

No. 11940

Supreme Court of Illinois

Petrie, et al

vs.

Newell

71641 7

McHenry Co.
Henry Petrie et al, implor.
vs.
John Newell.

11940

1852

Prepaid

Henry DeTra & others
vs
John Maxwell } Appellants from the
} Madison County
} Circuit Court

And now comes the
Appellant by C. Malum the Atty
and says that the Court erred
in rendering judgment in this to
wit

1st The Court erred in permitting the promissory
notes in the first & second Counts of the
plaintiff's declaration mentioned - to be
given in evidence under the Common
Law Counts, after rejecting them under
the special counts

2^o The Court erred in permitting the notes
to be given in evidence under the Common
Counts, there being no count account
filed with the declaration - except
a copy of said notes & assignments

3 The Court erred in overruling a
motion for a new trial

C. Malum
for Plaintiff

Given 2 Steam

Me. No way.

A. P. Thomas & Co.

John Maxwell

W. H. P. Jones

Filed June 30th 1852.

R. W. Leland D. C. C.
By J. P. Leland
Clerk.

John W. ...

vs

Henry P. ...

Superior Court June Term 1852

and said defendant in error by Church & Willard his attys depts &c & says that there are no such errors in the record of said case as are above assigned by said plaintiff in error &c

Church & Willard
Attys for Deft in error

United States of America

State of Illinois
McHenry County of Illinois before the Honble James
T. Wilson Judge of the thirteenth Judicial Circuit of the State of Illinois
and presiding Judge of the of the McHenry Circuit Court at a Circuit Court begun and held
at the Court house in Woodstock in said County
and State aforesaid on the fifteenth day of
September in the year of our Lord one thousand
Eight hundred and fifty one and of the Independence
of the said United States the twenty fifth.

Present the Honble James T. Wilson
Judge
Attest J. H. Johnson
Clerk
J. H. Platt
State attorney
John Brown
Sheriff

Be it remembered that heretofore to wit, on the
twenty second day of March, in the year of
our Lord one thousand Eight hundred and
fifty one at Woodstock aforesaid a certain writ
of Summons was issued out of the office of
the Clerk of the Circuit Court of said County in
the words and figures following that is to say.

State of Illinois of The People of the State
McHenry County of Illinois to the Sheriff
of said County Greeting.

We
Command you that you summon George Peter,
Christopher McKee, Robert G. Schuyler, James
C. Brown, George T. Kassar, James Alfred Smith
C. Bush

Franklin Safford Joshua J. Bannister William
 Spoon Peter W. Ditz Arny A. Gutz George A.
 Griffin John S. Fowler Charles W. Goodrich Joseph
 Knight Galen Spencer Charles Hunt Daniel Stan-
 ley Richard Parsons Nathan J. Reynolds John S.
 Fitch Joseph Swan, Wm. C. Swan Robert Curcott
 and Saml W. Welch. if he shall be found in
 your County personally 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 Woodstock in said County to answer unto
 John Sewell in a plea of trespass on the case
 on premises to the damage of the said Plaintiff
 as he says in the sum of five hundred dollars
 And have you then and there this writ with an
 imprisonment thereon as to what manner you shall
 have executed the same. Witness my hand & the seal
 of our said Court and the seal
 thereof at Woodstock aforesaid this
 22nd day of March A.D. 1857.

(Seal)

J. A. Johnson ^{the Circuit Court}
 Clerk of a

Which said Summons has endorsed thereon.
 Personally served on the within named defendants by
 reading in the hearing. Christopher Maltrap R. G.
 Spruynor J. T. Keston James Anselm Huntington
 Safford Wm. Sloan Peter W. Ditz George A. Griffin
 Charles W. Goodrich Joseph Knight Galen Spencer
 Charles Hunt Daniel Stanley Richard Parsons
 John S. Fitch Wm. C. Swan April 3rd 1857.
 John Bunn

Made April 14 1857
 J. A. Johnson
 ©

Shuff
 By S. W. McMaster
 Deputy

And thereupon to wit on the 2^d day of April
A.D. 1851. the said plaintiff filed in the office
of the Clerk of the Circuit Court of said McHenry
County his declaration in writing in the words and
figures following that is to say.

