

No. 11819

Supreme Court of Illinois

Schuttler

vs.

Piatt

71641  7

Cook, Co.
Schuttler v. Piatt

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851

11819
Propert

State of Illinois
Supreme Court. 3rd June Term 1851.

Peter Schuttler. Appellant

vs

William Piatt appellee

And now comes the
said appellant by Judge & Wilson his attorneys
and says that in the record and proceedings
aforesaid and also in the giving the judgment
aforesaid there is manifest error in this that
the judgment was rendered in favor of the
Defendant below whereas judgment should
have been rendered in favor of the Plaintiff

Second. That the Court erred in finding all
of the issues for the Defendant.

Third. The Court erred in overruling the motion
for a new trial made by the Plaintiff below.

And for the errors aforesaid and for
other errors in the record and proceedings
appearing the said appellant prays that
said judgment may be overruled and
reversed and held for nothing.

Judge & Wilson.
Atty for appellant.

United States of America }
State of Illinois }
County of Cook }

Pleas before the Honorable Hugh S. Wickey Judge of the Circuit Court of the Seventh Judicial Circuit of the State of Illinois presiding in the place of the Hon. Giles Spring Judge of the Cook County Court of Common Pleas, and at his request and by agreement, at a regular Term of the Cook County Court of Common Pleas within and for the County of Cook and State aforesaid, begun and holden at the Court House in the city of Chicago in said County and State, on the first Monday being the third day of February in the Year of Our Lord one thousand eight hundred and fifty-one, and of the Independence of the United States the Seventy-fifth,

Present the Honorable Hugh S. Wickey Judge
Daniel Mc Troy Prosecuting Attorney
William S. Church Sheriff
Attest Walter Kimball Clerk

And now at this day, that is to say, on the fourteenth day of February A.D. 1851, as yet of the February Term of this Court begun and held on the first Monday of February instant, the Pleas in said Court begun and held by and before the Honorable Hugh S. Wickey Judge of the Cook County Circuit

court comes the Honorable Giles Spring Judge
of the Cook County Court of Common Pleas before
whom the Pleas in said Court are continued.

It is Remembered, that heretofore,
to wit, on the twenty third day of August in the
year of our Lord one thousand eight hundred & fifty
came Peter Schuttler Plaintiff, by Sudd &
Wilson his attorneys and filed in the office of the
Clerk of said Court his Declaration of a Plea of
Trespas on the case on promises, against William
Platt, Defendant, which said Declaration is in
the words and figures as follows. to wit

State of Illinois }
Cook County Court } of September Term
of Common Pleas } A. D. 1850

Cook County - ss.

Peter Schuttler plaintiff in
this suit by Sudd & Wilson his attorney complains
of William Platt having been summoned to in
a plea of trespass on the case on promises: For that
whereas on the nineteenth day of October in the year
of Our Lord one thousand eight hundred and forty
eight at Chicago in said County one John Arm-
strong Junior by the name & style of John Armstrong
Jr by his note under his hand of that date for value
received promised the said William Platt defend-
ant to pay him or his order fifty day after date
the sum of One hundred Dollars, and the said defend-

and there afterwards on the same day & year last aforesaid by his indorsement of the same note ordered the contents thereof then unpaid to be paid to the said plaintiff according to the tenor thereof.

And the said Plaintiff avers that at the time the said promissory note became due John Armstrong Junior the maker of said note had left the State of Illinois - By means whereof & by force of the Statute in such case made & provided the said Defendant became liable to pay the said Plaintiff said sum of money mentioned in said note & being so liable in consideration thereof then & there understood & promised to pay the same to the said Plaintiff according to the tenor & effect true intent & meaning of said note & of the indorsement aforesaid - To wit at the place aforesaid.

And whereas also on the nineteenth day of October in the year of Our Lord one thousand eight hundred & forty eight at Chicago in said County one John Armstrong Junior by the name & style of John Armstrong Jr by his other note under his hand of that date for value received promised said Defendant to pay him or his order the sum of One hundred Dollars fifty days after date and the said Defendant then afterwards on the same day by his indorsement of the same note in writing ordered the contents thereof then unpaid to be paid to the plaintiff according to the tenor thereof, and the said Plaintiff avers that the said John Armstrong Junior the maker of said promissory note at the time the said note became due was insolvent & unable to pay said note or any part thereof.

and is still insolvent so that the institution of a suit upon said Note against him would have been unavailing, by means whereof & by force of the statute in such case made & provided the said defendant became liable to pay said plaintiff said sum of money mentioned in said Note being so liable in consideration thereof then & there understood & promised to pay the same to the said plaintiff according to the tenor & effect true intent & meaning of said Note & of the indorsement thereof to wit, at the place aforesaid

