

8754

No. _____

Supreme Court of Illinois

L.J.S. Turney

vs.

C.L. Organ

71641  7

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Pleas had before the Hon. Samuel Marshall
Judge of the 12th Judicial Circuit, Composing among
Others the County of Wayne in the State of Illinois.

Be It Remembered that on the 27th day
of July 1853. Cornelius L. Bryan by John Trondale
his attorney, filed in the office of the Clerk of the Circuit
Court for the County of Wayne the following precept
to wit: " State of Illinois }
Wayne County } 53.

Wayne Circuit Court
September Term 1853.

Cornelius L. Bryan }
vs. }
Leander Jay S. Turney } Treppas on the case upon
Promises, Damages \$1000.00

The Clerk of the Circuit Court
will please issue Summons in the above entitled
Cause Returnable according to Law.

John Trondale

Atty for Plaintiff

Upon which said precept afterwards to wit on the
27th day of July 1853 the following writ was issued.
to wit: " State of Illinois }
Wayne County }

The People of the State
of Illinois To the Sheriff of said County greeting
We command you that you summon Leander
Jay S. Turney of to be found in your County, person-
ally to be and appear before the Circuit Court
of said County on the first day of the next Term
thereof to be holden at the Court house in Fair-
field on the first Monday in September next
to answer unto Cornelius L. Bryan of a Plea
of Treppas on the case upon promises. To the
damages of the said Cornelius L. Bryan of

One thousand dollars as he says, and have you then there His writ, and make return thereon in what manner you execute the same

Recd
C. Deak

Witness Joseph G. Barkley Clerk of our said Circuit Court and the seal thereof at Fairfield this 27th day of July, AD. 1853. J. G. Barkley Clerk

And afterwards to wit on the said 27th day of July 1853. The said Summons was returned into the clerks office by the Sheriff of said County with the following Endorsement upon the same to wit:

"I have served the writure by reading the same to J. Jay & Lunny, this 27th July AD 1853
Jas. Kelant's Shff"

And afterwards to wit on the 3rd day of August 1853. The said Cornelius L. Organ by John Loundan his attorney came and filed the following advertisement in words and figures as follows:

"State of Illinois }
Wayne County }^{ss} Wayne Circuit Court
September Term AD. 1853.

Cornelius L. Organ Plaintiff complains of Leander Jay & Lunny defendant being summoned &c. of a plea of Hospes on the case upon promise. For that whereas the said defendant by name and description of L. Jay & Lunny heretofore to wit on the 5th day of June 1853. at the County of said made his certain promisory note in writing bearing date the day and year aforesaid and whereby then and there promised to pay on or before the first day of January then next to the said Plaintiff three hundred and fifty dollars Cash loaned, with Ten per cent Interest from date until paid for value received

And then and there delivered the said promissory note to the said Plaintiff by means whereof and by force of the Statute in such Manner and provided the said defendant then and there became liable to pay to the said Plaintiff the said Sum of Money in 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 County aforesaid undertook and there and there ^{faithfully} promised the said Plaintiff to pay him the said Sum of Money in the said promissory note Specified according to the tenor and effect thereof.

And whereas also the said defendant afterwards to wit on the first day of July 1833 was indebted to the said Plaintiff in the further Sum of three hundred and fifty dollars for Money loaned by the said Plaintiff to the said defendant at his special instance and request and being so indebted he the said defendant in Consideration thereof afterwards to wit on the day and year last aforesaid at the County aforesaid undertook and there and there ^{faithfully} promised the said Plaintiff to pay him the last mentioned Sum of Money when he the said defendant should be thereunto afterwards requested.

Yet the said defendant not regarding his said promises and undertakings, but Contriving and craftily and subtly intending to deceive and defraud the said Plaintiff

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in that respect hath not. (although often re-
-quested so to do) as yet paid the said Sums of
Money or any part thereof, but hath wholly
neglected and refused and still neglects
and refuses so to do. to the damage of the
said Plaintiff of one thousand dollars, and
therefore brings his suit,

John Foulds
Atty for Plaintiff.

"Copy of Note said on

On or before the first day of January next I
promise to pay Cornelius L. Organ three
hundred and fifty dollars cash loaned
with Ten per cent interest from date until
paid for value received.
Fairfield June 5th 1832. J. Day & Turney.

and afterwards to wit. on Tuesday the 6th day of
September 1853. being the second day of the Term
of said Court. the following order was made by
said Court. to wit.

"Cornelius L. Organ vs
J. Day & Turney

At this day came the said
Plaintiff by Foulds his Attorney. And the said Defen-
-dant being summoned solemnly called came not
but made default. It is therefore considered by the
Court that the said Plaintiff recover of the said
Defendant his damages sustained by reason of
the ~~same~~ non performance of the said defendants
promise. And that the Clerk of this Court forth-
-with compute and report to the Court what

These damages are. And the Clerk having Com-
puted and Reported the damages to be \$ 395. 45
100

Therefore it is further Considered and adjudged
by the Court that the said Plaintiff recover of the
said defendant the said sum of three hundred
and ninty three dollars and seventy five cents
his damages as aforesaid. together with
his costs about his suit in this behalf Expended
and thereof leave Execution &c.

