No. 8490

Supreme Court of Illinois

G. Carter et al

vs.

E. H. White

71641 7

State of Illinois
Pulaski County } ss

1 Pleas held in the Circuit Court
2 within and for the County of Pulaski
3 and State of Illinois at the Court House
4 in Caledonia on the
5 The Hon John Wesley Sloan presiding Judge
BE it Remembered that heretofore
6 to wit on the first day of June
7 AD 1859 the foll
8 owing fa precipi was duly filed
9 in the Clerks office of the Circuit
10 Court of said County to wit
11 Edward A Mills
12 vs
13 John W Monahan Circuit Court
14 William N Stokes of Pulaski County
15 John N Cochran Illinois
16 George W Carter
17 Daniel Wilk Trespass on the Case
18 Isaac W Mantfort Damages
19 Brutt Clark $5000 Dollars
20 A G Walson Precipi
21 O H Walson &
22 A B S Lindsley
23 Issue Summons in the above forth
24 with Returnable according to Law
W W Hunter Atty
To the Clerk for Plaintiff
Pulaski Circuit Court.
May 31st 1859.
25 Afterwards to wit
26 On the Second day of June AD 1859

The following summons was issued
to wit-

State of Illinois }ss
Pulaski County } The people of the
State of Illinois
To the Sheriff of Pulaski County
Greeting We command you to
summon John W Monahan William
H Stokes John W Cochran George W
Carter Daniel Wielh Isaac Willoughby
Burkett Cloan A G Holson E H Holson
and A & S Lindsley copartners under
the name and style of A G Holson & Co
if to be found in your County to
appear before the circuit court of
Pulaski County on the first day of
the next term thereof to be holden
at the court house in North Cairo
on the fourth monday in
the month of August next to ans
wer Edward A White of a plea
of Trespass on the case to his dam
ages as is alleged Five thousand
Dollars and here of make due
Return to our said court as the
law directs Witness
Jas M Dandy Clerk of said
Court and the judicial Seal
thereof at North Cai
(Seal) Edonia the second
day of June A D 1859
Jas M Dandy Clerk

And afterwards to wit on the
third day of June A D 1859
said Summons was Returned
by the Sheriff of Pulaski County
with the following indorsement
thereon to wit
I served the within
Summons by Reading
the same to the within
named William H Stokes
John W Cochran George
W Carter Burkett
Clarke and A V S Lindsley
defendants. the ballance
of the defendants not
found in my County.
June 3rd 1859
A. C. Bateman
Sheriff
Sheriff Fees
Serv & Ret $2.00 Mil 50 - $2.50 $5.10

[8490-1A]

And afterwards to wit - on the
28th day of July A D 1859
The following declaration
was filed in said cause to wit
State of Illinois } In the circuit court of
Pulaski County } ss Pulaski County Illinois
at the August Term 1859

Trespass on the case
Damages $5000,00

Edwin A White the plaintiff in this suit
by William Hunter his attorney Complains
of John W Monahan William A Stokes
John W Cochran George W Carter,
Daniel Wells Isaac W Mumford Burnett
Cloak A G Holson E A Holson and
A V S Lindsley under the style of A. G.
Holson and Company who have been duly
summoned to answer the said plaintiff of
a plea of trespass on the case
For that whereas the said defendants by the
style of A G Holson and Company by their agents
George W Carter and Burnett Cloak, on the
fifteenth day of July in the year of our
Lord One thousand Eight hundred and
fifty Seven at Mound City in the
County and State aforesaid by a certain
agreement in writing then and there made
by and between the said plaintiff and the
said defendants under the style and by their
agents aforesaid it was then and there by
agreed that the said