State of Illinois of McHenry County Circuit
McHenry County of Court April Term A.D. 1851.

John Sewell the plaintiff in this suit complains
of Henry Peter Sygier C. Bunn Derrick C. Bush
William How George H. Giffing Joseph Knight
Samuel Blum for John J. Mitch Christopher
McKee George J. Kesson Mansfield Safford
Peter H. Ditz John J. Douglas Calvin Steyer
Richard Parsons Joseph Gunn Robert J. Schuyler
James DeFulid Joshua Bannitt Amy W. Gages
Charles M. Goodrich Charles Hunt Nathan P. Ingalls
William C. Spa Dew Robert A. Gauntt Saml W. B.
Cher who have been summoned in a paper of
trespas on the Cure on promiss. For that whereas
the said defendants and James Hutchins, and
one William H. Combs were licensed heretofore
to wit. on the first day of June in the year A.D.
1846 at Noxestrop to wit in the County of Mc
Henry in the State of Illinois made their
certain promissory note in writing bearing date
the day and year aforesaid, and then and
then promised ^{by the name and style of the McHenry County Printing Company} to pay on demand to James
Hutchins of the firm of Messrs and Partners of the
McHenry County Printing Company the sum of one
hundred and eleven ⁵² / 100 dollars with interest and
then and then deliver the said promissory note
to the said James Hutchins and the said plaintiff
in fact saith that after the making of said note
and before the payment of the sum of money therein
mentioned died leaving his last will in and by

which said last will and testament he appointed
Quincy W. Hutchins Executor and Henry Peter execu-
tor of said last will and testament of said
James Hutchins deceased and letting testamentary
moneys duly spent by the Court of Probate in and
for the County of McHenry aforesaid on or about
the seventh day of September A.D. eighteen hundred
and forty eight to the said Henry Peter and
Quincy W. Hutchins and they were then and there
appointed by said Court Executors & Executrix of
the estate of said James Hutchins deceased and
the said Quincy Hutchins Executor and Henry Peter
Executrix of the estate of James Hutchins deceased
is such Executor & Executrix before said the sum of
Money in said note mentioned was paid to wit on
the day and year last aforesaid indorsed and deliv-
-ered the said note to the plaintiff who then and
there became the legal owner and holder of said
note by means whereof and by force of the statute
in such case made and provided the said
defendants then and there became liable to pay
to the said plaintiff the said sum of money in
the said promissory note specified and being
so liable the said defendants in consideration
thereof afterwards to wit on the day and year last
aforesaid at the County of McHenry aforesaid
the said defendants impudently and then and
there promised to pay the said plaintiff the said
sum of money in said promissory note specified
according to the tenor and effect thereof.

For that
whereas the said defendants and one James
Hutchins and one William F. Combs since deceased
heretofore to wit on the fifteenth day of January
A.D. Eighteen hundred and forty seven at
Hoodstock to wit in the County of McHenry in

