No. 8677

Supreme Court of Illinois

Wm. Patterson, Admr.

vs.

Andrew J. Steel

71641 7

1 Page Done

State of Illinois }
St Clair County } Pleas and proceedings had in the Circuit Court in and for the County of St Clair and State of Illinois to wit.

Be it remembered that on the 30th day of August A.D. 1860 the following Declaration was filed to wit.

State of Illinois }
St Clair County } ss of the Fall Term of the Saint Clair County Circuit Court A.D. 1860

George Wickline
vs
Andrew J. Steel } Action of Debt

George Wickline plaintiff in this suit complains of Andrew J. Steel by the abriviation A. J. Steel the defendant in this suit of a plea that he the said defendant render to the said plaintiff the sum of One Hundred and Thirty dollars and Sixty cents lawful money which he ows and unjustly detains from him

For that whereas the said defendant on the twenty fifth day of April one thousand eight hundred and fifty nine at the County of St Clair aforesaid did by his certain writing obligatory sealed with his seal and now shown to the Court here acknowledged himself to be held and firmly bound unto the said plaintiff in the sum of one hundred

[8437-1]

and thirty dollars and Sixty cents above demanded to be paid to the said plaintiff or order one day after the date thereof for value received with ten per cent interest from the date thereof. By means whereof and by force of the statutes 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 writing obligatory specified according to the tenor and effect thereof and although the said sum of money in the said writing obligatory specified hath long since been due and payable. Yet the said plaintiff in fact saith that the said defendant although often requested so to do did not nor would pay the said sum of one hundred and Thirty dollars and sixty cents in the said writing obligatory specified or any part thereof to the said plaintiff in manner aforesaid or otherwise however but hath hitherto wholly neglected and refused so to do whereby an action hath accrued to the said plaintiff to demand and have of and from the said defendant the said sum of money in said writing obligatory specified. And whereas also the said defendant afterwards to wit on the tenth day of August one thousand eight hundred and Sixty at the County of St Clair aforesaid was indebted to the said plaintiff in the further sum of fifty dollars lawful money before that time and then

due and payable from the said plaintiff as aforesaid for interest upon and for the forbearence of divers large sums of money before that time lent and advanced by the said plaintiff to the said defendant at his special instance and request and by him the said plaintiff forbearence to the said defendant for divers long spaces of times before then elapsed at the like special instance and request of the said defendant, and being so indebted the said defendant in consideration thereof afterwards to wit, on the day and year last aforesaid at the County aforesaid undertook and then and faithfully agreed to the said plaintiff to pay him the said last mentioned sum of money when he the said defendant should thereunto afterwards be requested &c. Yet the said defendant although often requested so to do, has not as yet paid the said sum of money above demanded or any or either of them or any part thereof to the said plaintiff. But he to do this hitherto has wholly refused and still doth refuse to the damage of the said plaintiff of one hundred dollars and therefore he brings this suit &c

J. M. White
Atty for Pltff

[8477-3]

Copy of instrument sued on

Fayetteville April 25th A.D. 1859

One day after date I promise to pay to George Wickline or order the sum of one hundred and thirty dollars and 69/100. for value received and with ten percent interest from this date until paid as witness my hand & seal A. J. Steel (seal)

George Wickline }
vs } Demurrer
Andrew J. Steel }

and the said defendant comes & defends the wrong & injury wherefore & says the plaintiffs declaration is insufficient in law 1st there is no allegation of process having been served & 2d there is no allegation of any delivery of the said writing obligatory from deft to plaintiff & for other informalities in said declaration

B. M. Cox atty

And on the same day the following summons was issued to wit.

State of Illinois }
County of St Clair } sct The People of the State of Illinois

To the Sheriff of said County Greeting

We command you to summon Andrew J. Steel if he can be found in your County to be and

appear in the St Clair Circuit Court on the first day of the next term thereof to be holden at the Court House in the City of Belleville in said County on the third Monday of September next then and there to answer unto George Hickline of a plea that he render unto him the sum of $130 $\frac{60}{100}$. which he owes to and unjustly detains from him to his damage as he says of $100. &c And not to fail under the penalty of what the law directs. And this writ you shall have at our said Court with your return endorsed thereon

Witness William S. Thomas Clerk of said Court and the seal thereof hereto affixed at office this 30th day of Augt. A.D. one thousand eight hundred and sixty

S.S.