And whereas also on the nineteenth day of October in the year of our Lord one thousand eight hundred & forty eight one John Armstrong Junior by the name & style of John Armstrong jr by his certain other Note under his hand that date for value received promised the said defendant to pay him or his order the sum of one hundred dollars on or before the first day of February next (the first day of February then next ensuing meaning) and the said defendant there afterwards on the same day by his indorsement of the same Note in writing ordered the contents thereof then unpaid to be paid to the plaintiff according to the tenor thereof, and the said plaintiff avers that at the time the said promissory Note became due John Armstrong Junior the maker of said Note had left the State of Illinois. By means whereof & by force of the statute in such case made & provided the said defendant became liable to pay said plaintiff said sum of money mentioned in said Note & being so liable in consideration thereof then & there understood &

promised to pay the same to the said plaintiff according to the tenor & effect - true intent & meaning of said note & of the endorsement thereof, to wit at the place aforesaid.

And whereas also on the nineteenth day of October in the Year of Our Lord One thousand Eight hundred & forty eight at Chicago in said County one John Armstrong Senior by the Name & Style of John Armstrong Jr by his certain other note under his hand of that date for value received promised the said Defendant to pay him or his order the sum one hundred dollars on or before the first day of February - (the first day of February then next ensuing - meaning) and the said Defendant there after on the same day by his endorsement of the same note in writing ordered the contents thereof then unpaid to be paid to the plaintiff according to the tenor thereof - and the said plaintiff avers that the said John Armstrong Senior the maker of said promissory note at the time said note became due was insolvent so unable to pay said note or any part thereof is still insolvent & that the institution of a suit upon said note against him would have been unavailing - By means whereof by force of the Statute in such case made & provided the said Defendant became liable to pay said plaintiff said sum of money mentioned in said note, & being so liable in consideration thereof then & there undertook & promised to pay the same to the said plaintiff according to the tenor & effect, true intent & meaning of said note & of the endorsement thereof, to wit at the place aforesaid.

And whereas also on the nineteenth day of October in the Year of Our Lord one thousand eight hundred & forty eight at Chicago in said County one John Armstrong Junior by the name & style of John Armstrong Jr by his other note under his hand of that date for value received promised said defendant to pay him or his order the sum of one hundred Dollars on or before the first day of June next (the first day of June then next ensuing meaning) and the said defendant there afterwards on the same day by his endorsement in writing ordered the contents thereof then unpaid to be paid to said plaintiff according to the tenor thereof, and the said plaintiff avers that at the time time the said promissory note became due & payable the said John Armstrong Junior the maker of said note had left the State of Illinois. By means whereof by force of the statute in such case made & provided the said defendant became liable to pay said plaintiff said sum of Money mentioned in said note & being so liable in consideration thereof then and there understood and promised to pay the same to the said plaintiff according to the tenor & effect true intent & meaning of said note and the endorsement aforesaid, to wit at the place aforesaid.

And whereas also on the nineteenth day of October in the Year of Our Lord one thousand eight hundred & forty eight at Chicago in said County one John Armstrong Junior by the name & style of John Armstrong Jr by his certain other note under his hand of that date for value received promised the said defendant to pay him or his order

the sum of One thousand Dollars on or before the first day of June next (the first day of June then next ensuing meaning) and the said defendant there afterwards on the same day by his endorsement in writing ordered the contents thereof, then unpaid to be paid to the said plaintiff according to the tenor thereof - and the said plaintiff avers that when said last mentioned note became due & payable the said John Armstrong Junior was Insolvent & unable to pay the amount of said note or any part thereof & still is insolvent & so the said Plaintiff saith that the institution of a suit on said note against said John Armstrong Junior would have been unavailing - By means whereof & by force of the Statute in such case made & provided the said defendant became liable to pay said plaintiff said sum of Money mentioned in said Note and being so liable in consideration thereof then and there undertook & promised to pay the same to said plaintiff according to the tenor & effect true intent & meaning of said Note and of the endorsement aforesaid, to wit at the place aforesaid.

And whereas also the said Defendant afterwards to wit on the first day of August in the year of Our Lord one thousand eight hundred and fifty to wit at Chicago, in said County, became and was indebted unto the plaintiff in a large sum of Money, to wit seven hundred & Dollars for money before that time lent and advanced to, and paid, laid out and expended for said Defendant by said Plaintiff at said Defendant's

request; and for money before that time had and received by said Defendant to and for the use of said Plaintiff. And also in the like sum, for goods, wares, and merchandise, before that time sold and delivered by said Plaintiff to said Defendant at like special instance and request; and also in the like sum, for labor, care, and diligence of said Plaintiff before that time done and performed by said Plaintiff for said Defendant, and at the like instance and request of said Defendant; and being so indebted, said Defendant in consideration thereof, then and there undertook and promised to pay said Plaintiff said last mentioned sum of money, when thereunto afterwards requested.