the State of Illinois by the name and style of
the McHenry County Printing Company made their
certain promissory note in writing bearing date
the day and year aforesaid and then and
then by the name and style of the McHenry County
Printing Company promised to pay one day after
date for date to James Hutchins the sum of one
hundred and two $\frac{33}{100}$ dollars with interest and
then and then delivering the said promissory note
to the said James Hutchins and the said plaintiff
in fact, to wit that after the making of said note
and before the payment of the sum of money therein
mentioned said James Hutchins died leaving his
last will and testament in and by which last will
and testament he appointed Emily W. Hutchins Ex-
ecutrix and Henry Peter Executors the last will
and testament of said James Hutchins deceased
and letters testamentary were duly issued by the
Court of Probate in and for the County of McHenry
aforesaid on or about the fourth day of September
A.D. eighteen hundred and forty eight to the said
Emily Peter and Emily Hutchins and they were
then and then appointed by said Probate Court
Executrix & Executors of the goods and Estate of said
James Hutchins deceased and the said Emily
Hutchins Executors and Henry Peter Executor of the
Estate of James Hutchins deceased as such Executors
& Executors before the said sum in said note was
paid to wit. On the day and year last aforesaid
incurred and delivering the said note to the plaintiff
who then and then became the legal owner and
bearer of said note. by means whereof and by the
force of the statute in such case made and provided
the said defendants then and then became liable
to pay the said plaintiff the said sum of money in
the said promissory note specified and being so
liable the said defendants in consideration thereof

afterwards went on the day and your last affidavit
at the County of McHenry aforesaid the said defen-
dants unexpecting and then and there promised
to pay the said plaintiff the said sum of money
in said promising note specific according to the
tenor and effect thereof

And whereas also the said
defendants and one James Hutchins and one
William J. Combs on the first day of March A.D.
Eighteen hundred and fifty one was indebted
to the said plaintiff in the sum of five hundred
dollars on an account then stated between them
and whereas the said defendants promised to pay
the said sum of money when they should thereafter
be requested yet the said defendants have disrepa-
red their promise and have not nor hath either
of them paid any of said moneys or any part thereof
to the plaintiff damages of five hundred
dollars and thereupon he brings suit &c.

A. M. Platt, attorney for
the Plaintiff

Copy of notes declared on

Woodstock Jan 15 1847
One day after date for value recd the
McHenry Co Printing Co promise to pay to Jas Hutch-
ins or order one hundred and thirty³³ dollars
with int
J. Leight Jun

On the back of said notes is the following agree-
ment "No hereby assign within note to John
Bevelly without incurring any liability ourselves or
on the part of of the estate of James Hutchins decd

Henry Petri
Emily H. Hutchins
Executing & Executor of James Hutchins
decd Emily Hutchins executrix

Woodstock 1st June 1846

For value Received of James Hutchins, we promise
to pay to him or his or order one hundred &
thirty 52/100 dollars on demand and interest
Annually for the McHenry County printing Company

James Hutchins
Henry Petrie
S. C. Tamm

James
Hutchins

On back of said note is the following endorsement.
We hereby assign the within note to John Sewell
without incurring any liability ourselves or on the
part of the estate of James Hutchins decd

Henry Petrie, Executor
of the estate of James Hutchins decd
Orsely H. Hutchins decd
Agent of the estate of
James Hutchins decd

Orsely Hutchins Executor.

Filed April 29 1837

J. A. Johnson

Clare

And afterwards to wit on the 22nd day of September
in the year last aforesaid, one of the said defendants
to wit Henry Petrie filed his return pleas, the said pleas
they being in possession at Woodstock aforesaid, in
the words and figures following to wit

Henry Petrie et al

vs
John Sewell

Assumpsit.

And says Comes the
above named defendant and
for other and further plea in this behalf says that
the said plaintiff has aforesaid action thereof against
them ought not to have and maintain because they

than the said promissory notes in the first and second
Counts of the said plaintiff declaration mentioned
were not endorsed at the time in said declaration
mentioned but was endorsed some time in the
beginning of the year 1839 and the said defendant
further avers that at the time of said endorsement
the said Henry Petre was not the executor of the
said James Nechtens, and but that on the 29th
day of November A.D. 1849 the said letters testa-
mentary of the said Henry Petre were proved
by Simey Joslyn, who is Probate Justice and has
jurisdiction in the subject matter as appears by the
records of the said Court of McKim County Ills and
this they are ready to verify whosoever they may judge
meets &c. Henry Petre

Sworn & subscribed before
me this 21st Sept 1851

J. H. Johnson Cleric

Ordered New Sept 23rd 1851
J. H. Johnson Cl.

