chals.
Princk

Filed Nov. 18. 1854.
Deland Co.

L. Deland & Co.

Providence Nov 18 1854

[Faint handwritten notes, possibly a list of names or items]

[Faint handwritten notes, possibly a list of names or items]

[Faint handwritten notes, possibly a list of names or items]

Wm. H. H. H.

[Faint handwritten notes]

State of Illinois, Oct.

The people of the State of Illinois,

To the Clerk of the circuit court for the county of *McHenry*—Greeting:

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of *McHenry*—county, before the Judge thereof, between *Calvin N. How, Benjamin W.*

How & William B. Whitaker

plaintiff, and

Lester H. Magher
Survivor of Noah N. Buge

defendant, it is said manifest error hath intervened to the injury of the aforesaid *Buge*

as we are informed by *his* complaint, and we being willing that error, if any there be, should be corrected 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 *2^d Monday of 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 A. Treat*

Chief Justice of our said Court, and the seal thereof at Ottawa, this *31st* day of *August* in the year of our Lord one thousand eight hundred and ~~forty~~ *forty-fifty*.

L. Deland

Clerk of the Supreme Court.

Lester H. Clagher
Survivor

vs
Calvin H. How et als.

Writ of Error

This writ of error is made
a supersedeas as to be
obeyed accordingly.
J. Ireland Ck.

Filed Aug. 31st 1850.
J. Ireland Ck.

Chief of the Supreme Court

WITNESSES, the Hon. J. Ireland Ck.

one thousand eight hundred and fifty
in the year of our Lord

Chief Justice of our said Court, and the

J. Ireland Ck.

Know all men by these presents that we Lester H. Magher as Principal and Samuel L. Keith as surety, are held and firmly bound unto Calvin W. How, Benjamin W. How, & William B. Whitaker, in the sum of one thousand dollars, lawful money of the United States, to the payment of which well and truly to be made we bind ourselves, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals. Dated this 19th day of August, A.D. 1850.

The condition of the above obligation is such that whereas, at the April Term A.D. 1850 of the Circuit Court held in and for the County of McHenry, in the State of Illinois, at the Court house in Woodstock, in said County, the above named Calvin W. How, Benjamin W. How, and William B. Whitaker, by the judgment of the said Court recovered against the above bounden Lester H. Magher, as survivor of Noah W. Birge, judgment for the sum of five hundred & twenty one dollars & thirty six cents damages, besides costs. In the rendition of which said judgment the said Lester H. Magher complains that there is error, and has prayed a writ of error, and that the same be made & shall operate as a supersedeas, which has been granted. Now if the said Lester H. Magher shall duly prosecute his said writ in error in the Supreme Court of

the State of Illinois, and shall
well and truly pay the judgment, and
costs, and interest and damages,
in case the said judgment shall
be affirmed by the Supreme Court, then
this obligation shall be void - otherwise
to remain in full force and effect.

S. A. Magner
Hunt Ketch

Seal
Seal

Lester H. Magner,
Survivor &c.
vs } Bond
C. M. How. et al

Filed Aug 21. 1850.
d. Deland Clk.

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