Yet the said Defendant, not regarding his said promises and undertakings, but contriving, &c. although often requested so to do, has not paid said Plaintiff either of said sums of money above mentioned or any part thereof, but so to do has hitherto wholly neglected and refused, and still does neglect and refuse, to the damage of said Plaintiff of Seven Hundred dollars, and therefore he brings this Suit &c.

Dodd & Wilson

Atty for Plaintiff

Copy of Note sued on.

Fifty days after date I promise to pay
William Piatt or Order One Hundred Dollars
for Value received

Chicago 19th Oct 1848 John Armstrong Jr
Endorsed. Pay Peter Schuttler or order
Wm Piatt

On or before the First day of February next I promise to pay William Piatt or Order One Hundred Dollars for Value recd

Chicago 19th Oct 1848 John Armstrong Jr
Endorsed Pay Peter Schuttler or order
Wm Piatt

On or before the First day of June next I promise to pay William Piatt or order One Hundred Dollars for Value received

Chicago 19th Oct 1848 John Armstrong Jr
Endorsed, Pay Peter Schuttler or order
Wm Piatt.

And afterwards to wit, on the Eighth day of November in the Year of Our Lord One thousand eight hundred and fifty the said day being one of the days of the October Special term of said Court for the year last aforesaid the following proceedings were had in said cause and entered of Record to wit,

Peter Schuttler

vs
William Piatt

} Attachment

On motion of Budd & Wilson attorney for the said Plaintiff. It is Ordered that this cause be continued to the next term of this Court, with leave to amend the affidavit filed herein.

And afterwards to wit on the Twenty fourth day of February in the Year of Our Lord one thousand eight hundred and fifty one, came the said Defendant by James A Collins Esquire his attorney

and filed in said Cause a Plea, which said Plea is
as follows, to wit

Cook County Court of Com Pleas

William Piatt

^{vs}
Peter Schuller

And the said Defendant by Jth
Collins his attorney comes & defends the wrong & injury
when he and says that he did not undertake to prom-
ise in manner & form as the said Plaintiff hath above
thereof complained against him, & of this he puts
himself upon the Country &c

And the Plaintiff doth the like

Jth Collins
Deft^s Atty

Judd & Nelson Atty for Plaintiff

And afterwards to wit on the Twenty seventh
day of February in the Year of Our Lord one thou-
sand eight hundred and fifty one, the said day
being one of the days of the February Term of
said Court for the year aforesaid, the following
proceedings were had in said cause, and enter-
ed of record, to wit

Peter Schuller

^{vs}
William Piatt

Attachment

And now comes the said
Plaintiff by Judd & Nelson his attorneys and file herein
due proof of publication of notice to the said Defendant
of the pendency of this suit, And thereupon the said Defen-

ant by Collins his attorney also comes. And issue ~~being~~
being joined herein, by agreement of parties this Cause
is submitted to the Court for trial without the inter-
vention of a Jury. And the Court having heard the
evidence and the argument of Counsel, finds the issue joint
for the Defendant, to which finding of the Court the
said Plaintiff excepts, and thereupon enters his motion
for a new trial, and the Court having heard the argu-
ment of Counsel thereon, overrules said motion, to which
the said Plaintiff excepts, and thereupon it is ordered,
and adjudged that the said Defendant have and re-
cover of and from the said Plaintiff his costs and
charges in this behalf expended and that he have execu-
tion therefor.

And thereupon said Plaintiff prays an
appeal, which is allowed upon said plaintiffs within
sixty days from the date hereof filing his bond with
Clement Stone as Security in the penal sum of One Thou-
sand Dollars conditioned as the law directs in cases of
appeal.

And upon the same day to wit the Twenty Seventh
day of February in the year last aforesaid the said
Plaintiff by his Attorneys aforesaid filed in said
Cause a Bill of Exceptions, which said Bill of
Exceptions is in the words and figures as follows, to
wit

Peter Schuttler

vs
William Platt

Cook County Court
of Common Pleas
February Term 1851

It is Reminded, that on this Twenty Seventh day of February 1851. in this present February term, the above entitled Cause came on to be heard upon the issue joined therein, and by agreement of the parties the intervention of a Jury was waived, and the Cause submitted to the Court for trial.