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112 Plaintiff should erect three double wooden
113 Dwelling Houses to the plans and specifi
114 cations then and there furnished and ex
115 amined that the same should be built of
116 good and suitable timber and lumber
117 and in a workman like manner
118 also to build three cisterns three double
119 privies with vaults and cellars under them
120 also to enclose the same by a fence the plan
121 of which was then and there agreed upon
122 the said plaintiff agreeing with the said
123 defendants by their agents aforesaid
124 to furnish the entire material for the erecti
125 on and completion of the aforesaid dwel
126 ling houses privies vaults cisterns and
127 to prosecute the work upon the same to
128 completion, which work was to be comple
129 ted as aforesaid within three months
130 from the time of the making of the agree
131 ment - if possible and the said defend
132 ants by their agents as aforesaid did then
133 and thereby agree to pay to the said plain
134 tiff the sum of One thousand dollars in
135 thirty days from the time of the making of
136 the said agreement - One Thousand Doll
137 ars in Ninety days from the making of
138 the said agreement and Twelve hun
139 ~~and ten~~ Dollars on the completion of the
140 said three buildings and the said
141 defendants by their agents as aforesaid
142 did further agree to convey or cause to
143 be conveyed to the said plaintiff

144 Lots number Thirty Nine, 39, and Forty, 40,
145 in Block Five, 5, Range One, 1, in the
146 Recorded Plat of Mound City Illinois and
147 to vest in him the title in fee simple to the
148 aforesaid premises upon the completion
149 of the dwelling houses fences cisterns
150 privies cellars &c as set forth in the afo
151 resaid agreement—
152 And the said agreement being so made
153 as aforesaid afterwards to wit
154 on or about the day aforesaid in consider
155 ation thereof the said plaintiff at the
156 special instance and request of the
157 said defendants by their agents aforesaid
158 having then and by the said agreement un-
159 -dertaken and promised the defendants by their
160 agents as aforesaid to perform and fulfil
161 the said agreement in all things on his
162 part and behalf to be performed and ful
163 filled he the said plaintiff undertook
164 and then and thereby promised the
165 defendants by their agents as aforesaid
166 to perform and fulfil the said agreement
167 in all things on his part and behalf
168 to be performed and fulfilled and the said
169 defendants by their agents as aforesaid
170 in consideration thereof then and there
171 by undertook and promised the said
172 plaintiff to perform and fulfil the said
173 agreement in all things on their part
174 and behalf to be performed and ful
175 filled And although the said plaintiff

176 hath always from the time of making
177 said agreement - hitherto performed and
178 fulfilled the same in all things on his
179 part - according to the true effect - and
180 afterwards on the 10th day of March
181 A.D. 1869 the mill thereof and erected
182 at Mound City &c aforesaid and completed
183 and furnished the certain material for
184 the same three double wooden dwelling ho=
185 =uses three double privies and digged the vaults
186 for the same and digged and completed
187 three cisterns as agreed upon by and betw
188 een the said plaintiff and the said defen
189 dants by their agents as their agents
190 as aforesaid and the said plaintiff
191 avers that afterwards and upon the com
192 pletion of the said houses privies cisterns &c
193 he the said plaintiff did deliver the said
194 houses as completed to the said agents of
195 the said defendants and that the same were
196 by on the first day of April A.D. 1869 aforesaid
197 said then said agents accepted and the
198 said plaintiff further avers that from and
199 after the said delivery and acceptance by
200 the defendants said agents as aforesaid the
201 said defendants have been receiving and still
202 do the entire benefit and the emoluments
203 of the said houses &c yet the said plain
204 tiff in fact saith that the said defenda
205 nts did not nor would perform and ful
206 fil their said agreement nor their sa
207 id promises and undertakings in this

208 To wit- that they the said defendants
209 wholly neglected and omitted to pay to
210 the said plaintiff the aforesaid sum of
211 One thousand Dollars in the aforesaid
212 agreement specified and agreed to
213 be paid to the said plaintiff in thir-
214 ty days from the date of the agreement
215 aforesaid but to pay the same accor
216 ding to the tenor and effect and true
217 intent of the aforesaid agreement they
218 did neglect and omit and also in this
219 to wit that they the said defendants
220 wholly neglected and omitted to pay the
221 said plaintiff the aforesaid sum of one
222 thousand dollars in the aforesaid agr
223 eement specified and therein agreed
224 to be paid to the said plaintiff in thirty
225 days from the date of the agreement aforesaid
226 but to pay the same according to the tenor
227 and effect and true intent of the aforesaid
228 agreement they did neglect and omit and
229 also in this to wit that they the said def
230 endants wholly neglected and omitted
231 to pay to the said plaintiff the aforesaid sum
232 of twelve hundred and ten dollars in the
233 aforesaid agreement specified and therein
234 agreed to be paid to the said plaintiff upon
235 the completion of the aforesaid three dou
236 ble wooden dwelling houses three double
237 privies three cisterns but to pay the same
238 according to the tenor and effect and true
239 intent of the aforesaid agreement.