Wm S Thomas Clk

And endorsed thereon as follows to wit I hereby Deputize Ch Held to serve this writ Sep 3d 1860

F. Mayer Shff St.Cl.

Served September the 4th 1860 by reading to the within defendant

F. Mayer Shff St.Cl.

by Ch Held Spl. Dpty

[Pam-2]

and on the 22nd day of September AD 1865 the following pleas were filed to wit

First Plea George Wickline
vs
Andrew J. Steel } In Debt

And the said defendant comes & defends the wrong & injury when &c and as to the first & second count of the said declaration says that the said supposed writing obligatory therein mentioned is not his Deed & of this he puts himself upon the Country &c. As to the first & second counts of the said declaration the said defendant says that he does not owe the said sum therein mentioned or any part thereof in manner & form as the said plaintiff has above thereof complained against him and of this he puts himself upon the country &c

B. M. Cox atty

George Wickline
vs
Andrew J. Steel }

and the said plaintiff doth the like

Second Plea As for a second plea in this behalf the said defendant says (Actio non) because he says that he the said defendant after the said day of &c at &c in the said writing obligatory mentioned & before the filing of this declaration

or the issuing of this writ of said plaintiff in this behalf to wit on &c at &c paid the said plaintiff the said sum of money and all the interest thereon which he the said defendant is ready to verify wherefore he prays judgment if said plaintiff ought to further have his action against him &c

B M Cox atty

And at the September Term A.D. 1860 of said Court the following proceedings were had to wit

George Wickline
vs
Andrew J Steel } Debt

on the first Saturday comes the Defendant by B. M. Cox his atty and files his demurrer to Plaintiffs declaration in words &c which demurrer is overruled by the Court and time until Monday next is given the Defendant to plead on the third Thursday it is ordered by the Court that this case be continued

And at the March Term A.D. 1861 of said Court the following proceedings were had to wit,

George Wickline
vs
Andrew J. Steel } Debt

on the fourth Wednesday comes the atty J. M. white and suggests the death

of the plaintiff George Hickline and leave is given by the Court to make his administrator party plaintiff and this cause is continued

And at the October Term A D 1861 of said Court the following proceedings were had to wit

William Patterson admr of George Hickline Dec
vs
Andrew J. Steel
} Debt

On the second Wednesday by consent of parties this cause is continued

And at the March Term A.D. 1862 of said County the following proceedings were had to wit

Wm. Patterson admr of George Hickline decd
vs
Andrew J. Steel
} Debt

on the second Friday this cause having been consolidated with cause number 24 on the Courts Docket of this Term the defendant by B. M. Cox his atty moves the Court on an affidavit which is filed for a continuance which motion is allowed. And the Court orders that the defendant pay all the costs of this suit accrued up to this time

State of Illinois }
St Clair County } I the undersigned Clerk of the Circuit Court in and for the County of St Clair and State of Illinois hereby certify the foregoing to be a true Copy of the Declaration the Summons together with the endorsements thereon the Demurrer the Pleas and the Proceedings and Orders of said Court in the said entitled cause as the same are respectively on file and of Record in my Office

In Testimony Whereof I have hereunto signed my name and affixed the seal of said Court at office this 15th day of August A D 1864

Wm. S. Thomas Clerk
by Wm. E. Wallace Depty

[3177-5]

State of Illinois }
St Clair County } Pleas and Proceedings had in the Circuit Court in and for the County of St Clair and State of Illinois to wit,

Be it remembered that on the 29th day of August A.D. 1860. the following declaration was filed to wit

State of Illinois } ss of the Fall Term of the Saint
St Clair County } Clair County Circuit Court
George Wickline A.D. 1860
vs } Action of Debt
Andrew J. Steel

