

No. 11880

Supreme Court of Illinois

^T
Curenus.

vs.

Wheeler.

71841  7

*Op. 39
A. G. Curenus vs.
William Wheeler*

1849

11880 P

Leventon & Gishwold
vs.
Whelan & Putnam
Same vs. Same

Supreme Court, Northern
Division, June 7/69 -
Appeal from Storker

And the said appellants, by Peters
their attorney, come & say, that in the record & proceed-
ings aforesaid, & in the rendition of the judgment
aforesaid, there is manifest error, in this Court, that
it appears by the record aforesaid, that the circuit court
rendered a judgment in favor of the depts. below,
whereas the said judgment should have been rendered
in favor of the plaintiffs & against the defendants -

And for further errors in the record & proceedings
aforesaid, the said appellants assign the following, to-wit:

1. - The said circuit court erred in excluding the
testimony of said White, -

2. - The court erred in overruling the motion of the
appellants for a new trial -

wherefore for the errors & ~~from~~ aforesaid, & for other
errors in the ~~record~~ record & proceedings aforesaid,
the said plffs. pray that the said judgment may be re-
versed, annulled & for nothing returned, & they be
restored to what they have lost by reason thereof &
By their Atty. Ourlow Peters

And the said defendant by his attorney
comes & says that in the record and proceedings and
in the rendition of the judgment aforesaid there
is no error wherefore he prays that the same
may in all things be affirmed
Merrill & Merriam for depts

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Be it remembered, that on the day and year
aforesaid, the following Orders were made in said Court,
as follows to wit,

"No 10. Curtinias & Griswold,

vs

Wheeler & Putnam, appts.

Appeal,

This day came the plaintiffs
by Petrus & Drummond, their attorneys and the defendants,
by Merriman, their attorney, and on motion of defendants
attorney, it is Ordered by the Court, that this cause be stayed
for this day at the defendants costs. It is therefore considered
by the Court that the said plaintiffs have and receive of the
said defendants, their costs & charges by them in this behalf
expended for and day, and that they have Execution therefor.

"No 11. Curtinias & Griswold,

vs

Wheeler & Putnam, appts.

Appeal,

This day came the plaintiffs
by Petrus & Drummond, their attorney, and the defendants
by Merriman, their attorney, and on motion of said defendants
attorney, it is Ordered by the Court that this cause be stayed
this day at the defendants costs. It is therefore considered
by the Court, that the said plaintiffs have and receive of the

Said ~~plaintiffs~~ defendants, their Costs & Charges by them
in this behalf Expended for this day, and that they have
Execution therefor.

And afterwards, to wit, on the 10th day of Octob. in the
Year, & at the Term aforesaid, the following Order were made
to wit,

"A^o 10. Curtinias & Griswalds,

vs

Wheeler & Putnam, appts



appeal,

This day came the plaintiffs by
Petus & Drummond, their attorneys, and the defendants by
Merriman their attorney, and by agreement of the several parties,
it was Ordered by the Court, that this Cause, and Cause
Number 13, be tried at the same time, and by the same
jury, as the evidence to be given would apply to both Cases
alike, and the issues being now joined, it was therefore
Ordered by the Court, that a jury be impannelled to try these
Cases, Whereupon, came twelve good & lawful Men, viz
James H. Bairnt, Robert Winter, John Hamilton, Ezra Hines,
Joseph Atterton, Joseph Ebery, Allen Bagley, Miland Arnold,
John W. Hannu, Charles Bolt, Arhemiah Wyckoff, &
Seward Smith, who being duly Chosen, tried & sworn, well
and truly to try the issues joined, and a true verdict give
according to evidence, who after hearing the proofs & allegations
of the parties respectively, and arguments of Counsel, Retired
to Consider of their Verdict, and now come into Court, &
upon their Oaths say, We of the jury, do find for the defendants,
Whereupon the said plaintiffs Enter a Motion for a new trial,

"A^o 13. Curtinias & Griswalds,

vs



appeal,

Wheeler & Putnam, appts.

