No. 8750

Supreme Court of Illinois

E.H.Ridgeway

vs.

A. M. Grant

71641 7

Record.

Edward H. Ridgway
vs.
Angus McGrant } Breach of Covenant

Clerks Fees $2.55

[8150-1]

Pleas had before the Hon. Downing Baugh, Judge of the Twelfth Judicial Circuit, at a Court begun and held at the Court House in Mt. Vernon, in said County of Jefferson and State of Illinois, on Monday the 7th day of May A. D. 1855, to wit:

"State of Illinois }
Jefferson County } ss.

Of the May Term of the Jefferson Circuit Court A. D. 1855—

Angus McGrant was summoned to answer Edward H. Ridgway, of a plea that he keep with him the Covenant made by the said Angus McGrant with the said Edward H. Ridgway, according to the force, form, tenor, and effect of a Certain Article of Agreement made between them, &c. and thereupon the said Edward H. Ridgway, by Davis & Wingate his Attorneys, Complains—

Declaration

For that whereas heretofore, to wit, on the first day of January, A. D. 1838, at the County of Jefferson and State of Illinois, by a certain article of Agreement, then and there made, concluded, and agreed upon, between the said Plaintiff of the one part, and the said Defendant of the other part, which said article of Agreement—sealed with the seal of the said Defendant—the said Plaintiff now brings here into Court, the date whereof is the same day and year aforesaid.—the said Defendant, among other things, then and there covenanted to and with the the said Plaintiff, that he, the said Pl'ff. should then and there become the Partner of the said Defendant in the business of merchandising, then & there being carried on by the said Deft. upon the said Pl'ff. then and there paying into the said business the sum of one thousand dollars, and the

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said Pltff. in fact says, that he then and there paid into the said business the said sum of One thousand dollars, which was then and there received and accepted by the said Defendant, as the capital Stock of the said Pltff. in said business. And it was then and there further Covenanted by the said Deft. to and with the said Plaintiff, that the said business of Merchandising should continue for and during the Term of one year from the date of said Article as aforesaid. And it was then and there further Covenanted by and between the said Deft. and the said Pltff. by said Article, that the name & style of said firm should be A. M. Grant, and that the said Plaintiff should not be known in said business. And it was then & there further covenanted by and between the said Deft. and the said Pltff. by said article that the said defendant should attend exclusively to the business, and that at the dissolution of the said business, the said Pltff should withdraw on his part therefrom, the said sum of One thousand dollars as the capital stock of the said Plaintiff in said business. And the said Pltff in fact says, that the said business was then & there - that is to say - from the time of the sealing of the said Article by the said Deft., as aforesaid, for the Term of One Year then next following, carried on solely and exclusively by the said defendant according to the tenor and effect of the said Article, and that at the end of the said term of one year, as aforesaid, the said business was closed,

Terminated, and dissolved, at the County and State aforesaid — Whereupon and by the form and effect of the said last mentioned covenant, the said Pl'ff. then & there became entitled to receive of and from the said Def't. the said sum of One thousand dollars, so as aforesaid by the said Pl'ff paid into the said business, and so as aforesaid taken and received as the Capital stock of the said Pl'ff in sd business And the said Def't. then & there became, and was bound to pay to the said Plaintiff the said sum of One Thousand Dollars, so paid as aforesaid by the said Pl'ff, into the said business. And the said Pl'ff in fact says, that the said Defendant did not, nor would upon the Termination and Dissolution of the said business as aforesaid, permit or allow the said Pl'ff to withdraw from the said business, the said sum of One thousand dollars (according to the tenor and effect of his said last mentioned Covenant,) nor did, or would, the said Def't. pay or deliver to the said Pl'ff the said sum of One Thousand Dollars, as by his sd last mentioned covenant he was then and there bound to do, (according to its tenor and effect,) And so the said Pl'ff in fact says, that the said Def't. (although often requested so to do,) has not kept the said Covenant so by him made as last aforesaid, but has broken the same, and to keep the same with the said Pl'ff. has hitherto wholly neglected and refused, and still does neglect and refuse, to the damage of the said plaintiff of Three Thousand dollars, and therefore he brings his suit, &c.