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240 they did neglect and omit
241 And also in this to wit that they the
242 said defendants wholly neglected omitted
243 and refused and still do neglect omit
244 and refuse to convey or cause to be conve
245 yed the Lots aforesaid and in the
246 aforesaid agreement specified and there
247 in agreed to be conveyed to the said plain
248 tiff upon the completion of the aforesaid
249 three double dwelling houses three double
250 privies three cisterns to wit thirty nine (39)
251 and forty (40) in Block fifty (50) Range one (1)
252 in the Recorded plat of Mound City
253 And the said plaintiffs avers that
254 the said defendants have not now
255 nor never have had any title or inter
256 est whatever in the said Lots of land
257 by which to convey the same to plain
258 tiff and in consideration thereof
259 said defendants at &c aforesaid
260 on the first day of April. AD 1859.
261 promised to pay to plaintiff the further
262 and aditional sum of one thousand
263 dollars when they the said defendants
264 should & thereunto afterwards requested
2nd count. And whereas also heretofore to wit on &c
266 aforesaid at &c aforesaid in consider
267 ation that the said plaintiff at the
268 said defendants request should erect and
269 furnish the material for three other
270 double ~~privies~~ wooden dwelling three
271 other double privies three other cistern

272 with fences and cellars as agreed upon
273 in writing by and between the said
274 plaintiff and the said defendants
275 by their agents as aforesaid for cer
276 tain reasonable reward to the said
277 plaintiff in that behalf - the the said
278 plaintiff did erect furnish the
279 materials for the same and complete
280 the said mentioned double dwelling houses
281 double privies & cisterns &c agreeable to
282 the last mentioned agreement with good
283 and proper materials and in a substanci
284 al and workmanlike manner and
285 did afterwards to wit when the said
286 last - mentioned dwelling houses cis
287 tns & privies were completed deliver the
288 same to the agent of the said defendants
289 which were by them & there by them duly acc
290 epted and although the said plaintiff
291 did &c aforesaid erect furnish the
292 materials for the same & complete the last
293 mentioned houses privies cisterns &c
294 agreeably to the agreement aforesaid
295 and performing on his behalf the same
296 yet the said defendants did not nor would
297 they perform and fulfil their said
298 agreement - on their part & behalf but
299 to perform and fulfil the same did
300 wholly neglect - and omit - and refuse
301 and still do neglect - omit - and refuse
3rd Count And whereas also the said defendants
[2490-5]
303 on the fourth day of June in the

Year of our Lord One thousand
Eight hundred and fifty Eight
at mount Ay in the County aforesaid
shall aforesaid were indebted to the
said plaintiff in the sum of Two
Thousand Dollars for work and labour
done and materials furnished by the
plaintiff for the defendants at their
special instance and request —

4th Count — And in the sum of two thousand doll
ars for money then and there paid by
the plaintiff for the use of the defend
ants and at their like instance and requ
est —

5th Count — And in the sum of Two thousand
dollars for money then and there
found to be due the said plaintiff
from the said defendants on an ac
count — then and there stated between them
and the defendants afterwards on
the day and year aforesaid and
at the county aforesaid in consideration
of the premises respectively promised the
plaintiff to pay to him the said several
sums of money when they should be
thereunto afterwards requested but the def
endants have disregarded their promises
and have not — nor have either of them
paid any of the said mentioned sums
of money or any part thereof to the da
mage of the plaintiff of Five thousand
dollars and therefore he brings suit &c

William Hunter
plaintiffs attorney

336 Defts To Plaintiff Dr
337 To work & labor done & Materials furnished $2000, 00
338 To Money paid by plaintiff & Deft $ 2000, 00
339 To " Yord due Plaintiff on a/c Stated $2000, 00