And thereupon to wit on the day and year last
aforesaid it being one of the days of the late
September term of said Court as aforesaid the said
plaintiff filed his replication in the words and
figures following to wit

John Howell

Henry Petre and others } And now comes the said
plaintiff and for replica-
tion to the plea of the defendant by him secondly
above pleaded and says that he ought not to be
barred from further suing and maintaining his
aforesaid action because he says that the said
Simey Joslyn Probate Justice of the Peace in and
for McKim County at the time he made said

order as in said plea alleged had not jurisdiction
of the matters and things in said order or of
the person of the said Henry Peter nor had he
any legal right to make such order at the
time the same was made and that the said
plaintiff parts upon the County & C.

And the defendants with the like

McClure for depts
Under seal this Sept 22^o 1857

J. A. Johnson CW

And afterwards to wit on the 29^o day of September
in the year last aforesaid the said defendants filed
their return plea in writing. the said Court there
being in session as aforesaid, to wit

State of Illinois In McHenry County Circuit
McHenry County } Court Sept. Term 1857

Christopher Walkup

James Dupuis

Franklin Safford

Peter W. Kelly

Josiah Dought

Calvin Spenser

Charles Hunt

Samuel Blair Jr

John J. Fitch

George T. Kassen unpleaded with others

etc

John Newell

And the said above named
defendants by McClure and Murphy their attorney
do and defend the wrong and injury when
and for plea says that they did not promise and
indulgence in manner and form as the said plain
tiff.

in his said declaration both thereof Complaind
against them and of this they put themselves
upon the Country &c.

And for other and further
plea in this behalf said defendants say that the
said Henry Petrie and the said George Hitchin
were not Executors and Administrators of the last will
of James Hitchin's dec'd at the time they made
said endorsement in said declaration mention'd
and that they are ready to verify wherefore
they pray Judgment &c.

And for other and
further plea in this behalf the above named
defendants say actio non because they say
that Josiah Wright was not Treasurer of the
McHenry County printing Company and had no
authority to execute said note in said first Count
of said declaration mention'd & that they are ready
to verify wherefore they pray judgment &c.

And for
other and further plea in this behalf the said
above named defendants say actio non because
they say that at the time of said supposed
encashment on said promissory notes in said
the first and second Counts of said declaration
mention'd the said Henry Petrie was not the Executor
of James Hitchin's dec'd and that said first
project assignment was not made until on or about
the twenty second day of March Eighteen hundred
and fifty one and that said Henry Petrie before
said endorsement was made (his said letting of
Administration was revoked) and that they
are ready to verify wherefore they pray judgment
&c.

Conceded

Filed Sept 24 1851

J. A. Johnson Clerk

McClure & Murphy
Atty for Defs

And afterwards to wit. On the 4th day of October
in the year last aforesaid, the said Circuit Court
then being in session as aforesaid, the said defend-
ants filed in the office of the Clerk of the Circuit
Court of said County their return and of exceptions
in the writs and papers following that is to say

John Russell

Henry Petri et al }
By it remembered that on
this day of September A.D.
1857 the above entitled Cause came on to be heard
before the Hon. J. H. Wilson Judge of the 13th Judicial
Circuit a Jury being named by the parties and
the Cause submitted to the Court for trial. Whereupon
the Plaintiff introduced two promissory notes with
the endorsements thereon in evidence to the effect
of which the defendants by their Counsel
objected on the ground that Henry Petri one
of the assignors of the notes was not executor of
of the last will and testament at the time he
made said endorsements on said notes. Whereupon
the defendants introduced the following testimony
to wit.

Thomas W. Platt who testified that the endorse-
ments were made on said notes but a short time
previous to the commencement of this suit and after
the 29th day of November A.D. 1850. The defendant
then offered and read in evidence the following order
of the Probate Court of the County of McHenry.