Davis & Wingate
for Pl'ff

[8750-3]

Copy of Agreement sued on —

"This Article of Agreement made and entered into this first day of January, 1838, between Edward Hunt Ridgway of the County of Jefferson and State of Illinois, of the one part, and Angus McGrant, of the same County and State of the other part —

Witnesseth, that the 3d Angus McGrant, for, and in consideration of the 3d Edward H. Ridgway paying into the Estabtishment One Thousand Dollars ($1,000.00) this day, now owned and carried on by the said Angus McGrant in Mt. Vernon, to take the 3d Edward H. Ridgway, and enter into Co-partnership with the said Edward H. Ridgway in merchandising, trading, buying, selling and doing business as merchants, — it is further agreed between the parties, that the name and style of said firm shall be A. McGrant, & that the said Ridgway shall not be known in it. It is further agreed by and between the parties, that all the Goods now in the Estabtishment is put in the firm at a value of one thousand dollars, ($1,000.00) that the said A. McGrant is to attend exclusively to the Establishment, and at the dissolution of the Partnership, each party shall draw from the Establishment one Thousand dollars, as the Capital Stock in trade, and one Half of the profits, accruing therefrom — the parties each and severally bind themselves to continue the partnership for the Term

Agreement

of one year, & that the Books & a/c &c., shall be open to the inspection of Either party as long as the firm continues.

Witness Angus Mc. Grant, {seal}
E. H. Ridgway. {seal} "

Upon which said Declaration, appears the following endorsements, in words and figures, as follows, to wit:

"May Term. 1855.

Edward H. Ridgway
vs. } Breach of
Angus Mc. Grant. } Covenant.

Declaration.

Filed January 16, 1855.
J. S. Bogan, clerk

The clerk will please file this declaration, and much oblige Davis & Wingate
for Plff

Upon the filing of which said Bill, summons issued, in words and figures as follows, to wit:

"State of Illinois,
Jefferson County } Sct.

The People of the State of Illinois, to the Sheriff of said County, Greeting.

We command you to summon Angus Mc. Grant, if to be found in your County, to appear before the Circuit Court of said County, on the first

Summons

18750-H

day of the next term thereof, to be holden at the Court House in Mt. Vernon, on the first Monday in the month of May next, to answer Edward H. Ridgway in a Breach of Covenant, to his damage of Three thousand Dollars, as is alleged, and hereof make due return to our said Court, as the law directs.

Witness, John S. Bogan, clerk of our said Court, and the Judicial Seal thereof, at Mt. Vernon, this 10th day of January A. D. 1855.

L. S.

John S. Bogan clerk"

And the following endorsements appear on the back of said Summons, to wit:

E. H. Ridgway
vs.
A. McGrant

Summons.

Executed January 16th 1855 by reading

Executing 25

Returning 10

John R. Allen Shff J. C.

Filed May 7. 1855 J. S. Bogan, clk"

I Executed the within writ by reading the same to & in the hearing of the within named defendant Angus McGrant, on this 16th day of January A. D. 1855

John R. Allen
Shff J. C. Clls"

And afterwards, to wit: on Tuesday, May 8, 1855, of May Term of the Jefferson Circuit Court, being the 2nd day of said Term, the following order was entered, viz:

"Edward H. Ridgway,
vs. } Breach of Covenant
Angus McGrant.

On this day came the Plaintiff by Davis & Wingate his Attorneys, and the Defendant by Marshall & Nelson his Attorneys. On motion of Plaintiff's counsel, it is ordered by the Court, that leave be granted to amend return of Sheriff on Summons."

(order)

And afterwards, on Wednesday, May 9, 1855, being the third day of said Term of said Circuit Court, the following order was entered in words as follows, to wit:

Edward H. Ridgway,
vs. } Breach of Covenant
Angus McGrant,

On this day came the Parties in person, and the Plaintiff by Davis & Wingate his Attorneys, and the Defendant by Marshall & Nelson his Attorneys. — Whereupon the Defendant by his Counsel, demurs to the Plaintiff's declaration, and asks leave to file said Demurrer. The Court having heard the Proofs and arguments adduced by Counsel, and being fully advised, considers said Demurrer sustained, with leave to amend. Demurrer refiled, on motion of Defendant's Counsel, and sustained by the Court.

(order)

[2750-5]

It is further considered by the Court that the Defendants have judgment for his costs and charges in this behalf expended, and that execution issue therefor against said Plaintiff, returnable, &c.

The Demurrers of Defendants referred to in the above order, and which are in the words and figures as follows to wit:

(first) "In the Jefferson Circuit Court,
May Term 1855.

