No. 8482

# Supreme Court of Illinois

Theodore Riley

vs.

Samuel Dickens

71641 7

Plea and proceedings had in the Circuit Court within & for the County of Marion & State of Illinois in a certain cause heretofore pending in said Court wherein Samuel Dickens assignee of Joshua C Dickens was plaintiff and Theodore Riley defendant

Be it remembered that on the 31st day of December A.D. 1855 the said plaintiff by Bryan his attorney filed in the Office of the Circuit Court of said County a Precipe for a Summons against said defendant which precipe is in the words & figures following to wit

"January term Marion Circuit Court for the year 1856

| | |
|---|---|
| Samuel Dickens assignee of Joshua C Dickens vs Theodore Riley | Assumpsit Damages $1211 |

Mr Clerk

Will please issue a summons to the above named defendant returnable at the January Term of this Marion Circuit

S L Bryan atty for Plaintiff

Upon the reverse of which precipe is the following endorsement to wit "Filed December 31st 1855 B J Marshall clk"

Whereupon a Summons issued in the words & figures following to wit

State of Illinois } The People of the State of Illinois
Marion County }

To the Sheriff of Marion County Greeting.

We command you that you summon Theodore Riley if to be found in your county, to appear before the Circuit court of said county on the

[8482-1]

2

first day of the next term thereof to be holden at the court House in Salem on the Second Monday in the Month of January next to answer Samuel Dickens assignee of Joshua E. Dickens of a plea of trespass on the case on promises to his damage as he says One hundred ~~& twenty~~ thirty dollars, and hereof make due return to our said court as the Law directs —

Witness B. F. Marshall Clerk of our said Court and the Judicial Seal thereof at Salem this 31st day of December A.D. 1855 —

B. F. Marshall Clerk

Upon the reverse of which is the following Sheriffs return viz "Served on the defendant by reading this the 2nd day of January 1856; James Chane Sheriff by Logan Shelton Deputy"

And afterwards to wit on the 2nd day of January A.D. 1856 the said plaintiff by Bryan his attorney filed in the office of the Clerk of the Circuit Court of said county of Marion his declaration which is in the words & figures following to wit

"Of the January Term of the Marion Circuit Court for 1856

Samuel Dickens assignee of Joshua E Dickens vs Theodore Riley } Assumpsit Damage $130

Samuel Dickens assignee of Joshua E Dickens complains of Theodore Riley having been summoned of a plea on promises. for that whereas the said defendant heretofore on the 15th day of November 1854 at the County

3

of Marion and State of Illinois made his certain promissory note in writing bearing date a certain day and year therein mentioned to wit the day and year aforesaid and thereby then and there promised to pay thirteen months after the date thereof to the order of one Joshua E Dickens the sum of one hundred and ten dollars for value received and then and there delivered the said promissory note to the said Joshua E Dickens and the said Joshua E Dickens to whom or to whose order the payment of the said sum of money in the said promissory note specified was to be made after the making of the said promissory note and before the payment of the said sum of money therein specified to wit on the day and year aforesaid at the County and State aforesaid endorsed the said promissory note by writing on the same and by signing the endorsement by the abbreviation of J E Dickens ~~then and there endorsed as aforesaid~~ by which said endorsement he the said Joshua E Dickens then and there ordered and appointed the said sum of money in the said promissory note specified to be paid to the said plaintiff and then and there delivered the said promissory note so endorsed as aforesaid to the said plaintiff by means whereof and by force of the statute in such case made and provided the said defendant then and there became liable to pay to the said plaintiff the said sum of money in said promissory note specified according to the tenor and effect of said promissory note and being so liable he the said defendant in consideration thereof afterwards to wit on the day and year aforesaid at se aforesaid undertook and then and there faithfully promised the said plaintiff to pay him

[8482-2]

the said sum of money in the said promissory note specified according to the tenor and effect thereof but to pay the same or any part thereof to the said plaintiff. the said defendant has wholly refused *

Silas L Boyer atty for Pltff

Said note is herewith filed

S. L. B

$110.00 November 25th 1854

"Thirteen Months after date I promise to pay to the order of Joshua E. Dickens two hundred and ten 00 Dollars for value received, negotiable and payable without defalcation or discount