State of Illinois }
McHenry County } Special Term of the Probate
Court held November 29th
1849 Present S. Joslyn P. J. P.
It being the first
time to hear and determine the matter why the

Letters of Executorship in the Estate of James Hutchins
decd. should not be recorded Nov 2^d 1846
Henry Petre did not appear to show cause why
his letters of Administration should not be record-
ed. It is ordered by the Court that in consequence
of the said Henry Petre total neglect to make his
report as the said Administrator and refusing to
obey the order or Citation to appear and show cause
for so neglecting to obey said order it is ordered
by the Court that the letters testamentary on the
part of Henry Petre be recorded.

Smiley J. Slyn P. S.

which was all the evidence offered.
Whereupon the
Court rejected said notes as evidence under the two
first Counts in plaintiffs declaration.

After which the
plaintiff offered said notes in evidence under the
Common Count of said declaration to the introduction
of which the defendant by his Counsel objected
which objections were overruled by the Court and the
notes received in evidence which was all the evidence
offered.

\$111.52

Woodstock 1st June 1846

For value received of James Hutchins We promise
to pay him or his order One Hundred and Eleven
52/100 Dollars on demand and interest annually.
For the McHenry County printing Company

James Hutchins
Henry Petre
S. C. Brown

James Hutchins

McHenry County printing Company

Arts \$111.52

Arts as described in bill
of exceptions.

due on demand

We hereby assign the within note to John Sewell
without incurring any liability ourselves or on the
part of the estate of James Hutchins dead

I hereby assign the ^{Henry Peter} Executor of the Estate of
within to John Sewell James Hutchins dead
Emily A. Hutchins Emily A. Hutchins
Executrix of the Estate of Executrix of the Estate of
James Hutchins dead James Hutchins dead

Woodstock Jan 15 1847

One day after date for value recd the
Messrs Co Printing Co promise to pay to James
Hutchins or order one hundred and two 3/4
Dollars with int J Knight Treas.

McHenry County Printing Company Note \$102 3/4

No 2. described in bill of exceptions.

We hereby assign
the within note to John Sewell without incurring any
liability ourselves or on the part of the estate of James
Hutchins dead

I hereby assign the within ^{Henry Peter} Executor & Executrix of the
to John Sewell Estate of James Hutchins
Emily A. Hutchins dead
Executrix of the estate
of James Hutchins dead

Whereupon the following
judgments was rendered by the Court

John Sewell }
Henry Peter et al } Assigns
And now come
the parties by their respective attor
nis and issue being joined this Cause is submitted to

to the Court for trial without the intervention of a jury by the agreement of the parties.

John Sewell

vs
Henry Petrie Christopher
Mulliken Robert S. Saffrey
George T. Nasson James Cupido
Franklin Safford Wm. Snow
Peter W. Ditz George A. Guffney
Charles W. Woodruff Josiah Knight
Catharine Spencer George Hunt
Samuel Blum Jr. Richard Parsons
John S. Hitch and William C. Sed. Adm.
impleaded with D. C. Bushy and others

Shumpert

And your Court
the parties by their respective attorneys and thereupon
the plaintiff introduced in evidence under the Court
men Court in his declaration a note in writing
to the introduction of which the defendants by their
their attorney objects and the Court being fully advised
therein overrules the said objections of the said defen-
dants to the opinion of the Court in overruling the
objections of the defendants, the defendants by their
Counsel excepts. And the Court being fully advised
in the premises finds the issue for the plaintiff and
assesses his damages at the sum of two hundred
dollars and seventy five dollars and seventy six
cents. It is therefore ordered considered and
adjudged by the Court that the plaintiff have
and recover of the defendants the sum of two
hundred and seventy five dollars and seventy
six cents his damages, so assessed as also
his costs and charges having expenses and
that he have execution therefor.