The Plaintiff then read in evidence three promissory notes as follows.

"Fifty days after date I promise to pay William Piatt or order One Hundred Dollars for value received,"
Chicago 19th Oct 1848 "John Armstrong, Jr"
Endorsed, "Pay Peter Schuttler or order" "Wm Piatt"

"On or before the first day of February next I promise to pay William Piatt, or order One Hundred Dollars for value received,"
Chicago 19th Oct 1848 "John Armstrong, Jr"
Endorsed, "Pay Peter Schuttler or Order, Wm Piatt"

"On or before the first day of June next I promise to pay William Piatt, or order One Hundred Dollars for value received."
Chicago 19th Oct 1848 "John Armstrong, Jr"
Endorsed, "Pay Peter Schuttler or Order" "Wm Piatt"

John Gray was then sworn as a witness on the part of the Plaintiff and testified that he has seen the notes above set forth; that he knew Armstrong, the maker of the notes, that Piatt (the Defendant) sold Armstrong a pair of horses and buggy and took the notes in payment: that the notes were made at witness' office in Chicago - that the horses and buggy were in

Mitney living stable when the trade was made and they remained there afterwards for some days. until Armstrong left for his home in Wisconsin - that Piatt lived in the State of Indiana and came to Chicago with a drove of horses, and kept them in Mitney's stable; that after the giving of the notes by Armstrong, and before Piatt returned to Indiana, he sold the notes to Schuttler for some wagons, and thence the trade was made at Mitney's office - and the notes endorsed there, that Schuttler asked Mitney if the notes were good: that Mitney told Schuttler that Piatt was good if Armstrong was not at the time the notes were made, and also when they were endorsed it was stated by Piatt and others that Armstrong lived in the State of Wisconsin up in the Piney; that soon after the trade Armstrong took the horses and buggy & left for home in Wisconsin and Mitney had not seen him since; that Armstrong had not to his knowledge been in Chicago since that time -

On his cross examination, Mitney testified that the notes were transferred by Piatt to Schuttler before they became due, and Mitney believes within two weeks after the notes were made. that at the time the notes were given and endorsed it was stated by the parties that Armstrong lived up in the lumber country in Wisconsin; that Mitney had not seen and did not know of Armstrong being in the State of Illinois since he left for Wisconsin with the horses and buggy soon after he had bought them -

William B Rogers was then sworn and testified that he had known Armstrong from 1842

to the present time, that he did not know of his having any property since he sold an interest in a Farm in 1844 or 1845; that the Farm was near Witney Farm in Fond du Lac County Wisconsin; that soon after the sale of the farm, Armstrong moved to Oconto in Wisconsin and went into the lumber business; that Witney had been unable to collect debts of him, had tried it but could not get anything - that he had known executions to be returned on property -

On Cross Examination he testified that he did not know of but one demand that could not be collected, and that he only knew from what the Justice of the Peace wrote about it - that the only debt that he had any knowledge of Armstrong owing was one in favor of Charles Hollanshee which was sent to a Justice of the Peace at Green Bay for collection; that he did not know that any process had been issued against said Armstrong, or that said Armstrong had any notice that the demand had been sent to Green Bay for collection; that Oconto was some thirty or forty miles from Green Bay, he did not know that Armstrong had been at Green Bay, nor had Witney any personal knowledge of the circumstances of Armstrong since he moved from Fond du Lac to Oconto; that Witney had not lived in Wisconsin for about three years, nor had he resided near Armstrong since he moved from Fond du Lac; that he had no personal knowledge whatever that any effort had been made to collect said demand of said Armstrong; that Witney had been at his Janice and had been traveling most of the time for the last two or three years -

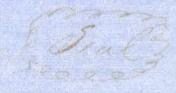
The foregoing being all the evidence in the cause,
the Court found the issues joined for the defend-
ant, to which finding said plaintiff excepted, and
moved for a new trial herein for the following
reasons -

1st The finding herein was against the evidence,

2nd The finding herein was against the law,

3^d The finding herein was against the law
and evidence.

Which motion for a new trial was overruled by
the Court. To which decision said Plaintiff ex-
cepted and prayed the Court to sign and Seal this
bill of exceptions: Which is done.

Giles Spring 

And thereafter, to wit, on the Eighth day
of April in the year of Our Lord One thousand eight
hundred and fifty One the said Plaintiff by
his attorneys aforesaid filed in the office of the
Clerk of said Court his appeal Bond in said cause,
which said Appeal Bond is in the words & figures
as follows, to wit.