This day came the parties by their respective attorneys, and by their agreement, it is ordered by the Court, that this Cause and Cause Number 10, be tried by the same jury, and the parties being ready for trial, it was ordered by the Court, that a jury of twelve good and lawful men be impaneled, viz, James A. Baird, Robert Winter, John Hamilton, Ezra Sims, Joseph Altherton, Joseph Egan, Allen Bagley, Melander Arnold, John M. Stannard, Charles Belt, Nehemiah Wyckoff, & Sewell Smith, who being duly sworn, tried & sworn, well & truly to try this Cause, and a true verdict give according to evidence, after hearing the proofs and allegations of the parties respectively, retired to consider of their verdict, now come into Court, and upon their oaths do say, we of the jury, do find for the defendants, whereupon, the plaintiffs enter a motion for a new trial, —

And afterwards, to wit, on the 11th day of October, in the year, and at the term just aforesaid, the following Order was made to wit

A^o 10. Guttenius & Grosvalds,

vs

Wheeler & Putnam, appts.

appeal,

This day again came the parties by their attorneys, & this Cause came on to be heard, upon the motion hereinbefore entered for a new trial, which was argued by Counsel, in consideration whereof the Court being fully advised in the premises, overruled the said motion, therefore it is considered by the Court, that the said defendants have & recover of the said plaintiffs, their costs & charges about

their defense in this behalf expended (except the witness' attendance
one day) and that they the said defendants have Execution
therefor. It is also ordered by the Court, that it be Certified
the following witnesses sworn for defendants were all necessary,
to wit, W. Conlin, S. G. Wright, A. Sacy, Alvin Mepenzu, J. B.
Lewis, P. H. Minw, Ed. Nicks, P. J. Anshutz, J. H. Hund, & Moraco
Bushnell, whereupon the said plaintiff prayed an appeal to
the Supreme Court of this State, which is allowed them, upon
their entering into bonds to the said defendants, in the sum of
one hundred dollars, with Samuel Thomas, and Wm. H. Thomas,
as Securities Conditioned according to law, & to be filed in the
office of the Clerk of this Court, within thirty days.

"A^o 10^o. Curtin & Griswold,
vs
Wheeler & Putnam, appts. Appeal

This day again came the parties
by their attorneys, & this cause came on to be heard upon
the motion hereinbefore entered for a new trial, which was
argued by Counsel, in consideration whereof the Court being
fully advised in the premises, overruled the said motion, - Therefore
it is considered by the Court, that the said defendants have
& recover of the said plaintiff, their Costs & Charges about
their defense in this behalf expended (except the witness' attendance
one day) and that they the said defendants have Execution therefor.
It is also ordered by the Court that it be Certified, that the
following witnesses sworn ^{for dfts} were all necessary, viz W. Conlin,
S. G. Wright, Alvin Mepenzu, J. B. Lewis, P. H. Minw, E. Nicks,
A. Sacy, P. J. Anshutz, J. H. Hund, & Moraco Bushnell, - Whereupon
the said plaintiff prayed an appeal to the Supreme Court of
this State, which is allowed them upon their entering into bonds
to the defendants, in the sum of one hundred dollars, with Samuel
Thomas, & Wm. H. Thomas, as Securities, Conditioned according

to law, and to be filed in the office of the Clerk of this Court, within thirty days."

And afterwards to wit, on the day and year last aforesaid, viz on the 11th day of October, A.D. 1848, the plaintiff filed their bill of Exceptions, which is in the words and figures following to wit:

"A. G. Curtinias
John S. Griswold, &
Mathew Griswold
as
William Wheelw, &
Alfred Putnam,
Same as Same,

Stark Cir. Court Oct. 1. 1848,
Appeal from Jas. Pease,
Same,

Be it remembered, that these Causes coming on for trial, by agreement of the parties, both Causes are submitted together to the same jury for trial, - The Plaintiff to maintain the issues on their part, read to the jury, the following ^{promises} Notes and the endorsements thereon to wit:

Peoria September 6th 1847,

(Note) \$82.34/100 On or before the first April next, we or either of us promise to pay J. M. & S. Thomas, or bearer Eighty two dollars and thirty four Cents for value received with Six per Cent interest from date, if not paid at maturity,
Witness
J. A. White, William Wheelw,
Alfred Putnam,

Endorsment, "For value recd. we hereby sell, assign and guarantee the payment of the within Note when due to Curtinias & Griswold or order, Sept 30th 1847. J. M. & S. Thomas,"

Note \$82.34/100 Peoria, September 6th 1847, On or before

The first of January next, we or either of us, promise to pay
J. M. & S. Thomas, or bearer Eighty two dollars and thirty
four Cents for value received with Six per Cent interest
from date, if not paid at maturity.

