

8473

No. _____

Supreme Court of Illinois

Daniel Mussleman

vs.

Reville Oaks et al

71641  7

State of Illinois
Massac County

Now Before the honorable Wesley Hoar,
Judge of the Massac Circuit Court, at the Court
House in Metropolis City Ill, Tuesday September the
22^d 1857.

Reville H. Oaks admr. of Winslow Hatcher Deced
vs
Daniel Musselman &
J. Musselman } in assumpsit

Be it remembered that
heretofore, to wit, on the 18th day of August A D
1857, the Plaintiff in the above styled cause —
Exhibited and filed in the clerk's office of the
Circuit Court for Massac County, his note against
the said Defendants, which is in the words &
figures following to wit,

\$42.00 nine months after date to or either
of us Promise to pay to Oliver Hatcher ad R.
H. Oaks, admr. of the Estate of Winslow
Hatcher, Deced the Sum of Two hundred and
forty two Dollars for Value received of them
this the 10th of Oct 1856

Daniel Musselman
J. Musselman

And Whereupon the following Summons issued
to wit

State of Illinois }
 Hannibal County } et

The People of the State of Illinois
 To the Sheriff of Said County Greeting

In command
 You that you Summon Daniel Musselman, and
 Jacob Musselman, if they shall be found in
 your county that they appear Before the Circuit
 Court in and for said County on the first day
 of the next term thereof to Be holden at the
 Court house in Metropolis City, Illinois, on the
 Second Monday of September next then and
 there to answer Reville W. Baker, administrator
 of the Estate of Winslow Fletcher deceased of a
 certain Plea in assumpsit to the damage of the
 said Plaintiff in the Sum of three Hundred
 Dollars as he the said Plaintiff doth say

And have you then and
 there this writ with an endorsement thereon
 as to how you executed the same,

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Witness James Elliott Clerk of
 our said Court and the Judi-
 cial Seal thereof this 18th Aug 1857
 James Elliott Clk.

Upon which Summon^{is} the following endorsement
 By the Sheriff, Served By reading to Daniel
 Musselman & Jacob Musselman this August 22^d 1857

J. H. Mears, Sheriff M. C.
 Service on D — 100
 Return \$1.00

the said Defendants in consideration thereof after-
~~ward~~ ^{ward} Suit on the 10th day of October aforesaid
 at the County aforesaid undertook and then and
 there faithfully promised the said Plaintiff to pay him
 the said Sum in the ^{sd} promissory note specified accor-
 ding to the tenor & Effect thereof Yet the said Defendants
 Contriving & to cheat and Defraud the said Olive
 Hatcher in his life time and the said Reville H. Oakes
 now Surviving Adm. of said Estate hath not
 paid the same nor any part thereof to the
 said Olive Hatcher who was adm. of said
 Estate with Reville H. Oakes nor to Reville
 H. Oakes Surviving adm. although the
 said note hath been long since due &
 Payable and although the same hath
 been after demanded But to pay the same
 the said Defendants hath hitherto wholly neglected
 & refused to pay the same & still doth neglect
 and refuse to pay the same to the damage of the
 sd Plaintiff in the Sum of three hundred Dollars
 And he therefore Brings Suit &c

J. Jack atty for Plff
 29 August 1857

Reville H. Oakes Adm.
 of Minstow Hatcher's

19
 Daniel Musselman &
 Jacob Musselman

To the Defendants
 You are hereby notified that
 that the following is a copy
 of the note in the foregoing
 Declaration mentioned among

1805

the Resp. cause of action against You viz.
242.00

Nine Months after date wd or Either of us
promise to pay Olin Stetcher or R. H. Oaks, admr,
of the Estate of Winslow Stetcher Decd., the Sum
of two Hundred & forty two Dollars, for value
Received of them this 10th of October 1850
Signed Daniel Musselman
J. Musselman

