

No. 8644

Supreme Court of Illinois

Wm. G. Bowman

vs.

Milton Bartley

71641  7

Pleas had in the Circuit Court of Gallatin County Illinois before Hon Wesley Sloan presiding Judge of the nineteenth judicial circuit.

On the 23rd day of April A.D. 1857 Milton Bartley filed in said Court a declaration in the words and figures following to-wit:

State of Illinois $\frac{2}{2}$ 53 May Term 1857
Gallatin County $\frac{2}{2}$ Gallatin Circuit Court

Milton Bartley the plaintiff in this suit complains of William G. Bowman the defendant in this suit - Summoned &c in a plea of debt that he render unto the said plaintiff the sum of \$ 76.²⁵ in which he owes to and unjustly detains from him - For that whereas the defendant on the sixth day of January in the year of our Lord eighteen hundred and fifty seven at Shannectown to-wit in the County of Gallatin and State of Illinois made his promissory note in writing and then and there delivered the same to John W. Lunnell and thereby promised to pay to the said John W. Lunnell or order the sum of \$ 76. 25 one day after the date thereof for value received which period has now elapsed and the said John W. Lunnell then and there indorsed the same to the plaintiff whereof the defendant then and there had notice and then and there in consideration of the premises undertook and agreed to pay the amount of the said note to the plaintiff according to the tenor and effect

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thereof yet the plaintiff avers that said defendant has not paid said note or any part thereof according to the tenor and effect, or in any manner whatever though the same has been long since due and payable but to pay the same or any part thereof has hitherto wholly failed and still doth fail to the plaintiffs damage of \$50.00 and therefore he sues him

Milton Bartley atty for plff

Copy of note sued on

"One day after date I promise to pay to John W. Lunnell or order the sum of Seventy Six dollars & 25 cents for value received of him

Shannectown Jan 6th 1857

Wm G. Bowman"

And on the 27th day of May A.D. 1857 the defendant filed the following pleas numbered One (1) nine (9) and ten (10) (with others which were subsequently withdrawn) in the words and figures following to-wit:

"W. G. Bowman
ats Milton Bartley of the May Term of the Gallatin Cir Court 1857

And the said defnd by Ingersoll his attorney comes and defends the wrong & injury whereof and says that he does not owe to the said plaintiff the

Said sum above demanded or any part thereof in manner and form as the said plaintiff hath above complained against him and of this he puts himself upon the Country &c

Ingersoll
atty for deft

"And the plaintiff doth
the like

Partly for plff"

"Commence of the May Term of the Circuit Court 1837
at
Partly

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And the said defendant for a further plea in this behalf says that before the commencement of this Suit the said defendant assigned to the said plaintiff a certain note upon one James S. Bearden for the sum of Sixty five dollars and twenty three cents without recourse and the said plaintiff in consideration thereof then and there agreed to credit the said debt upon said note in said declaration mentioned with the said sum of Sixty five dollars and twenty three cents wherefore the said defendant avers that he has paid to the said plaintiff the said sum of Sixty five dollars and twenty three cents and this he the said defendant is ready to verify
Ingersoll for deft

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“*Return* of the May Term of
at 3 the Gallatin Circuit Court
Barthley & A 10 1857

And the said deft for a
further plea in this behalf says
that before the commencement of
this suit he paid to the said plaintiff
the sum of fifty dollars good and
lawful money &c and also one
horse of the value of twenty dollars
and one sheep of the value of one
dollar and fifty cents all of which
the said defendant then and there
agreed to credit upon said note
and this he the said defendant is
ready to verify
Ingersoll atty for deft”

And on the 29th day of May A 10 1857
the plaintiff filed the following repli-
cations numbered one (1) nine (9) and
ten (10) (with others to the pleas which
were subsequently withdrawn) in the
words and figures following to-wit

“Milton Barthley Of the May Term
vs 1857 of the Gallatin Cir-
William G. Bowman cut Court

(1)

And the said plaintiff as to said
defendants first plea herein above
pleaded by him the said defendant
says precludi non because he says

that said note has been made and executed within sixteen years before and at the time of the commencement of this suit and of this he puts himself upon the Country wherefore he
Barthly for self

“And the said plaintiff as to defendants plea ninthly above pleaded herein says he ought not to be barred from recovery on the said note mentioned in said declaration for and by reason of anything in said plea stated because he says that before the commencement of this suit the said defendant did not assign to the said plaintiff a certain note upon one James S. Bearden for the sum of sixty five dollars and twenty three cents without recourse and the said plaintiff in consideration thereof then and there did not agree to credit the said debt upon said note in said declaration mentioned with the said sum of sixty-five dollars and twenty three cents and of this he puts himself upon the Country
Barthly for self”

“And the said plaintiff as to said defendants 10th plea pleaded herein says that before the commencement