George Wickline the plantiff in this suit complains of Andrew J. Steel by the abreviation of A.J. Steel the defendant in this suit of a plea that he rendrs unto the said plaintiff the sum of Four Hundred Dollars lawful money which he owes and unjustly detains from him. For that whereas the said defendant heretofore to wit. on the fifth day of October one thousand eight hundred and fifty seven at the County of St Clair aforesaid by his certain writing obligatory sealed with his seal and shown to the Court here the date whereof is the day and year aforesaid acknowledged himself to be held and firmly bound unto

the said plaintiff in the sum of Four Hundred dollars ($400.00) above demanded to be paid to the said plaintiff or order twenty four months after the date thereof for value received with interest at the rate of ten per cent from the date thereof till paid By means whereof and by force of the statutes in such cases made and provided the said defendant then and there become liable to pay to the said plaintiff, the said sum of money in the said writing obligatory specified according to the tenor and effect thereof, and although the said sum of money in the said writing obligatory specified hath long since been due and payable according to the tenor and effect thereof. Yet the said plaintiff in fact saith that the said defendant although often requested so to do did not nor would not pay the said sum of Four Hundred dollars in the said writing obligatory specified or any part thereof to the said plaintiff or otherwise however but hath hitherto wholly neglected and refused so to do whereby an action hath accrued to the said plaintiff to demand and have of and from the said defendant the said sum of Four Hundred dollars in the said writing obligatory specified And also whereas the said defendant afterwards to wit, on the first day of August one thousand Eight Hundred and Sixty at the County of

St Clair and State of Illinois aforesaid was indebted to the said plaintiff in the further sum of two hundred dollars lawful money before that time and then and to the said plaintiff as aforesaid for interest upon and for the forbearance of divers large sums of money before that time lent and advanced by the said plaintiff to the said defendant at his special instance and request and by him the said plaintiffs forbearance to the said defendants for divers long spaces of times before then elapsed at the like special instance and request of the said defendant, and being so indebted he the said defendant in consideration thereof afterwards to wit, on the day and year aforesaid at the County of St Clair aforesaid undertook and then and there agreed to the said plaintiff to pay him the said last mentioned sum of money when he the said defendant should thereunto afterwards be requested. Yet the said defendant although often requested so to do has not as yet paid the said sum of money above demanded or any part thereof to the said plaintiff. But he to do this hitherto has wholly neglected & refused and still doth neglect and refuse to the damage of the said plaintiff of two hundred dollars & therefore he brings this suit &c

J. M. White
Atty for Plff

[8677-7]

Copy of Instrument sued on —

$400 00

Twenty four months after date I promise to pay to George Wickline or order the sum of four hundred dollars for value received with ten per cent interest from this date until paid this October 5th A.D. 1857. Witness my hand and seal

A. J. Steel (seal)

George Wickline }
Andrew J. Steel } vs Demur

And the said deft comes & defends the wrong & c & says plaintiffs declaration is wholly insufficient in law. 1st there is no obligation of process 2. no allegation of delivery of said writing obligatory from deft to plaintiff & for other insufficiencies and informalities in plaintiffs declaration &.

B. M. Cox atty

And on the same day the following summons was issued to wit

State of Illinois }
County of St Clair } ss The People of the State of Illinois

To the Sheriff of said County Greeting

We command you to summon Andrew J. Steel

if he can be found in your County to be and appear in the St Clair Circuit Court on the first day of the next term thereof to be holden at the Court House in the City of Belleville in said County on the third Monday of September next then and there to answer unto George Wickline of a plea that he render unto him the sum of $400 00 which he owes to and unjustly detains from him to his damage as he says of $200 00. And not to fail under the penalty of what the law directs. And this writ you shall have at our said Court with your return endorsed thereon

Witness William S Thomas Clerk of said Court and the seal thereof hereto affixed at office this 29 day of August A.D. one thousand eight hundred and sixty

L.S.