Due Dec 25th 1855 "Theodore Riley"

Upon the reverse of which declaration is the following endorsement to wit "Filed January 2nd 1856 B F Marshall Clk"

And afterward to wit at the January Term 1856 of said court there were filed in said cause a Plea in abatement a replication thereto and a demurrer to said replication which by agreement of said parties were withdrawn

And that at the May Term 1856 of said Circuit Court the following order was made in said cause to wit

"Samuel Dickens Appellant
vs
Theodore Riley
of Joshua E Dickens
vs
Appellee

Thursday May 8th 1856

And now at this day comes the said deft by Houck & Hamilton his attys and file their demurrer to the plaintiffs replication which said demurrer is sustained by

* and he has refused although often requested so to do to the damage of the said plaintiff of one hundred and thirty dollars and therefore he brings his suit &c

5

the court, and leave given to said plaintiff to amend his declaration herein

And afterwards to wit at the September Term AD 1856 of the Circuit Court aforesaid to wit on the 18th day of September AD 1856 the said defendant filed his plea in the words & figures following to wit

"State of Illinois } ss } of the September Term 1856
Marion County } of the Marion Circuit Court

And the said Deft by Hoits & Hamilton his attys comes and defends the wrong and injury wherein &c and saith that he did not undertake or promise in manner and form as the said plaintiff hath above thereof complained against him and of this he puts himself upon the country &c

Hoits & Hamilton
attys for Deft

And the said plaintiff do the like
Hogue & Bryan attys

And afterwards to wit at the March Term AD 1857 of the Circuit Court aforesaid the following order was made in said cause and entered of record to wit

"Samuel Dickens & ux } Thursday March 12th AD 1857
of Joshua C Dickens
vs } Assumpsit
Theodore Riley

And now at this day comes the said plaintiff by Bryan & Hogue his attys and the said defendant by Hoits his attorney and issue being joined let a jury come and thereupon come a jury to wit Wm H Bandy, Granville Cherry, Joel H Middleton, James Davis, William

Byers, Alex P Kell, James M Higgins, Jasper N Jones, Henry Piles, Andrew Copper, Samuel Shanafelt and Thomas Cally twelve good and lawful men who being elected tried and sworn well and truly to try the issue joined, after hearing heard the evidence and arguments of counsel retired to deliberate & consider of their verdict and afterwards returned into court the following verdict "We the Jury find for the plaintiff and assess the damages at one hundred and seventeen dollars and ninety cents. Whereupon the court being fully and sufficiently advised of and concerning the premises it is therefore ordered & adjudged by the court that the said plaintiff do recover of and from the said defendant the said sum of One hundred & seventeen dollars and ninety cents together with his costs and charges in this behalf expended & may have execution therefore &c

And afterwards to wit at the March Term aforesaid of the Circuit court of said county to wit on the day of March A.D. 1857 the said defendant by Hounts his attorney filed in the Office of the Clerk of the Circuit court aforesaid his bill of exceptions duly signed & sealed by the Judge of said court, which said Bill of Exceptions is in the words & figures following to wit

"Samuel Dickens Appellee of Joshua E. Dickens vs Theodore Riley

Marion Circuit court March Term 1857 Assumpsit

Be it remembered that

upon the trial of the above entitled cause before the Hon. Sidney Breese Judge 2nd Judicial Circuit of the State of Illinois and a Jury. The plaintiffs offered to be read in evidence the following note

"$110,00 November 25th 1854

"Thirteen months after date I promise to pay to the order of Joshua E Dickens two hundred and ten ~~ten~~ Dollars for value received, negotiable and payable without defalcation or discount

Due Dec 25th 1855 "Theodore Riley"

To which the defendant by his counsel at the time objected on the ground of a fatal variance which objection was by the court overruled. To which overruling of the court the deft by his counsel at the time accepted

Whereupon said note was read to the jury and afterwards, pending the trial of said cause and after the reading of said note to the jury, which was all the evidence submitted to the jury in said cause, the said defendant by his counsel requested the court to instruct the jury on the part of Deft as follows to wit