340 This agreement made and Entered into
341 by and between E. S. White and George W
342 Carter & Buckel Clean agents for A. G. Holcom
343 & Co of different Counties and States
344 witnesseth that the said E. S. White has this
345 day obligated himself to Sd Carter and
346 Clean as agents for A. G. Holcom & Co to
347 Erect three double wooden dwelling houses
348 three cisterns three double privies with fences
349 & cellars as shown by the plans drawn and
350 furnished said Carter and Clean by said
351 white and agreed upon by said Carter and
352 Clean as agents &c the alterations made and
353 agreed upon are the figures of S. White
354 in the plans the work to be done out of good
355 and suitable timber and in a workman
356 like manner and all of said buildings
357 finished within three months from this
358 day if possible said Carter & Clean agents
359 &c are to pay said white for the furnishing
360 & building of said dwellings cisterns privies
361 & fencing &c &c at the following times and
362 in the following manner the said Carter
363 & Clean agents &c are to Convey or cause to be
364 Conveyed to the said White on the com-
pletion

And fulfillment of this Contract
Lots No (39) thirty nine & (40) forty in
Block (5) five Range one in the Corner
of Pearl and East Fourth Streets at fif
teen dollars per foot front on 27th the
28th feet front 105 feet deep amounting
to $840 00/100 and the balance the said three
buildings sennes be payable in money as
follows one thousand dollars in
thirty from this day One thousand
Dollars in ninety days from this day
Twelve hundred and ten dollars
on the completion of the said three
Buildings according to the said plans
It is understood that the said White is
to erect or cause to be erected thirty
again to be conveyed buildings on said
lots of no less value than Five hundred
dollars within two years from the said
day of June 1857
Given under our hands this 15 day of July
1857

E H White
George W Carter
Barrett & Cloak Agents
A G Holson & Co

and afterwards to wit at the
August Term of the Pulaski
County Circuit A.D. 1859
the following proceedings were
then and there had in said
cause to wit

Edwin H White
vs
A G Halsam & Ors
} Judgment on the case

on this day comes the plaintiff
by his attorney and the defendants
Stokes, Carter, Cochran Cloaker
and Lindsley being duly
summoned and at this
being three times solemnly
called come not but
make default — J —
And on this day comes the
defendant Carter, and on his
motion and proper affidavit
being made and filed, which
is in the words and figures following
to wit

Edwin H. White
vs
A G Halsam et al
} August Term of the Pulaski County Circuit Court A.D. 1859

George W Carter one of the defendants
in the above entitled cause, being
first duly sworn deposes and says
that the defendants in this case

have a meritorious defence to
the plaintiffs action, defendant
says that their defence is first
that the said plaintiff has not
yet completed the contract
upon which this action is brought
and that the said Plaintiff is not
prevented from completing the
said contract by defendants
and as a further defence to said
action defendant says that
defendants have paid the plaintiff
the full amount that is due said
plaintiff - defendant says that the
defendants have made a defence
to said action at the commence-
ment of this term, but that said
defendants all Reside at a distance
and were mistaken as to the
time of the commencement
of the present Term

George W. Carter

Sworn & Subscribed
before me Sept 18th & 24 1859

J. M. Lemmon Clerk

ordered that defaults herein taken
be set a side at defendants costs
And afterwards towit
on the 4th day of September 1859
the following paper was duly
filed Edmund H. White vs A. G. Hobson et al

441 In the circuit court Pulaski County
442 Aug – Term AD 1859
443 The Plaintiff in this cause notifies
444 the defendants to produce the
445 original contract between
446 Edward H White & A G Holsan & Co
447 upon which this action is brought
448 Wm Lemon
449 Pltffs atty
450 Sept 4th 1859
457 on the back of said notice
452 is the following endorsement
453 Comes I Served a copy of
454 the within upon J A Green
455 & defendants atty in open
456 Court this 4th Sept 1859
457 S. P. Wheeler
458
459 And afterwards towit on the
460 15th day of December AD 1859 the
461 following Alias Summons was
462 Issued towit
463 State of Illinois } Ss
664 Pulaski County } The people of the
465 State of Illinois
466 to the Sheriff of said County
467 Greeting, We command, that
468 you Summons Lemuel Welch
469 Isaac N Morford A G Holsan
470 E H Holsan and John W Menahan
471 who are impleaded with William H Stokes
472 John W Carter Burkett Clarke and