Wm. S. Thomas, Clk

And endorsed thereon as follows. to wit. I hereby deputize Charles Weld to serve this writ Sept 3 1860

F. Mayer Shff St Cl Co.

Served September the 4th 1860 by reading to the within defendant

F Mayer Shff St Cl Co.
by Chas Weld spec Depty

And on the 22nd September 1860 the following Pleas were filed to wit

First Plea. George Vickline
vs } In Debt
Andrew J. Steel

And the said defendant comes and defends the wrong and injury when &c, and as to the first & second count of the said declaration says that the said supposed writing obligatory therein mentioned is not his deed & of this he puts himself upon the Country &c.
As to the first and second counts of the said declaration the said defendant says that he does not owe the said sum therein mentioned or any part thereof in manner & form as the said plaintiff has above thereof complained against him and of this he puts himself upon the Country &c

B. M. Cox, atty

George Vickline
vs }
Andrew J. Steel

and the said plaintiff doth the like

Second Plea

As for a second plea in this behalf the said defendant says (Actio non) because he says

that he the said defendant after the said day of &c at &c in the said writing obligatory mentioned & before the filing of this declaration or the issuing of this writ of said plaintiff in this behalf to wit on &c at &c paid the said plaintiff the said sum of money and all the interest thereon which he the said defend-ant is ready to verify wherefore he prays Judgment if said plaintiff ought to further have his action against him &c B. M. Cox. atty

And at the September Term A.D. 1860 of said Court the following proceedings were had to wit.

George Hickline
vs
Andrew J. Steel } Debt

On the first Saturday comes the Defendant by B. M Cox his atty and files his demurrer to Plaintiffs declaration in words &c which demurrer is overruled by the Court and time until monday next is given the Defendant to plead. On the third Thursday it is ordered by the Court that this case be continued

And at the March Term A.D. 1861 of said Court the following proceedings were had to wit,

George Wickline
vs } Debt
Andrew J. Steel

On the fourth Wednesday comes J. M. White atty and suggests the death of the Plaintiff George Wickline and leave is given by the Court to make his administrator party plaintiff and this cause is continued

And at the October Term A.D. 1861 of said Court the following proceedings were had to wit.

William Patterson admr
of George Wickline decd
vs } Debt
Andrew J. Steel

On the second Wednesday comes the Defendant by B. M. Cox his atty and moves the Court on an affidavit which he files for a continuance in this case, which motion is by the Court allowed and this cause is continued

And at the March Term A D 1862 of said Court the following proceedings were had to wit

William Patterson admr
of George Wickline decd
vs
Andrew J. Steel } Debt

on the second Friday comes the Parties by their Attys respectively and by consent of Parties the Court orders that this cause be consolidated with cause number 23 on the Courts Docket of this Term and that the Plaintiff pay the costs accrued to this Term

And at the October Term A D 1862 of said Court the following proceedings are had to wit
William Patterson admr
of George Wickline decd
vs
Andrew J. Steel } Debt

on the first Wednesday it is ordered by the Court that this case be continued

And at the March Term A D 1863 of said Court the following proceedings were had to wit

William Patterson Admr
of George Wickline decd
vs
Andrew J. Steel } Debt

on the third Wednesday
the Court orders that this cause be continued

And at the October Term A D 1863 of said Court the following proceedings were had to wit.

William Patterson admr.
of George Wickline decd
vs
Andrew J. Steel } Debt

on the second
Thursday it is ordered by the Court that this case be continued

And at the March Term A.D. 1864 of said Court the following proceedings were had to wit.

William Patterson admr of George Wickline decd
vs
Andrew J. Steel
} Debt

On the second Monday comes the Plaintiff by J. B. Underwood his atty and also comes the Defendant by Cox & Case his attys and the parties being ready for trial the Court orders that a Jury be called and twelve good men to wit &c. are chosen and sworn to try the issue and a true verdict to render according to law and evidence. After hearing the evidence and arguments of counsel the Jury retire to consider upon their verdict. When the Jury return into Court they publish the following verdict to wit. We the Jury find the issue for the Defendant and that the Plaintiff is indebted to the Defendant in the sum of $279.$\frac{89}{100}$. And now the Plaintiff by his said atty moves the Court for a new trial which motion is by the Court denied. It is therefore considered by the Court that the Defendant recover of the Plaintiff the said sum of $279 $\frac{89}{100}$. and also his proper costs to be taxed and that the said Plaintiff pay the same in due course of administration. And now the said Plaintiff by his said atty prays an appeal