"Dickins assignee
vs
Theodore Riley } "The court instructs the jury that the figures in the margin of a note at the left hand, purporting to be the amount for which the note is given is no ~~part~~ part of the note

(Refused)

"That if the jury believe that the note offered in evidence does not agree with the note described in the Declaration as to amount they must find for Deft

(Refused)

8

Which instructions was by the court refused
To the decision of the court in refusing to give
said instructions the sd defendant by his coun-
sel at the time accepted

Sidney Breese Seal

State of Illinois }
Marion County } I H W Eagan Clerk of
the circuit court within for the county & state
aforesaid do hereby certify that the foregoing Record
contains a full, accurate, complete & perfect copy
of the judgments and other proceedings had
in the circuit court of said county in said
cause as appears by the record & proceedings there
in on file in my office

In testimony whereof I have hereunto
set my hand & affixed the seal
of said court this 21st day
of May AD 1857

H. W. Eagan Clk

Theodore Riley Pltff in Error
vs
Samuel Dickens assignee of
Joshua E Dickens Deft in Error

In Error
Error from
Marion Co Ills

And now again comes the said Theodore Riley by Hoits & Hamilton his Attorneys, and says, that in the Record and proceedings aforesaid and also in the rendition of the judgement aforesaid, there is manifest Error, and assigns for Error the following causes to wit

First. The court Erred in permitting the note produced and offered by said Deft in Error to be read to, and received by the jury as Evidence

Second The Court Erred in refusing to give the first instruction asked for by said Pltff in Error, to the jury

Third The court Erred in refusing to give the second instruction asked for by said Pltff in Error, to the jury.

And the said Theodore Riley prays that the judgement aforesaid, for the Errors aforesaid, and for other Errors apparent in the record & proceedings aforesaid, may be reversed, annulled & altogether held for nothing, and that he may be restored to all things which he hath lost by occasion of said judgement, and that a writ of Supersedeas may issue

Hoits & Hamilton attys
for Pltff in Error.

[8482-5]

Mt Vernon Illinois
July 1st 1857.

The Clerk of Supreme Court will make the writ of Error in this case a Supersedeas upon plaintiff in Error filing bond in the sum of three hundred dollars with Leonard Spotton as surety conditioned as the law directs

W. B. Scates ch Justice

And the said Defendants in Error Comes and Says there in nullo est Erratum se whose &c

Bryan Hco
for Defts in Error

No 25

Theodore Riley
Pltff in error
vs
Samuel Gillham
Defts in error

Filed July 15. 1857.
Nicholas Schaffer Clk

Paid by P. Hamilton Esq
$5.00

Defaced

Supreme Court, 1st Grand Division Nov Term 1857

Theodore Riley Plff in Error
vs
Samuel Dickens Deft in Error,

Error from Marion

Argument of Counsel for Plaintiff

This was an action of Assumpsit on a Note commenced by the Defendant in Error, as assignee against the Plaintiff in Error.

The Declaration is in the usual form, describing the note as being for "One hundred and ten Dollars" &c

The main question in this cause, was the variance between the note offered in Evidence and the one described in the Declaration

The declaration alleges that the note was for "One hundred and ten dollars, whereas it appears from the Record and bill of Exceptions, that the one offered in Evidence, and the only proof offered ~~to sw~~ in the cause was a note for "Two hundred and ten dollars" Now to say that there was no variance between the note sued on and described in the declaration and the one offered in Evidence, would be to say that there was no variance or difference between a note for $500= and one for $110= or any other two amounts that differ materially

I care not if there are marginal figures on said note offered in Evidence, they do not alter or effect the amount specified in the body of note. I hold that the marginal figures on a note is no part or parcel of said note, if the figures were cut off, it would not effect the note, and even where figures

[R4824b]

are used in the body of a Note, and shew a different amount than what is expressed in the written amount they will not avail anything, the written amount is always taken before the figures, that is a principal which cannot be disputed