Witness,

J. A. White,

William Wheeler,
Alfred Putnam,

Enclosure

"For value recd. we hereby sell assign & guarantee
the payment of the within note, to Curtinias & Griswold,
or order, Sept. 30th 1847. J. M. & S. Thomas"

"And return their case, - The defendants then offered
evidence to prove that the said plaintiffs were not bona
fide holders of the notes, but that they received & held
them as collateral security for a debt due from the
payee to plaintiffs, & under such circumstances as would entitle
the defendants to set up the same defense as if the suits had been
brought by the payee thereof. - They also offered evidence to
prove that the notes were given to secure part of the purchase
money of a horse power saw Mill, sold by the payee of the
notes to the defendants. - That the agreed price of the Mill was
\$400, that the whole of the consideration had been paid
by the defendants to the payee except the amount of said two notes, that
the Mill was not well made, & was worth less than
the agreed price to the amount of the said notes. - The
plaintiffs then called Samuel E. White, as witness & proposed
to prove by him facts material to the issue. - The defendants
objected to the admission of the testimony of this witness, because
of his incompetency, by reason of his interest in the event
of these suits. - Said White testified to the Court that he had
executed a mortgage to the plaintiffs of his real estate, to secure
the payment of a debt due from said payee (the Thomas's)
to the plaintiffs for the security of which said debt of the
Thomas's said two notes had also been assigned by payee to the

plaintiffs, that if judgment should be rendered in these cases, the Money would go to discharge the debt which the Mortgage was given to secure; but he stated that he had no other interest in these Suits, & that if he should be compelled to pay anything by reason of his having given said Mortgage, the said payers, would be liable to pay the same to him, as he, White, was security only for them, he also stated that after ^{the} said Notes had been assigned to plaintiffs, they having heard that there was difficulty about the Notes, required further security, & in consequence of this, he, White, gave the Mortgage aforesaid, - The Court decided that the witness ^{was} incompetent to testify, & excluded him as a witness, and to this decision, the plaintiffs excepted, = "At the Request of defendants the Court instructed the jury as follows, to wit,

Instructions, "1st That if the jury believe from the evidence, that Curtin & Griswold, held these Notes in Suit for the benefit of the Thomas; or if they have no interest in the Notes in Suit, they are not bona fide holders of the Notes, & the defendants have a right to make any defence to these Notes in the hands of plaintiffs that they could if Suits were in the names of the Thomas;

"2nd If the jury believe from the evidence, that these Suits ^{prosecuted} are for the benefit of the Thomas; - and further, that the Mill in dispute was made of improper materials, or the workmanship was unworkmanlike, the jury will allow to the defendants against said Notes such a credit as the defendants have proved was the fair difference in value between the Mill as it was made, and as it should have been by the contract, or in other words, what it was worth less, in consequence of bad materials, or improper work in the construction;

"3rd When a Mechanic undertakes to do work, the law requires him to do it in a good & workmanlike manner, and

" furnish suitable materials,
 " 4th If the Jury believe from the evidence, that the Thomas's
 " Warranted the Mill to be a good one, and do good work,
 " And it was not either from unsuitable materials, or
 " unskillful workmanship in the construction, the defendants
 " are entitled to a deduction from the contract price of all
 " damages they have necessarily sustained from such causes
 " according to the rule laid down in the 2nd instruction, &
 " no notice to the Thomas's was necessary if part of purchase
 " money was paid. And the Jury further believe that the
 " plaintiffs prosecute this suit for the benefit of the Thomas's,
 " The Jury returned verdicts in both cases for the defendants.

- " The J^{ts} moved for a new trial,
 " 1st Because the ~~verdict~~ ^{verdict was against} ~~the Court~~ ^{law & evidence of} ~~the Jury~~ ^{the Court}
 " 2^d Because the instructions given by the Court to the Jury at the
 " request of the defendants was against law,
 " 3^d Because the Court excluded Samuel B. White, as a witness."

" The Motion for a new trial was overruled by the Court, &
 " the plaintiffs excepted to the decision of the Court, & prayed that
 " their bill of Exceptions may be allowed, signed & sealed
 " by the Judge, & made part of the record in this cause, which
 " is done."
 " O. Catow. (Scrib.)"

And afterwards, to wit, on the 9th day of November,
 A.D. 1848, the said plaintiffs filed in the Clerk's office of the
 Court aforesaid, an appeal bond in the words & figures
 following to wit,

(App. Bond.)

" Know all men by these presents, that
 we A. S. Curtin, John Griswold, Mathew Griswold,
 Samuel Thomas, & Mrs. F. Thomas, of the County of Stark &
 State of Illinois, are held and firmly bound, unto Alfred
 Putnam, and William Wheeler, in the penal sum of one hundred

dollars, for the payment of which, well & truly to be made,
we, & each of us, bind ourselves, our heirs, Executors & administrators,
jointly & severally, & firmly by these presents, sealed with our seals,
and dated at Toulon this Eighth day of November, Anno Domini,
one thousand eight hundred and forty eight.