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of this suit the said defendant did not pay to the said plaintiff the sum of fifty dollars good and lawful money &c and also one horse of the value of twenty dollars and one sheep of the value one dollar and fifty cents all of which the said defendant there and then agreed to credit upon said note and of this he the said plaintiff puts himself upon the country
Bartley for pay

On the 28th day of October A.D. 1837 the Circuit Court made the following order in the words and figures following to-wit

Wednesday 28th October 1837

Milton Bartley Debtor
vs
William S. Bowman Plaintiff

On this day came the plaintiff in his own proper person as also the defendant by Ingersoll his attorney and with drew pleas to-wit 2. 3. 4. 5. 6. 7. 8. 11. 12. 13. 14. 16. 17. 18. 19. & 13 and entered his motion for discontinuance this action where which motion is by the Court overruled and came submitted upon proofs being heard the Court being now sufficiently advised finds that the

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with James H. Hart his security

And on the 28th day of November A.D. 1857 the defendant filed in the office of the Clerk of the Circuit Court an appeal bond in the words and figures following to-wit

"Know all men by these presents that we William G. Bowman and James H. Hart are held and firmly bound unto Milton Bartley in the penal sum of Two Hundred dollars lawful money of the United States for the payment of which well and truly to be made we bind ourselves our heirs administrators and assigns jointly and severally and firmly by these presents Witness our hands and seals on this 28th day of November A.D. 1857

The condition of this obligation is such that whereas on the 28th day of October 1857 the said Milton Bartley recovered a judgment in an action of debt in the Circuit Court of said County of Gallatin against the above bounden William G. Bowman for the sum of Seventy nine dollars and thirty-four cents debt and costs of suit and whereas the said William G. Bowman has prayed an appeal from the said judgment to the Supreme

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Court of the State of Illinois
Now if the said William G.
Bowman shall pay the said judgment
costs interests and damages in case
the said judgment shall be affirmed
and shall duly prosecute his said
appeal then this obligation to be void
otherwise to remain in full force and
effect

William G. Bowman *Seal*
James H. Hart *Seal*

State of Illinois }
Gallatin County } *Seal*

I James Davenport Clerk
of the Circuit Court in and for said
County and State aforesaid do hereby
certify that the foregoing of nine pages
is a true and perfect copy of all the
orders had in this cause at the October
Term of the Gallatin Circuit Court
as also a perfect and true copy of the dec-
laration filed in the foregoing cause
of all pleas and replications that were not
withdrawn, with the judgment of the
Court, and appeal bond thereon filed
with the correct date of the filing of
each

Given under my hand and
Seal of office at Shawanatown this
15th day of July A.D. 1838
James Davenport Clerk

The Appellant assigns for error
in the foregoing record
and proceedings that the Cir-
cuit Court erred in not
specifying how much of the judg-
ment is for debt, and how much
for damages.

Olney attorney
for Appellant

Index in Appeal
Baxter for
appellee

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William G. Bowman

Milton^{vs.} Bartley

Appeal from Gallatin

8644

Filed Nov. 10. 1858.

N. Johnston Clk

Paid by Obey - \$ 5.00

Bartley vs Bowman (Appeal)

Judgment below in debt for a certain sum. The error assigned is that the Court does not find the amount of debt and the amount of damages. This cause was tried by the Court without the intervention of a jury. The writ and declaration claimed \$76.25 debt and \$50.00 damages. The Court found in debt \$79.54 and rendered judgment in debt for that sum and for costs.

The general issue & 2 pleas of partial payment were filed & issue joined on same. It is true the judgment is in debt and is for more than is claimed in the writ and declaration. but that fact is not in issue here. The error and only error assigned is that the judgment does not show how much is the debt and how much is the damages. The judgment is all in debt. no damages nor interest is mentioned in the judgment. and it is to be presumed that the Court found no ^{damages} ~~judgment~~ for the plaintiff. if so

the this Court will not inquire into that fact at the instance of the defendant. the Court will not inquire into

any fact at the instance of
any party which just complained
of does the party complaining —
^{any} injury — Then as to this
judgment this Court will not
inquire into any error not assigned.
See first Decree Vol 1. Page 471.

Gilbert & wife vs Maggord. The Court
in that case intimate & say. that the
rule will be adhered to in all cases
except possibly there might be
an exception to the rule in a
case of extreme character where
great injustice might result from
the literal and rigid adherence to
the rule. But I think no such
relaxation of the rule is required in
this case; the Record shows no injustice
no hardship done to the defendant.

his error assigned and complained of
is purely a technical one — and one
that does him no wrong. The
judgment being for some \$3,29
more than is claimed by the
plaintiff and declaration does not
work such extreme hardship
on the defendant as would
call upon this Court to violate

a long established rule of this Court, to enable them to inquire into an amount not assigned. The Court must see that the \$3.27 accrued by way of interest. But it is to be marked that this judgment is not similar to any one of those judgments referred to by the authorities cited by counsel for the appellant - some of those judgments are solely in damages whilst the action is in debt, some are in debt expressing to be the aggregate of debt and interest. But this judgment is in debt alone, the finding of the Court is in debt for \$79.54. without specifying whether or not any part of that sum was for interest or damages - and as that finding the Court below entered the judgment in debt for that sum & costs.