In this case therefore the Court should not have permitted the note, set forth in the record to have been read or received by the Jury as Evidence and even if it was proper to let the Jury pass upon it, he should have given the instruction asked for by the Deft in that Court, It is Evident from the Record that the note offered in Evidence is different from the one described in the declaration One is for "One hundred" &c and the other for "two hundred" &c

It is certainly a clear principal of law that the proofs, must correspond with the averments of the declaration, that you cannot introduce as Evidence of indebtedness a different instrument than that described in the declaration

The Court by refusing to give the 2d instruction, not only establishes the doctrine that it is not necessary to prove the material averments of the declaration; that the proofs must correspond with the decl, and that it will not do to introduce a different instrument than what is described in the declaration, but it also establishes the doctrine that the Jury shall not be the Judges of the Evidence, as to whether it is sufficient to warrant a finding on the declaration, It shews that a Jury must find a verdict in the decl for Plff, even if the instrument introduced to them, should be entirely different to the one described in the decl, for they are not permitted to judge that fact,

If the instructions asked for by Deft in said Cir Court had been given, or if the note offered had been refused, thereby compelling Pltff to amend his decl to correspond with the note, then we could have defended successfully by proving payment, but under this declaration we did not expect to be called upon to answer to a different instrument or note, than that which was described in the declaration.

I therefore insist that the Court erred in permitting the note described in the Exceptions, to be read to the jury, and that after said Note was read, it erred in refusing to give the instructions asked for by said Deft in Cir Court,

S. S. Hamilton for
Pltff in Error.

[2483-1]

No 25

Sheldon Kelley
vs
Samuel Dickens

Argument of
Counsel for Plaintiff

November 25th

$ [illegible]

Thirteen months after date I promise to pay

to the order of Joshua E. Dickens

Two hundred and ten 100 Dollars,

for value received, negotiable and payable, without defalcation or discount.

Due Dec. 25th 1855 Theodore Riley

[Niednet, Printer.] Sold by Noyes B. Meech, corner of Chesnut and Main streets.

Samuel L Dickens
Assignee of
Joshua E Dickens
vs
Theodore Riley

State of Illinois
Marion County } I H. W. Cazan
clerk of the Circuit Court within & for said
County do Certify that the Note hereto attached
is the identicle Note offered in evidence in
which cause is now pending in the Supreme Court
said Court in the above entitled Cause

In testimony whereof I have hereunto
set my hand and affixed the Seal
of said Court at my office in
Salem this 25th day of November AD 1857

H. W. Cazan Clk.

L8482-B

Sign the within note to Samuel [illegible]
value received

J. E. Dieter

Of the January term of the
Marion circuit court for 1856

Lamuel Dickens
Assignee of Joshua
E Dickens.
vs
Theodore Riley

Assumpsit
Damages $100

Lamuel Dickens assignee of Joshua E Dickens complains of Theodore Riley having been summoned of a plea in promises for that whereas the said defendant heretofore on the 15th day of November 1854 at the county of Marion and State of Illinois made his certain promissory note in writing bearing date a certain day and year therein mentioned to wit the day and year aforesaid and thereby then and there promised to pay thirty days after ~~the~~ date thereof to the order of one Joshua E. Dickens the sum of one hundred and ten dollars for value received and then and there delivered the said promissory note to the said Joshua E Dickens and the said Joshua E Dickens to whom or to whose order the payment of the said sum of money in the said promissory note specified was to be made and after the making of the ~~said~~ promissory note and before the payment of the said sum

[8482-9]

Lamar Del Regno
Assignee of L. B. Gates
vs
Theodore Riley

Declaration
Assumpsit
Damages $150

Filed Jany 2nd 1856
H. Pettibone clk

Summons issued
S L B Myer
for plff

of money therein specified to wit on the day and year aforesaid at the county and state aforesaid indorsed the said promissory note by writing on the same and by signing the indorsement by the abbreviation of J. E. Dickens by which said indorsement he the said Joshua E. Dickens then and there ordered and appointed the said sum of money in the said promissory note specified to be paid to the said plaintiff and then and there delivered ~~the said~~ the said promissory note so indorsed as aforesaid to the said plaintiff by means whereof and by force of the statute in such case made and provided the said defendant then and there became liable to pay to the said plaintiff the said sum of money in the said promissory note specified according to the tenor and effect of the said promissory note and being so liable he the said defendant in consideration thereof afterwards to wit on the day and year aforesaid at the aforesaid undertook and then and there faithfully promised the said plaintiff to pay him the said sum of money in the the said promissory note specified according to the tenor and effect thereof when he