[8677-4]

to the supreme Court which is allowed by the Court upon the Plaintiff filing within thirty days from this date his bill of exceptions and also his appeal Bond in the Penal sum of $450.00. with security to be approved by the Clerk of this Court
And by consent of parties the appeal is to be heard in the Supreme Court at Springfield

State of Illinois }
St Clair County } ss I the undersigned Clerk of the Circuit Court in and for said County of St Clair hereby certify the foregoing to be a true copy of the Declaration the Summons together with the endorsements thereon the Demurrer the Pleas and the proceedings and judgment of Court in the said entitled cause as the same are respectively on file and of record in my office

In Testimony Whereof I hereto sign my name and affix the seal of said Court at office this the 15th day of August AD 1864

Wm. S. Thomas Clerk
by Wm. E. Walton Depy

William Patterson Admr.
of George Wickline decd } Error to St Clair
vs.
Andrew J. Steel

And the said pltff. in error comes & says in the record and proceedings aforesaid there is manifest error in this to wit: The court below erred in rendering judgment on an informal verdict and in rendering judgment against said pltff. according to said verdict for a specific sum & costs, wherefore said pltff. prays said judgment may be reversed &c.

W H Underwood &
A. Watts Attys for
pltff. in error.

[8677-13]

21

William Patterson Adm
of George Wickline
vs.
Andrew J. Steele

Error ~~from~~ to St Clair

The Clerk of the Supreme Court will file this record & issue process to the Sheriff of St Clair County.

W H Underwood &
A. Watts.
Attys. for pltiff
in error,

$2.40

Filed October 3rd 1864 - Paid by Watts - $11.50 -
N. Johnston Clk

Nashville Illinois September 25th 1864

Noah Johnson Esqr

Dear Sir

Please file the inclosed Record and issue Summons against Steel to Sheriff of St Clair County Ills, I send you $11,50 inclosed in this letter to pay fees,

Respectfully Your Friend

Amos Watts

[8677-43]

21

Patterson – Admr. of
Wicklin –
vs
A. I. Steel –

Praecipe

Filed October 3d 1864.
N. Johnston Cl

Supreme Court of the State of Illinois.

FIRST GRAND DIVISION.

WILLIAM PATTERSON, Adm'r of George Wickline, Deceased,
VERUS
ANDREW J. STEEL.

Error to St. Clair.

PAGE 10 On the 29th of August 1860, George Wickline brought an action of debt in the St. Clair Circuit Court against Andrew J. Steel upon a Promissory Note under seal, made by Steel for the payment of $400, with interest at ten per cent. twenty four months after date, to said Wickline, and dated October 5th 1857.

" 1 On the 30th of August 1860, Wickline brought another suit against Steel on another Promissory Note under seal, made by Steel to Wickline for the payment of $130,60–100 with interest at ten per cent., payable one day after date, and dated April 25th 1859.

" 2 & 10 Declarations were filed in the usual form.

" 15 & 16 On the 26th of September 1860, Defendant filed in each case the following pleas. To 1st count, *Non est factum.* To 2d common counts, *Nil debit.* To whole declaration, *Payment.*

" 6 & 7

" 7 & 8 At the March Term 1861, the death of Wickline was suggested, and leave given to make his Administrator party plaintiff.

" 17

" 8 & 18 At the March Term 1862, the Court, by consent of parties, ordered the cases to be consolidated.

" 20 At the March Term 1864, the causes thus consolidated were tried by a jury who found the "issue" for the defendant, and that the plaintiff is indebted to the defendant in the sum of $279,89–100. Plaintiff moved for a new trial, which motion was denied by the Court, and judgment entered that defendant recover of plaintiff the said sum of $279,89–100 and costs, to be paid in due course of administration. The case is brought here by writ of error, and plaintiff assigns for error;—The Court below erred in rendering judgment on an informal verdict, and in rendering said judgment against said plaintiff.

Brief;

1st—Under the issues the verdict for a specific sum, and judgment thereon against plaintiff were not warranted by law. It is only where defendant has filed a plea or notice of set-off that such a verdict and judgment are proper.—[*Practice Act, Sec.* 19.