Know all men by these presents, that we Peter Sch-
ullter and Clement Stoe, are held and firmly bound
unto William Peck, in the penal sum of One hun-
dred dollars, for the payment of which sum well and
truly to be made unto the said Peck, his heirs, ex-
ecutors, administrators and assigns, we do bind
ourselves, our heirs, executors and administrators,
firmly by these presents, Signed and Sealed with

our Seals at Chicago this Fifteenth Day of April A.D.
1851.

The Condition of the above obligation is such that
Whereas, at the February Term of the Cook County
Court of Common Pleas, last past, in a suit then
and there pending wherein the above named Peter
Schuttler was Plaintiff and William Smith was de-
fendant, such proceedings were had that a Judgment
was rendered against the said Schuttler, from which
Judgment said Schuttler has prayed an appeal to
the Supreme Court, which was allowed upon said
Schuttler entering into bond with Clement Stoss
as Surety in the penal sum of Two hundred Dollars
conditioned as in cases of appeal.

Now therefore if the said Peter Schuttler shall
well and truly prosecute said appeal in the
Supreme Court of the State of Illinois, and pay the
Judgment and interest, and all costs and dam-
ages that may be awarded in case said judgment
shall be affirmed, then this obligation to be void,
otherwise to be and remain in full force and virtue.

In Witness whereof we have hereunto set our
hands and Seals the day and Year above written.

Peter Schuttler Seal
Clement Stoss Seal

State of Illinois
County of Cook

J. Walter Kimball, Clerk

of the Cook County Court of Common Pleas, within
and for the County and State aforesaid, do hereby
Certify that the foregoing is a true and correct copy
and Transcript of the "Declaration", "Plea", "Bill of
Exceptions" & "Appeal Bond", and of all Orders entered
of Record in said Court, now on file in my office
in the cause of Peter Schubler Plaintiff, and
William Piatt Defendant.

In Testimony whereof, I have hereunto
set my hand, and affixed the Seal of
said Court at the City of Chicago in said
County this 29th day of May A.D. 1851.

Walter Kimball, Clerk

W. K.

Cook Co. Ct of Com Pleas

Peter Schuller

vs

William Peatt

Transcript and
appt. of errors.

Filed clay 31st 1854.

L. Seland Clerk.

Recs Transcript &
Cert. \$ 5.75

Peter Schuttler

William Piatt } Appeal from Cook County Court of Common Pleas =

Appellants costs = Fil. record & proc. 20, fil. errors, apper. 25,	.50
Dr. cause 10, fil. argt. 5, ent. argt. 25, extra 25, under advt. 25;	.90
Ord. revg. 25, Ord. remedy 25, fil. Opus. 5, ent. judt. & Opus. 1.25	1.80
Copy of sum 1.25, cert. record 25, judt. for costs 25, Ord. for ex. 25;	2.00
Dr. judt. 25, extra 25, fil. & Dr. 15, Supp. extra. 10,	.75
Bill of costs 25, Copy 25, Postg. 20, Transp. ex. 5.75, satis. 25,	6.70
2 ^d bill of costs 25, Copy 25, cert. record 25, fil. & Dr. 15, Supp. extra. 10, Qty. extra. 25,	<u>\$12.65</u>
	13.15

A true Copy from my Fee Book as taxed and recorded therein. L. Island Clerk
By P. K. Island Deputy.

State of Illinois, ss.

Supreme Court - Third Grand Division, at Ottawa;

The People of the State of Illinois to the Sheriff of Cook County - Greeting;

We Command you, that of the goods and Chattels, lands and tenements of Peter Schuttler, you cause to be made the sum of ~~ten~~^{thirteen} dollars and twenty five 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. Daniel McTear, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this twenty fourth day of October A.D. 1857.

L. Island Clerk of the Supreme Court
By P. K. Island Deputy

¹⁴⁵ Peter Schuttler

vs
William Platt

Bill of costs - ~~13.75~~

Fee Bill vs. P. Schuttler - \$13.75

Co. by Rec. of Ch. Judd - 5.00

Am. \$ 8.75

Shps fees 90

Rec full amt of
Costs of P. Schuttler
Nov 26 ¹⁸⁵¹

Wm Schuch Shuff
By A A Dexter Deft

Filed May 17th 1852,

Leland Clark

By P. H. Leland
Deft.

L. Leland Esq }
Attorney }

Chicago 30 May 1851

Dear Sir - Enclosed find
record in case of Better Schutter vs. William Paul
which you please file docket &c.

Yours

Judd & Wilson

P. S. Acknowledge receipt & oblige.
Yrs
JWS

Cook
Schuttler vs Pitt

Filed May 31. 1854
L. Kelam Clk.