And afterwards So wd on the 15th day of September
A D 1857ⁿ the Said Resp. by their attorney filed
their Demure to Plaintiff's Declaration which is in
the words and figures following,

Daniel Musselman et al }
vs } Trespass on the said ord promise^{See}
R. H. Oaks admr & C }
}

And the Said defendants by W. H. Green their
Attorney, Come and defend the wrong and
injury When & C & say that the Said declaration
& the Matters therein alleged in Manner & found
as they are above stated, are not sufficient in
law for the Said Plaintiff to maintain his
Said action against the Said defendants &
they the Said defendants are not Bound
by law to answer the Same. And this he is
ready to verify. Wherefore by reason of the insufficiency
of Said declaration the Said Defendants pray Judgment
etc
W. H. Green. Attorney for Defs

20173-2

And afterwards Court at a term of the Massac
 Circuit Court Began & held at the court house
 in ~~the~~ and for Said County, on Monday the 14th
 day of September A D 1857, Court on Friday
 the 18th Sept 1857 Defendants by their attorney
 Comd & file their Demure to Plaintiff Declaration
 And afterwards Court on the second Monday
 of Said term of Said Court Being the 21st day
 of September 1857 The following order was duly
 entered in Said cause Court

Revill W. Dohr adm^r & c

vs

Daniel Musselman
 for Musselman

And now on this day
 Came the parties by their atty, and the court
 after Being fully advised in the premises
 ordered that the Demure filed herein Be
 overruled, therefore it is considered by the
 court, that the Plaintiff recover, against the
 Defendants the Sum of two hundred & nine
 Dollars and forty six cents, also his cost by
 him in and about this behalf expended,
 and that Execution May issue & c, And
 afterwards Court on Tuesday following the
 following order was duly entered in Said
 Cause Court, Came again the parties by
 their atty and the Defendants pray an appeal
 to the Supreme Court Which is allowed by the
 Court on condition that the Defendants file Bond

With Aaron B. Brown, & Robert G. McKee,
as their securities in thirty days. And afterwards
To wit on the 20th day of October A.D. 1857. The
appeal Bond which is in the words & figures following
^{was duly filed in said cause}
Know all men by these presents that Daniel
Muselman and Jacob Muselman principals
and A. B. Brown and R. G. McKee, securities
are held and firmly bound unto Reville W. Daker
Administrator of the Estate of Winslow Fletcher
Deceased in the penal sum of Four hundred
& Eighteen Dollars and ninety two cents good &
lawfull Money of the United States for the
Payment of which well and truly to be made
We bind ourselves our heirs Executors and Admin-
-istrators, jointly and severally firmly by these
presents. Signed with our hands and Sealed
With our Seals and dated this 19th day of
October 1857.

The Condition of the above obligation
is such that Whereas the above named, Reville
W. Daker Administrator of Winslow Fletcher
did at the September term 1857, of the Circuit
Court in and for the County of Massac and
State of Illinois To wit, on the 22^d day of Septem-
ber 1857 recovered judgment against the
above bounden Daniel Muselman & Jacob
Muselman, for the sum of two Hundred &
Nine Dollars & forty six Cents Besides Cost of
Suit from which said judgment the said
Daniel Muselman and Jacob Muselman

have prayed an appeal to the Supreme Court
of the State of Illinois, which appeal is by
the said Circuit Court allowed,

Now if the
above bounden Danice Musselman and Jacob
Musselman, shall duly and without delay
prosecute their said appeal and shall pay
whatever judgment cost interest and damages
as shall be awarded by said Supreme Court
in case the said judgment appealed from in
said Circuit Court be by the Supreme Court
affirmed, then and in that event the foregoing
indenture to be void & to remain in full
force & effect in law

Attest
James Elliott Clk

Daniel Musselman (Seal)
J. Musselman (Seal)
A. B. Brown (Seal)
H. J. B. Mc Kee (Seal)

State of Illinois }
Massac County } S.