The Condition
of the above obligation is such, that, whereas Alfred Putnam,
& William Wheelw, did on the Eleventh day of October, A.D.
1848, in the Circuit Court, within and for the County of Stark,
and State of Illinois, obtain a judgment against the above
bound Curtinius & Griswold, for the sum of sixty dollars
& three cents, Costs of suits, from which judgment, the said
Curtinius & Griswold, have prayed for, and obtained an
appeal to the Supreme Court of said State, - Now if the said
Curtinius & Griswold, shall duly prosecute said appeal,
and shall moreover pay the amount of the judgment, Costs,
interests & damages, rendered, & to be rendered against them,
the said Curtinius & Griswold, in case the said judgment
shall be affirmed in the said Supreme Court, then the above obli-
gation to be null and void, otherwise to remain in full
force and virtue. Alfred G. Curtinius, (Seal) John S. Griswold,
(Seal) Mathew Griswold, (Seal) Samuel Thomas, (Seal)
Mr. S. Thomas, (Seal)

State of Illinois, 3
Stark County, ss. 3

I Oliver Whitaker, Clerk of the Circuit Court
within & for the County of Stark, & State aforesaid, do hereby certify
that the foregoing, contains a full & perfect transcript of the
record, in Causes, numbered ten & thirteen. Witness My hand,
and the Seal of said Court, at Toulon, this
26th day of December A.D. 1848, Oliver Whitaker,
Clerk.

39
Curtinias & Griswolds,

vs
Wheelw & Putnam,

Transcript.

20
15
100
10

Filed June 13. 1849.
Leland Clk.

\$5. paid Clk. by Petrus.

Clerks fees. viz,

For transcript. ——— \$4.25

Cost of rat. ——— 50

taking & filing Bond. ——— 56 1/4
\$5.81 1/4

100002

State of Illinois, ss.

Supreme Court, Third Grand Division, at Ottawa:

The People of the State of Illinois, to the Sheriff of Stark County---Greeting :
WE COMMAND YOU, That of the goods and chattels, lands and tenements, and real estate of

William Whelan & Alfred Putnam

you cause to be made the sum of *twenty one* dollars and
thirty five & a fourth cents costs in the said Supreme Court, which *Alfred C. Cur-*
terius, John V. Griswold & Matthew Griswold

lately recovered against *them* - before the Justices of our said Supreme Court, as appears to
us of record, and make return hereof in ninety days.

WITNESS, the Hon. SAMUEL H. TREAT, Chief Justice
of our said Court, and the Seal thereof, at Ottawa,
this *16th* day of *July*
in the year of our Lord one thousand eight hundred
and *forty nine*.

Deland Clerk of the Supreme Court.

Supreme Court.

Alfred G. Cutinius et al.

vs
William Wheeler et al.

Execution.

Bill of Costs $\$21.35\frac{1}{4}$

Fee Bill 3.50

Amount $\$24.85\frac{1}{4}$

Filed Sept. 27. 1849.
Wheeler Clk.

Came to hand July 21st at 5 o'clock P.M. 1849

I could not find any papers belonging to the within
named William Wheeler & Charles Putnam to convey
this execution upon the said I cannot have the money
ready as commenced Sept 22nd 1849
Wm Wheeler
Charles Putnam
1849
John Hardy Sheriff
Wheeler Clk.

Supreme Court, 3^d Grand Division - June Term 1849.

Alfred G. Curtains, John L. Gisswald & Matthew Gisswald

Appeal from Stark.

William Mauler & Alfred Putnam

jud. adv. & same rends. -

Appellus costs = Apper. 25,	fil. & ent. joint 31 ^q ,	bill of cert 37 ^q ,	Appy 25,	1.18 ^q
Cert. & seal 50,	fil. & Dr. 18 ^q ,	Shpps. retur. 12 ^q ,	sat. pr. 25, Dr. ju 125,	2.31 ^q
			Am't.	\$ 3.50

State of Illinois, ss.

Supreme Court—Third Grand Division, at Ottawa:

The People of the state of Illinois to the sheriff of *Stark* — county --- Greeting:

WE COMMAND YOU, that of the goods and chattels, lands and tenements of *William Mauler & Alfred Putnam* — you cause to be made the sum of *three dollars* — dollars and *fifty* — cents, the amount of the foregoing bill, which is due and unpaid, and is a true copy from the Fee Book in my office; and hereof make due return in ninety days.

WITNESS, the Hon. SAMUEL H. TREAT, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this *16th* day of *July* A. D. 18*49*.

Beland Clerk of the Supreme Court.

I could not find any property belonging to the within
named William Whelan & Alfred Hutchinson to levy this fee
bill upon therefore I can not have the money ready as
commanded Sept^r 22^d 1849

Fees returning

12¹/₂

John Finley Sheriff

State of Ill

Filed Sept. 27. 1849
Whelem Clerk

Superior Court
Alfred G. Hutchinson
William Hutchinson
Fee Bill \$3.50