To the opinion of the Court

of the Court in rendering said judgment the defendant also by his Counsel excepts

And thereafter to wit on the 4th day of October in
the year last aforesaid the said Court then being
in session as aforesaid the following order was
entered of record in said Court to wit.

John Howell

vs

Appellant

Henry Peter Christopherson
Nathaniel Robert G. Schuyler
George J. Kasson James Duffield
Franklin Safford, Wm. Stow
Peter W. Ditz George H. Griffing
Charles W. Goodrich Josiah Dight
Cyrus Spencer Charles Hunt Quincy
Blair Jr. Richard Puring John S.
Nitch and William C. Say Don
imprisoned with D. C. Bush and others.

And the
Court being fully advised on the motion for a
new trial formerly entered herein overules the
same, to the opinion of the Court in overruling the
motion for a new trial the defendants by their
counsel except. And thinking the said defendants
Henry Peter Josiah Dight James Duffield and
George J. Kasson pray an appeal herein which
is granted on condition that they enter into a
bond in the sum of five hundred dollars within
thirty days with Robert G. White and John White
their surety.

And thereafter to wit on the 30th day of October
in the year of our Lord one thousand eight
hundred and fifty one the defendants filed
in the office of the Clerk of the Circuit Court
an appeal bond herein in the name and
figures following to wit

Know all men by these presents that we
Henry Peter James Duford Josiah Daight
and George T. Nasson who are impleaded with
Christopher Nutkirk Robert Schreyer Franklin
Safford William Sloan Peter H. Aitz George H
Giffing Charles H. Goodrich Edwin Shering Charles
Mont. Daniel Bluff Richard Parsons John G
Mitch and William C. La Par as principals and
Robert M. White and John White signatories are
held and firmly bound unto John Sewell
of the County of McHenry and State of
Illinois in the penal sum of six hundred doll
ars current money which payment well and
truly to be made to and each of us bind
ourselves our heirs executors administrators and
assigns jointly jointly and severally by these pres
ents. Witness our hands and seals at Woodstock
the 23rd day of October A.D. 1831

The execution of
the above obligation is such that whereas the above
named John Sewell did at the late September
term of the Circuit Court of said County on the
fourth day of October inst. receive a judgment
against the above bounden Henry Peter James
Duford Josiah Daight and George T. Nasson
impleaded with the above named Christopher
Nutmirk and others for the sum of two hundred
and seventy five dollars and seventy six cents
damages and costs of suit from which said judg
ment the said Henry Peter James Duford
Josiah Daight and George T. Nasson impleaded
as aforesaid has taken an appeal to the Supreme
Court of the State of Illinois. Now if the said
Henry Peter James Duford Josiah Daight and
George T. Nasson shall prosecute their appeal
with effect and shall pay and satisfy the judg
ment interest and costs and damages in case

the said judgment shall be affirmed in the said
 Supreme Court then the above obligation to be
 void otherwise to remain in full force and virtue
 Taken up & entered into before Henry Pitkin Clerk
 on the 23rd day of Oct 1837 James Dufur
 as to Dufur & Kassin Elizabeth Doughty
 J. H. Johnson Clerk Wm T. Kassin
 Once as to Doughty Oct 24th Robt J. White
 as to H. Pitkin, Oct 29. as to John White
 R. J. White & John White Oct 31st 1837
 J. H. Johnson Clerk

Received
 Paid Oct 31st 1837
 J. H. Johnson Clerk

State of Illinois of the undersigned Clerk
 McHenry County of the Circuit Court in
 and for the said County
 in the State aforesaid do hereby certify that the foregoing
 is a true and perfect copy of the record and
 proceedings in this office in the above entitled cause
 Witness my hand and the seal of said
 Court at Woodstock in said County
 this 28th day of May 1852
 J. H. Johnson
 Clerk

11-04613

McHenry Co.

Henry Petreotals. impl. sec.

vs.

John Newell

Record.

Filed June 10th 1852.
L. Siland Clk.
By P. H. Siland Esq.

Due \$5.60