Angus McGrath
ats
Edward H. Ridgway } Covenant

And the said Defts by Nelson and Marshall his attorneys, comes and defends the wrong and injury where, &c, and says that the said declaration and the matters and things 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 or maintain his aforesaid action thereof against the said Defts and he the said Defts is not bound in Law to answer the same, and this he is ready to verify, wherefore he prays Judgment &c.

Nelson & Marshall for
Defts.

Upon the back of which said Demurrer, appear the following endorsements:

"Angus McGrath
ats
Edward H. Ridgway
In Covenant.

Demurrer to Declaration

Filed May 8, 1855. John J. Bogan, Clk
per Wm D. Johnston D.C."

In the Jefferson Circuit Court,

May Term 1855.

Angus McGrath

ats. Covenant

E. H. Ridgway

And the said Defendant by Nelson and Marshall his Attorneys, comes and defends the wrong & injury when &c. and craves oyer of the said writing obligatory, &c. and it is read to him in words and figures following to wit, (here insert articles verbatim) which being read and heard the said defendant says that the said amended 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 or maintain his aforesaid action thereof against the said Defendant, and he the said Defn. is not bound by law to answer the same, and this he is ready to verify, wherefore by reason of the insufficiency of the said declaration in this behalf the said defn. prays Judgment &c.

Nelson & Marshall
for Defn.

Upon the back of which said amended Demurrer appear the following endorsements —

Angus McGrath
ats. } Covenant
E. H. Ridgway

Demurrer to the Amended Declaration

Filed May 9, 1855 —

J. J. Bogan, clerk

Amended Demurrer 3

(8750-b)

And, afterwards, on the 11th day of October, 1855, the Plaintiff by his Solicitor, filed the following, in the Clerk's office of said Circuit Court to wit:

Edward H. Ridgway
vs. } Error to Jefferson
Angus McGrath

And the said Plaintiff in Error, by R. F. Wingate his Attorney, comes, and for assignments of Errors, says that the Court below erred, 1st. In sustaining the demurrer to the said Plaintiffs declaration, and rendering judgment thereon for the said defendants that the said Plaintiffs suit be dismissed, when the judgment of the Court should have been that the demurrer be overruled, and that the said Pltff have judgment for his debt & damages, &c.

2nd. In rendering judgment for the defendant, and not for the Pltff on said demurrer

R. F. Wingate
for Pltff

State of Illinois }
Jefferson County } ss. I, John S. Bogan, clerk of the Circuit Court, certify that the foregoing is a true, correct and full Record of all the Papers and Proceedings on file or of record in this office in the case of Edward H. Ridgway vs. Angus McGrath, Breach of covenants.

Given under my hand and seal this 15th October A. D. 1855, at Mt. Vernon, in said County of Jefferson

John S. Bogan
Clerk Circuit Court
Jeff. Co. Ills.

WRIT OF ERROR.

STATE OF ILLINOIS } SS. THE PEOPLE OF THE STATE OF ILLINOIS;
SUPREME COURT,

To the Clerk of the Circuit Court for the county of Jefferson 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 Jefferson county, before the Judge thereof, between

Edwin H Ridgeway

plaintiff, and Angus M Grant

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

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 Count, 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 Mount Vernon, in the county of jefferson, on the 2d Monday of December 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. WALTER B. SCATES Chief Justice of our said court, and the seal thereof, at Mount Vernon this 16th day of October in the year of Our Lord One Thousand Eight Hundred and Fifty-five

Wm N Johnston

Clerk Supreme Court.

[97500-7]

Ridgway

vs

Grant

Writ of error

Filed 26. Oct 1855

A. Johnston clk

STATE OF ILLINOIS, } ss.
SUPREME COURT. }

THE PEOPLE OF THE STATE OF ILLINOIS,

To the Sheriff of Jefferson **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 Jefferson County, before the judge thereof, between Edwards A Ridgway, Plaintiff, and Angus M Grant defendant, it is said that manifest error hath intervened to the injury of said Edwards A Ridgway 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 Mt. Vernon, 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 Angus M Grant that he be and appear before the Justices of our said Supreme Court, on the first day of the next term of said Court, to be holden at Mount Vernon, in said State, on the Second Monday in November next, to hear the records and proceedings aforesaid, and the errors assigned, if he 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 Angus M Grant notice, together with this writ.