[8482-10]

any part thereof to the said plaintiff the said defendant has wholly refused and still does refuse although often requested so to do to the damage of the said plaintiff of one hundred and thirty dollars and therefore he brings his suit &c

Lilos L. Brown
Atty for Plff

Said note is herewith filed
L.L.B.


Salem July 15 - 1857

A Johnson Esq

Dear Sir.

I again send you herewith, the Bond in case of Dickens vs Riley and also "Principal" and Clks Certf. of the Solvency of the Security, and also the Affr. All of which I hope you will find correct. — If I had known what the "Order of the Judge" was, I could have sent it all correct in the first place, but as I have only been able to get it by "piecemeal" it has caused some trouble — I did not know what kind of Evidence to send as to Solvency of the Security, but the Clks Certf. — I was told that a mere statement that the Security offered, was good, would be sufficient — all that was ever required, as it could be of no advantage to the atty to recommend bad Security. I hope this is all right now that you will send the writ per return mail.

Respectfully &c P P Hamilton

[2482-11]

The Sale is on Saturday — consequently the writ will do no good if not here in time

No 25

Letter of
P. P. Hamilton Esq
Attorney for
Pltff in error

Know all men by these presents that we Theodore Riley and Leonard Seaton of the County of Marion and State of Illinois are held and firmly bound unto Samuel Dickens of the County and State aforesaid in the penal sum of Three Hundred ——— Dollars, lawful money, 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 10th day of July AD 1857

The Condition of the above obligation is such that whereas the said Samuel Dickens as assignee of Joshua E Dickens did on the 12th day of March 1857 in the Circuit Court of said County of Marion recover a judgement against the above bounden Theodore Riley for the sum of Nine hundred & Seventeen & $\frac{91}{100}$ Dollars damages and four & $\frac{45}{100}$ Dollars Costs, for the reversial of which said judgement of the said Circuit Court the said Theodore Riley has prayed for and obtained a writ of Error and Supersedeas from the Supreme Court of said State.

Now if the said Theodore Riley shall duly prosecute his said writ of Error with effect, and shall moreover pay the amount of the judgement Costs interest & damages rendered or to be rendered against him, in case the said judgement shall be affirmed in the said Supreme Court

[4422-12]

then the above obligation to be void otherwise
to remain in full force and virtue

attest P. P. Hamilton

Theodore Riley (Seal)
Leonard Sexton (Seal)

No 25

Theodore Riley
Pltff in error
vs
Samuel Williams
Defts in error

Bond - filed for
Supersedeas.

Filed July 15th 1857
N. Lefferson Clk

State of Illinois } ss.
Marion County

I, H. W. Eagan Clerk of the Circuit Court of said County do hereby certify that I owned approve an appeal Bond executed by Theodore Riley and Leonard Septon for Three Hundred Dollars, that I believe said Leonard Septon to be good & sufficient security in a Bond for that amount.

In witness whereof I hereunto set my hand & affix my seal of Office at Salem this 14th July 1857

H. W. Eagan Clerk

[8482-13]

No 25

Theodore Riley
Pltff in error
vs
Samuel Dickens
Defts in error

Certificate of Circuit
Clerk as to Solvency
of Security

Filed July 15. 1857
A. Johnston Clk

2

Theodore Riley Pltff in Error

vs

Samuel Dickens Deft in Error } Error from Marion County

The Clerk of the Supreme Court of the State of Illinois for the 1st division will please issue writ of Error and Supersedeas in the above cause, being a cause tried in the Marion Circuit Court wherein Samuel Dickens appeared of Joshua E Dickens was Plaintiff and Theodore Riley was Defendant, judgement having been rendered in said Circuit Court in favor of said Samuel Dickens

Salem July 14 - 1857

P. P. Hamilton atty
for Pltff in Error.

(3482-14)

No 25

Theodore Riley
Pltff in error

vs

Samuel Dickens
Defts. in error

Praecipe

Filed July 15. 1857
N. Johnston Clk

STATE OF ILLINOIS
SUPREME COURT, } SS.