Whereupon afterwards on the same day came the
said defendant by his Attorney, and the said
Plaintiff by his Attorney, and the said defen-
dant by his Attorney Entered his motion to set
the Judgment herein above rendered. because the
same was rendered without service upon the said
defendant, Whereupon the said Plaintiff by his
Attorney Entered his exp Motion for a Rule
upon the Sheriff to amend his return Executed
upon the Summons herein, which Motion was
allowed by the Court, and the said Sheriff could
to amend his return, which being done. It is
~~found~~ Considered by the Court that the said
Motion in arrest of Judgment be overruled &c."

Whereupon afterwards to wit on the 10th day of
September 1853. the said defendant by Robert
F. Wrigate his Attorney filed the following Bill
of exceptions, in the words & figures following viz.

" Wraym levant levant Sept Term 1853
Gondris & Organ }
vs. } afumpsit
A. Jay & Turney }
Be it remembered that

after the rendition of Judgment in the above
 Entitled Cause, the defendant by his Counsel
 Moved the Court to arrest said Judgment
 for the reason that the return of the Sheriff
 upon the Summons herein did not show a
 Service of said Summons upon the defendant,
 The return upon said Summons at the time
 of taking said Judgment default being in
 the words and figures following, to wit,

"I have served the within, by reading the same
 to Jay S. Turney. This 27th July A.D. 1853 J. A.
 Leake Shff" Whereupon the Plaintiff by his
 Counsel Moved the Court for a rule upon the
 Sheriff to amend his return upon the said
 Summons which was granted and said
 Sheriff being sworn testified that he had served
 the said Summons upon the defendant by
 reading the same to him at the date mentioned
 in his said return, whereupon he amended
 his return, which after his amendment
 was in the words and figures following to wit,

"I have served the within by reading the same
 to the Deft J. Jay S. Turney. This 27th July A.D. 1853.
 J. A. Leake Shff" whereupon the Court overruled
 the Motion in arrest of Judgment, to which
 opinion of the Court allowing the amendment
 of the return, and overruling the Motion in
 arrest of Judgment the Deft by his Counsel
 Excepts, and asks that this his bill of
 Exceptions be signed sealed and made
 a part of the record herein which is done.

S. S. Marshall *cccl*

State of Illinois }
Wayne Security }

I. Joseph G. Barkley Clerk
of the Circuit Court in and for the County
of Franklin do hereby certify that the foregoing
six pages contain a true and correct copy
of the papers and proceedings had in the
above entitled cause. as appears from the
Books and papers now on file in my
Office.

Given under my hand and
the Seal of said Circuit Court
at my Office in Fairfield
this 22nd day of September 1853.
J. G. Barkley Clk

1500 words. 150
Certificate Seal 35

Leander Jay & Turney \$1.85
do } Erna & Wayne Postage 6
Cornelius & Organ \$1.91

And for the assignment of errors herein the said Jeff
by P. J. Wingate his atty comes & says, that there is manifest
error in the record & proceedings in this

1st That the Court erred in allowing the return of the Jeff
to be amended after judgment rendered in the Cause
2nd In overruling the motion of Jeff in arrest of judgment
3rd In ordering the Clk to assess the Jeff below's damages
without the intervention of Jury
P. J. Wingate for Jeff

Cornelius L. Organ }
ats, }
Leander Jay & Turney }

Erna & Wayne,

And the said defendant by his

No 10
Record

Cornelius L. Ogden
acts.
Jay B. Tinney

Filed 14th Nov/53

J. D. Pustow
cks

Many pages there is no error in the serial record and judgments
of said court.

D. Beecher, Jr. W. H. B. in

Orgau brought an action of assumpsit against Leander Jay & Turney, and declared upon a promissory note. The sheriff made this return upon the summons: "Served the writ by reading to Jay & Turney." At the return term, a judgment by default was entered for the amount of the note. The defendants then appeared and moved in arrest of judgment; and the plaintiff entered a cross motion, that the sheriff have leave to amend his return. The Court sustained the latter motion; and the sheriff so amended his return, as to show service of the writ on the defendants. The motion in arrest of judgment was then overruled.

No error was committed in allowing the sheriff to amend his return. The leave to amend was a matter of course. The defect in the original return was supplied by the amendment; and the court properly refused to arrest the judgment. The record now shows that the defendants was regularly before the court.

The judgment must be affirmed.

Judgment affirmed.

Truce a Organ

Opinion

Heart

No 10

November 1854

L S L Perry

v
C L Organ

James W. Mayne

Specimen by
Nat. C. S.

James W. Mayne

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