Walter B Scates

Witness, the Hon. ~~Samuel H. Treat~~, Chief Justice of our said Court, and the seal thereof, at Mount Vernon, this 20th day October in the year of our Lord, one thousand eight hundred and fifty-five

Noah Johnston
Clerk of Supreme Court.

[8-75-1]

34

E. A. Ridgway

vs

A. M. Grant

Executed the
within Scifa
by reading to
the within named
Defendant
Octo 27th 1855

Serving	60
returning	10
	70

John R. Allen Shff 46

A 883 5

Edward H. Ridgway
vs
Angus W. Grant & Ernest Offerson

Brief

Mr. Wingate for the plff.

1st The agreement declared upon does not create a partnership.

2nd If it does, the action can nevertheless be maintained

Collyer on Partnership
Page 216 & 245 & 246

Gow v Lucke XXIV Mendell 158
Paine v Thacher XXV " 450
Duncan v Lyon 3 John Ch 351
McArthur v Judd 5 Ohio 514
Willy v Phinney 15 Mass 120
Williams v Henshaw 11 Pick 83 & authorities therein
1st Story Eq jur 665
Fenning v Lickie 13 East 7

3rd As Covenant may be either express or implied and I insist that if from the terms of the article Grant did not expressly covenant to return the Capital Stock of Ridgway or permit Ridgway to withdraw the same, on the termination of the partnership, that such is the necessary implication, and if either this action can be maintained

[8750-9]

E. H. Midgley
v. Ome
Complaint
Trip

Edward M Ridgway } November term of
vs } the Supreme Court
Angus McGrant } at Wst Jersey 1855

And the said plaintiff in Error by R F Wingate his attorney, comes and says there is manifest error in the record and proceeds herein in this

1st The Court erred in sustaining the demurrer to the amended declaration of pltff. as amended, and rendering judgment that the pltffs suit be dismissed, and that the deft recover judgment for his costs

2d In giving judgment on the demurrer for the defendant when the judgment should have been that the demurrer be overruled and that the pltff have judgment for his damages and costs

R F Wingate

Joinder in Error

Nelson & Marshall for Deft in Error

E. W. Ridgeway
vs
A. M. Grant
Error to Sprigg

Filed 19. Nov. 1855.
N. Johnston Cl.

Edward H Ridgway

vs

Angus W Grant

Error to Jefferson

Plff in Error brought his action of Covenant to the Jan Term of the Circuit Court of Jefferson County 1833. For that the defendant in Error failed to keep with him certain Covenants contained in a certain Article of Agreement under seal entered into between them on the 1st of January 1828, which Article is fully set out in the record, from which it will appear, that Grant in Consideration of Ridgway paying into an Establishment then Rent & owned by Grant the sum of one thousand dollars, Grant was to take Ridgway into partnership in the business of Merchandising, that the style of the firm was to be A W Grant, and the business was to be Conducted and attended to exclusively by Grant. Ridgway was not to be known in it. the goods owned by Grant were valued and put into the firm at $1,000. the business was to continue for the time of one year, & at the expiration of that time the firm was to be dissolved, when each party should withdraw from the establishment one thousand dollars as his Capital stock in trade, and one half of the profits.

Plffs declaration was in the usual form in which he avered, that he paid in the one thousand dollars, that the same was accepted by the said Grant, as his Ridgways Capital stock, that the business was carried on exclusively by the said Grant for the time specified in said Article, at the termination of which time it was dissolved; And assigned for breaches that the said defendant did not nor would upon the termination and dissolution of the said business, as aforesaid, permit or allow the

the said Pltff to withdraw from the said business the said sum of one thousand dollars (according to the tenor & effect of his said last mentioned Covenant,) nor did or would the said Deft pay or deliver to the said Pltff the said sum of one thousand dollars as by his said last mentioned Covenant he was then and there bound to do (according to its tenor and effect) and so the said Deft in fact say that the said Deft (although often requested so to do) has not kept the said Covenant &c

Grant at the term aforesaid of said Circuit Court filed a demurer to the Pltffs declaration which was sustained by the Court. Ridgway obtained leave to amend his declaration which was done instanter and Grant filed a general demurer to the amended declaration as ammended, and the Court sustained the same to the Pltffs declaration as ammended; dismissed the Pltffs suit and rendered judgment against the Pltff for Costs &c to which ruling of the Court the Pltff by his Counsel excepted, and brings the Case into this Court by writ of Error; And has assigned for Error