WRIT OF ERROR.

THE PEOPLE OF THE STATE OF ILLINOIS;

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

Samuel Dickens, assignee of Jackson & Dickens,

plaintiff, and Theodore Riley

defendant it is said manifest error hath intervened, to the injury of the aforesaid Theodore Riley 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 first Tuesday after the second Monday in November 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 fifteenth day of July in the year of Our Lord One Thousand Eight Hundred and Fifty-Seven.

Noah Johnston
Clerk Supreme Court.

[84825]

This Writ of Error is made a Supersedeas, and is to be obeyed accordingly.

Noah Johnston Clk

No 25

Theodore Riley
Pltff in error
vs
Samuel Dickens
Deft in error

Writ of Error.

Issued — made a
Supersedeas and
filed July 15. 1857
Noah Johnston Clk

Your Honor will allow me to suggest, that — I regard the decision of the first question to mit.

"The right of the court to decide when a variance between the note offered in Evidence & the one described"

as involving the decision of the second question —

Because, if the court has the right to decide whether there be a variance or not this presupposes the proper determination of what constitutes a part of the note — So that the Court must in deciding as to a variance determine itself what is or is not a part of the note — Therefore the instruction was rightly refused — the Jury had not any right to decide that question apart from the Court,

Chitty on Bills Top P. 149. & notes (1)
" " 159

Bryant Hayes

[9492-16]

Brief

Riley
vs
Dickins

# SUPREME COURT OF ILLINOIS.

## FIRST GRAND DIVISION.

## NOVEMBER TERM, A. D. 1857.

### ABSTRACT.

Record Page.

Theodore Riley pl'ff in error,
vs,
Samuel Dickens, de'ff in error.

1. This was an action commenced in the Marion circuit court at the January term in the year 1856, by Samuel Dickens assignee of Joshua E. Dickens and against Theodore Riley, action of assumpsit, damages $130,00.

3, The plaintiff filed this declaration in assumpsit in the usual form upon a promissary note given by said defendant Theodore Riley, to Joshua E. Dickens for the sum of one hundred and ten dollars bearing a certain date and assigned by said Joshua E. Dickens to Samuel Dickens said plaintiff.

4. And the said plaintiff also filed a note which is payable to Joshua E. Dickens, one Theodore Riley for too hundred and ten dollars, and at said January term said defendant filed a plea in abatement, and that said plaintiff filed his replication to said plea; and afterwards, at the May term 1856, of said circuit court the said defendant filed his demurrer to plain-

5. tiff's said Replication, which demurrer was by said court sustained and leave given to said plaintiff to amend his declaration. And afterwards at the September term 1856, of said circuit court the said defendant filed his plea of non assumpsit to said declaration, and the said plaintiff took issue thereon and afterwards at the March term 1857 of said circuit

6. court, the said cause was tried by a jury, and they found a verdict for plaintiff and assessed his damages at $117,90. Whereupon the court entered judgment against said de-

7. fendant for $117,90 and costs. And afterwards the defendant filed his bill of exceptions,

8. which contains all the evidence offered in the cause together with the instructions asked by said defendant in the trial of said cause and which was refused by the court.

And now the said plaintiff in error seeks to reverse the judgment of the Circuit court of Marion county, for the following errors assigned upon the Record.

First, the court erred in permitting the note produced and offered by said defendant in error to be read and received by the jury as evidence,

Second the court erred in refusing to give the first instructions asked for by said plaintiff in error, to the jury.

Third, the court erred in refusing to give the second instruction asked for by said plaintiff in error to the jury.