This Court cannot say that the Court below had any evidence of interest or damages. unless perhaps they look to the copy of the note sued on - and if they do this, they can ascertain the

and will also perceive what the interest
or damage should be, and will
I hope enter up in this court
such judgment as the court
below should have done: ~~in~~
The court this court decides this
judgment on the error assigned
to be erroneous. This court in the
Case of Wilman vs Bank 1 Gilb page
671. cited by appellant. reversed the
judgment below and entered judgment
in this court for such ^{judgment} ~~as~~ as should
have been entered in the court
below: and whenever this court has been
called upon to enter up the proper
judgment it invariably does so. if
there be sufficient evidence to allow
it so to do. and when there is not
such evidence the court regrets to
reman a cause merely on a
technicality - Besides } ~~Barthly for~~
this judgment is such } ~~appellee~~
as is warranted by the }
pleadings. the
action is in debt and
the judgment is in
debt as appears by the Record

The informality of entering a judgment is no
cause of reversal see 2 Bibb. / Leans vs Rankin page
88. The error is a clerical error and is amendable
at any time in the court below

and in this case there is no
error assigned to the finding of
the Court. but to the

judgment is not specifying
what is debt & what is damage.
Now if this judgment is not
a judgment in debt. the
finding of the Court is in
debt. and if the Court will
inquire into the judgment
although there is no assignment
of error to the judgment as it is.
~~this Court~~ they will correct the
judgment by making the
proper order

Barthley J. W. Appeller

Barthley vs

Bowman

Argument of
Barthley for
appellee

IN THE SUPREME COURT—STATE OF ILLINOIS—FIRST GRAND
DIVISION—TO NOVEMBER TERM, A. D. 1853.

WILLIAM G. BOWMAN, Appellant, }
vs. } Appeal from Gallatin:
MILTON BARTLEY, Appellee.

This was an action of DEBT, commenced in the Circuit Court of Gallatin County, by Bartley against Bowman. The writ and declaration claimed seventy-six dollars twenty-five cents debt, and fifty dollars damages.

The general issue—and two pleas of partial payment were filed.

Cause submitted to the Court—proofs heard, and judgment against the defendant for SEVENTY-NINE DOLLARS AND NINETY-FOUR CENTS and costs.

The defendant appealed, and seeks to reverse the judgment upon the following assignment of errors:

The Court erred in not specifying how much of the judgment is for debt, and how much for damages.

OLNEY & BOWMAN, Attorneys for Appellant.

Authorities relied on by the Appellant.

Jackson vs. Haskell 2nd Scam 565
 Wilman vs. Bank of Ill 1st Gil. 671
 Heyl vs. Stapp 3rd Scam. 94
 March vs. Wright 14 Ill 248
 Meadors vs. De Loret Sassoule 2 Gil 270

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March vs. Wright 14 Ill. 248
Meager vs. De Lassoule 2 Gil 270*

The case of Meach v. Geo. S. Wright 14 Ill. p 249
is almost precisely in point in point
debt for work & labor \$160.87 - Damages \$100
Gen issue & payment Submitted to Court
issues found for plff. and judgment reversed
& remanded. -

Meach v. De Sossone 2 Gil p 270 & 271
The Court say The judgment ought not
to be general for the aggregate of principal
& interest, but must specify what portion
is the debt and what is given as damages
Judgment reversed & remanded.

Where the judgment below was upon the pleadings, as
default - or discovery, this Court has almost invariably
reversed the case and entered judgment here
But in all cases where there were issues
of fact tried this Court has reversed and
remanded the case

The judgment in this case is for \$19.⁹⁴/₁₀₀ generally
and is not a judgment in debt as the appellee supposes
It does not say that the judgment is for debt.

In the case of Jackson vs. Haskell 2 Scan 565
Action of debt upon a note - ^{new of} - mil debt -
submitted to the Court - issues found for the plaintiff
and judgment in damages - Cause reversed
& remanded

Key vs. Stapp, debt by Petition & Summons
Gen. Issue & set-off. - jury, and verdict in
damages. Judgment accordingly. Judgment
reversed and remanded. 3 Scan 96

In the case of Wilman vs. Bank of Illinois.
1 Gil. p 671. Debt upon a note - four pleas
filed - Gen. Denumer to the four pleas - and
judgment on Denumer for an aggregate
amount of debt and damages, without
distinguishing the amount of each.

Judgment reversed - But as this Court
could ascertain as well as the Circuit Court
the amt of debt and damages the judy -
was entered in this Court

William A. Bowman

^{vs.}
Millon B. Bartley

Abstracts

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Bowman

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Bartley