Such notice of set-off is regarded as a plea, and is a part of the record.—[16 *Ill. R.* 283, 296.

W. H. UNDERWOOD
and AMOS WATTS,
Attornies for Plaintiff in Error.

21

William Patterson Admr of George McKinney

vs

Andrew J. Steel

Abstract & Brief

Filed October 3d. 1864.

N. Johnston Clk

Fee of Printer

Printing Abstracts $5

State of Illinois,
SUPREME COURT,
First Grand Division. } ss

The People of the State of Illinois,

To the Clerk of the Circuit Court for the County of St Clair 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* Saint Clair *county, before the Judge thereof between* William Patterson Administrator of the Estate of George Mitchin, deceased *plaintiff and* Andrew J. Steel *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, 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 our 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* **Mount Vernon,** *in the County of Jefferson, on the* 1st Tuesday after the 2nd Monday of 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.* P. H. Walker *Chief Justice of the Supreme Court and the seal thereof, at* MOUNT VERNON, *this* Third *day of* October *in the year of our Lord one thousand eight hundred and* Sixty four

Noah Johnston
Clerk of the Supreme Court.

[8677-15]

21

SUPREME COURT.

First Grand Division.

William Patterson.
Adm^r of the Estate of
George Wiklin Dec^d

Plaintiff in Error,

VS.

Andrew J. Steel

Defendant in Error.

WRIT OF ERROR.

Issued, Stamped, Sealed
Cert.

FILED October
3^d, A. D. 1864.
N. Johnston Cl
11

Supreme Court of the State of Illinois.

FIRST GRAND DIVISION.

WILLIAM PATTERSON, Adm'r of George Wickline, Deceased, VERUS ANDREW J. STEEL. } *Error to St. Clair.*

PAGE 10 On the 29th of August 1860, George Wickline brought an action of debt in the St. Clair Circuit Court against Andrew J. Steel upon a Promissory Note under seal, made by Steel for the payment of $400, with interest at ten per cent. twenty four months after date, to said Wickline, and dated October 5th 1857.

" 1 On the 30th of August 1860, Wickline brought another suit against Steel on another Promissory Note under seal, made by Steel to Wickline for the payment of $130,60-100 with interest at ten per cent., payable one day after date, and dated April 25th 1859.

" 2 & 10 Declarations were filed in the usual form.

" 15 & 16 On the 26th of September 1860, Defendant filed in each case the following pleas. To 1st count, *Non est factum*. To 2d common counts, *Nil debit*. To whole declaration, *Payment*.

" 6 & 7 At the March Term 1861, the death of Wickline was suggested, and leave given to make his Administrator party plaintiff.

" 7 & 8 At the March Term 1862, the Court, by consent of parties, ordered the cases to be consolidated.

" 17 At the March Term 1864, the causes thus consolidated were tried by a jury who found the "issue" for the defendant, and that the plaintiff is indebted to the defendant in the sum of $279,89-100. Plaintiff moved for a new trial, which motion was denied by the Court, and judgment entered that defendant recover of plaintiff the said sum of $279,89-100 and costs, to be paid in due course of administration. The case is brought here by writ of error, and plaintiff assigns for error;—The Court below erred in rendering judgment on an informal verdict, and in rendering said judgment against said plaintiff.

" 8 & 18

" 20

Brief;

1st—Under the issues the verdict for a specific sum, and judgment thereon against plaintiff were not warranted by law. It is only where defendant has filed a plea or notice of set-off that such a verdict and judgment are proper.—[*Practice Act, Sec.* 19.

Such notice of set-off is regarded as a plea and is a part of the record.—[16 *Ill. R.* 283, 296.

W. H. UNDERWOOD and AMOS WATTS,
Attorneies for Plaintiff in Error.

[8677-16]

21

William Patterson Assignee of George McKinney

vs

Andrew J. Steel

Abstract & Brief

Filed October 3rd 1864.

N. Johnston Cl

Printers' Fee For Printing Abstracts $5

1864.

21 ——— 24

Patterson - Appt.

vs

Steel

~~8677~~

1864

8677

Opinion to Leith

Reporter