I James Elliott Clerk of the Circuit
Court in and for the county aforesaid, do hereby
certify that the foregoing eight written pages,
contain a true and perfect transcript of the
record and proceedings in the cause therein
entitled the truth and perfectly as the same
appears of record in my office in testimony
whereof I have hereunto set my hand and the
Seal of said court at my office in Metropolis, this
2^d day of Nov A D 1857,

James Elliott Clk

Musselman et al. Plffs in Error

vs

R. H. Carter, Admr of the Estate
of Willow H. Litch, deceased, Defs. in Error

Error to Massac.

In the Supreme Court, Illinois
1st Grand Division

And now on this day come the Plffs, by W. W. Keew
their Attorney, & say there is manifest error in the said
Record, & assigns the following Special Errors upon the
Record aforesaid:—

1st. The Court erred in overruling
the demurrer to the declaration filed by defendants
below.

2nd. The Court erred in giving
judgment against defendants below, therefore the Plffs
in Error pray that said judgment be reversed. — W. W. Keew
Att'y for Plffs in Error

H. H. Dakes admr

vs

Daniel Musselman
& J. Musselman

Transcript

Filed Nov. 10. 1857.

A. Johnston clk

Received ~~for~~
Nov 24 1857 - \$5.00

Circuit clerk fee
for Transcript \$2.07

Prepared

SUPREME COURT OF ILLINOIS.
FIRST GRAND DIVISION.
NOVEMBER TERM, A. D. 1857.

ABSTRACT.

Record Page.

<p style="text-align: center;">Daniel Musselman et al., Pliffs, in Error <i>vs.</i> Reville H. Oakes, Adm'r of the estate of Winslow Fletcher dec'd.</p>	}	Assumpsit.—Error to Massac.
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1 to 4. This was an action of assumpsit instituted at the September term of the Massac Circuit Court by the defendant in error against the plaintiffs in error. The instrument sued on, and filed with the declaration, was in the words and figures following:
 "Nine months after date we or either of us promise to pay Olive Fletcher or R. H. Oakes, administrators of the estate of Winslow Fletcher, deceased, the sum of two hundred and forty-two dollars, for value received of them this the 10th of October, 1856.
 Daniel Musselman.
 J. Musselman.

4 to 6. Demurrer to plaintiff's declaration; which demurrer was by the Court overruled, and judgment rendered in favor of the plaintiff below, for the sum of \$209.46 and cost of suit. From which judgment defendants appealed.

ERRORS ASSIGNED.

- 1st. The Court erred in overruling the demurrer to the declaration, filed by the defendants below.
- 2nd. The Court erred in giving judgment against defendants below.

W. H. GREEN, Atty.,
For Plaintiffs in Error.

Story on note 40

2 Beaumont & al. 417

A note payable to one or another of two persons is not a promissory note

~~*Story on note*~~
~~*2 Beaumont & al.*~~

We have showed over that other answer is dead

No 46

D. Musselman et al

vs

R. H. Cape et al

Essex Co Massac

Abstract

Filed 24. Nov. 1857.

A. Johnston Clk

RECORDS AND DIVISION

The Court ordered to give judgment in favor of the plaintiff...

SUPREME COURT OF ILLINOIS.

FIRST GRAND DIVISION.

NOVEMBER TERM, A. D. 1857.

ABSTRACT.

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Daniel Musselman et al., Pliffs., in Error

vs.

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Daniel Musselman,
J. Musseman.

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W. H. GREEN, Atty.,
For Plaintiffs in Error.

No 46

Samuel Musselman et al

R. H. Calks, Admiral

Esquire, Massac

Abstract

Filed 24 Nov. 1857.

S. Johnston *ck*
" "

EXHIBIT A-100000

J. W. H. QUINN, ATTORNEY AT LAW

No 46

Nov. 1857

Daniel Musselman and
Jacob Musselman

vs

Neville Bates - Adm^r of
Winslow Fletcher and

Appel for Massac

8473

Reverses and
Remittances