P. P. HAMILTON Atty for
Pl'ff in error.

[8482-17]

25

Filey
vs
Dickens

Argument
Dec. 1

548 2

Filed Dec. 1. 1857
N. Johnston Clk

1857

Papers of Cases Determined at Nov Term 1857 - Awarding Return of Records, &c - for the Reporter - that they may be placed on the proper files -

LBK

# SUPREME COURT OF ILLINOIS.

## FIRST GRAND DIVISION.

## NOVEMBER TERM, A. D. 1857.

Record Page.

### ABSTRACT.

Theodore Riley pl'ff in error,
vs,
Samuel Dickens, de'ff in error.

1. This was an action commenced in the Marion circuit court at the January term in the year 1856, by Samuel Dickens assignee of Joshua E. Dickens and against Theodore Riley, action of assumpsit, damages $130,00.

3, The plaintiff filed this declaration in assumpsit in the usual form upon a promissary note given by said defendant Theodore Riley, to Joshua E. Dickens for the sum of one hundred and ten dollars bearing a certain date and assigned by said Joshua E. Dickens to Samuel Dickens said plaintiff.

4. And the said plaintiff also filed a note which is payable to Joshua E. Dickens, one Theodore Riley for too hundred and ten dollars, and at said January term said defendant filed a plea in abatement, and that said plaintiff filed his replication to said plea; and afterwards, at the May term 1856, of said circuit court the said defendant filed his demurrer to plain-

5. tiff's said Replication, which demurrer was by said court sustained and leave given to said plaintiff to amend his declaration. And afterwards at the September term 1856, of said circuit court the said defendant filed his plea of non assumpsit to said declaration, and the said plaintiff took issue thereon and afterwards at the March term 1857 of said circuit

6. court, the said cause was tried by a jury, and they found a verdict for plaintiff and assessed his damages at $117,90. Whereupon the court entered judgment against said de-

7. fendant for $117,90 and costs. And afterwards the defendant filed his bill of exceptions,

8. which contains all the evidence offered in the cause together with the instructions asked by said defendant in the trial of said cause and which was refused by the court.

And now the said plaintiff in error seeks to reverse the judgment of the Circuit court of Marion county, for the following errors assigned upon the Record.

First, the conrt erred in permitting the note produced and offered by said defendant in error to be read and received by the jury as evidence,

Second the court erred in refusing to give the first instructions asked for by said plaintiff in error, to the jury.

Third, the court erred in refusing to give the second instruction asked for by said plaintiff in error to the jury.

P. P. HAMILTON Atty for
Pl'ff in error.

25

Riley

vs

Dickens

Filed Dec. 1. 1857.

St. Johnston Cl

STATE OF ILLINOIS, } ss. 1st Grand Division
SUPREME COURT. } At Mount Vernon

# THE PEOPLE OF THE STATE OF ILLINOIS,

**To the Sheriff of** Marion **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 Marion County, before the judge thereof, between Samuel Dickens, assignee of Joshua E. Dickens, Pltff, and Theodore Riley defendant, it is said that manifest error hath intervened to the injury of said Theodore Riley 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 Samuel Dickens

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 Samuel Dickens notice, together with this writ.

**Witness**, the Hon. ~~Samuel H. Treat~~ Walter B Scates, Chief Justice of our said Court, and the seal thereof, at Mount Vernon, this fifteenth day of July in the year of our Lord, one thousand eight hundred and fifty-seven

Noah Johnston
*Clerk of Supreme Court.*

(8482-20)

The writ of Error which has been issued and filed in this Cause, is made a Supersedeas, and is to operate as a Suspension of the Execution of the Judgment; and as such, is to be obeyed by all concerned.

Noah Johnston Clk

Theodore Kelley
Plaff in error
vs
Samuel Dickens
Deft in error

Writ for
Sheriff fee
Service 50
Mileage 16
Rtn 16
40

Costs

in pursuance of the within writ
to me directed I have this summoned
the said Samuel Dickens to be and appear
before the Justice of the Sixth Supreme
Court at the day and place within mentioned
as within I am commanded

July 25 — } W. J. Castleman Sheriff of the
AD 1857 } County of Marion and State of Illinois

No 25

Nov. 1857

Theodore Riley

vs

Samuel Dickens -

Assignee of

Joshua E. Dickens

Error to Marion

8482

Affirmed