1st That the Court Erred in sustaining the demurer to the ammended declaration as ammended, and rendering judgment thereon for the defendant. that the Pltffs suit should be dismissed. and that he the said Deft should recover his Costs of the Pltff when the judgment of the Court should have been that the demurer be overruled, and that the said Pltff have judgment for his damages &c

2nd In rendering judgment for the Deft and not for the Pltff on the demurer

Wingate for Plaintiff

S. S. Marshall for Defendant
Nelson for Defendant in conclusion
2 Bacon Abrid 555 "Covenant"
25 Mend R 452

Robert Fox Wingate for Plaintiff in conclusion

24 Wend R 153 One partner may sue another in certain cases.
3 John Ch R 351

No 34

E N Ridgway
vs
Ex
A M Grant
Abstract

Ridgway & Grant } 216 Collyer
13 Easty
19 Wendel 429 — 12 Johns. R. 401 — 2 Caines R. 293

Grant & Ridgway put into the partnership each put into the partnership $1000 they were Continue in partnership 1 year & each should be at liberty to draw from time their Capital stock & one half the profits, whether this Could be done must depend upon the net profit & loss of the business

There must then have been an account taken before any thing Could be drawn, or an action will lie on the article see Collyer on partnership page 216, Wendel 25. Vol. 452 in Paine vs Thatcher — 12 Johns. R. 401 — 2 Caines R. 293

J S Marshall Thompson for deft in error

Dudgeon
vs
Grant &
vs
Brait-y defts

Edwin H. Ridgway

v.

Angus McGrant

Error to Jefferson

The pltff in Error brought his action of Covenant to the May term of the Circuit Court of Jefferson County 1855. For that the defendant in Error filed a Rep with three certain covenants contained in a certain article of agreement under Seal entered into between them on the 1st of January 1838, which article is fully set out in the record, from which it will appear that Grant in consideration of Ridgway thenceforth entering into an establishment then kept & owned by Grant, the sum of one thousand dollars Grant was to take Ridgway into partnership in the business of merchandizing, that the style of the firm was to be A. McGrant, and the business was to be conducted and attended to exclusively by Grant Ridgway was not to be known in it, the goods owned by Grant was valued and put into the firm at $1000 the business was to continue for the term of one year, & at the expiration of that time the firm was to be dissolved when each party should withdraw from the establishment one thousand dollars as his capital stock in trade, and one half of the profits accruing thereon

The pltffs declaration was in the usual form in which he avers, that he paid in the one thousand dollars, that the same was accepted by the said Grant as his Ridgways Capital Stock, that the business was carried on exclusively by the said Grant for the time specified in said article, at the termination of which time it was dissolved — and assigned for breaches 1st that the said defendant did not nor would upon the termination and dissolution of the said business as aforesaid permit or allow the said pltff to withdraw from the said business the said

sum of one thousand dollars (according to the
tenor and effect of his said last mentioned Covenant)
notwithstanding the said deft pay or deliver to the
said pltff the said sum of one thousand dollars
as by his said last mentioned Covenant he was
then and there bound to do (according to its tenor
and effect) and so the said pltff in fact says
that the said deft (although often requested so to
do) has not kept the said Covenant &c

Yet at the time aforesaid of said
Circuit Court filed a demurrer to the pltffs
declaration, which was sustained by the Court,
Ridgway obtained leave to amend his declaration
which was done instanter, and deft filed
a General demurrer to the amended decl-
aration as amended and the Court sustained
the same to the pltff declaration as amended
dismissed the pltffs suit and rendered judg-
ment against the pltff for Costs — to which
ruling of the Court the pltff by his Counsel ex-
cepted, and brings the Cause into this
Court by Writ of Error, and assigns for
Error,

1st That the Court erred in sustaining
the demurrer to the amended declaration
as amended, and rendering judgment therein
for the deft, that the said pltff suit should be
dismissed and that he the said deft
should recover his Costs of the pltff
when the judgment of the Court should
have been, that the demurrer be overruled and
that the said pltff have judgment for ~~the deft~~
his damages — 2d In rendering judgment
for the deft and not in favor of the pltff
on the demurrer

E H Ridgway
v } Error
A M Grant

Abstract

No 34

Railroad
vs
Grant

1 Reason
1 Opinion
5 Abs & Brs
7 in all

Prepare

No 34

Railroad
Judgment
vs
Grant

Affirmed

Copy first order
Order

8 50