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473 A A S Lindsey by the Style and
474 Description of A G Hobson & he
475 is in your County to be and
475 appear before the January Special
476 term of the Circuit Court of Pulaski
477 County on the first of said term
478 to be held in the Court house at
479 Mount Meldrim in and for said
480 County on the 4th Monday in the
481 month of January next to answer
482 Edmund H White of a plea of
483 Trespass on the case to his damage
484 as is alleged Five thousand dollars
485 and hereof make due return
486 to our said Court as the law
487 directs Witness Jas M Scarborough Clerk
488 of said Circuit Court
489 and the seal thereof
490 (Seal) hereto affixed at Mount
491 Meldrim this 13th day
of Decr A D 1859
J M Scarborough Clerk

492 And afterwards Comes on the
493 14th day of January A D 1860
494 the said Summons Was
495 Returned Executed — not
496 Served defendants not found
497 in my County Jan 14th 1860
498 A C Bostick Shff
499 And afterwards Comes at the
500 April Special Term of the Pulaski

501 County Circuit Court held in
502 the Court house at Perth Calaveras
503 for said County commencing
504 on the first Monday in the
505 said month of April A.D. 1860
506 and on Friday the fifth day
507 of said term being the sixth
508 day of said month the following
509 proceeding was then and there
510 had and entered of Record in
511 said Court to wit

512 Edwin H White
513 vs } Case
514 A G Holman & Co } on this day
515 comes the
516 defendant and files demurrer to plaintiffs declaration
517 which is in the words and figures
518 following to wit

519 Edwin H White
520 vs. } Pulaski County
521 A G Holman & Co } Circuit Court
522 Special Term A.D. 1860.

523 And the defendants by J A Green
524 their attorney says that the declaration
525 is not sufficient in law
526 By J A Green Atty
527 for Defendants

528 Demurrer withdrawn and
529 now comes the plaintiff and
530 upon his motion defendants
531 Ruled to plead by to morrow
532 morning. And now comes the

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533 defendants by J. A. Green and
534 files his pleas in the words and
535 figures following Court
536 John W Manahan
537 William H Stokes
538 John W Cochran
539 George W Carter
540 Samuel Meek
541 Isaac W Manfort
542 Burkett Clarke
543 A G Holman
544 E H Holman
545 A & S Lindsley. Style of A G Holman & Co
546 &c
547 Edmund H Wheeler
548 And the said John W Manahan
549 Wm H Stokes John W Cochran
550 Geo W Carter Samuel Meek
551 Isaac W Manfort, Burkett
552 Clarke A G Holman E H
553 Holman A & S Lindsley Style of
554 A. G. Holman & Co names and
555 defendants &c. and say that they did
556 not promise as in the declaration
557 alleged, and of this they put
558 themselves upon the Country
559 and the Plaintiff
560 doth the like
561 Hunter & Wheeler
562 his atty

By J A Green
atty for Defendants

Pulaski County
Circuit Court
April Special
Term A.D. 1860

563 The Plaintiff in the above

564 Entitled Cause will take notice
565 that the defendants will give in
566 Evidence at the trial of said Cause,
567 that they have paid the said plaintiff
567 more than the full amount claimed
568 by said plaintiff, for furnishing
569 material, and erecting the three double
570 wooden dwelling houses privies
571 cisterns etc, mentioned and
572 described in the plaintiffs declaration
573 including the price of the two lots,
574 to wit no 39 and 40 in block five
575 Range one West in the recorded
576 plat of Akron City that Defts. paid
577 plaintiff four thousand dollars in
578 cash, and by cash orders drawn
479 on ~~defendants~~ different persons
580 which were paid by said persons to the
581 said plaintiff, which orders Defts.
582 will offer in Evidence on the
583 trial of said cause — and defend=
584 ants will also offer in Evidence
585 a number of receipts for money
586 paid Pltff — by said Defts for furnishing
587 materials, and erecting said
588 Houses Privies etc — also that defendants
589 paid freight on material for building
590 of said houses to the amount of five
591 hundred dollars also that they furnished
592 lumber lime nails and other materials
593 for building said houses privies cisterns
594 &c to the amount of eight hundred dollars

The plaintiff will further take notice
that on the trial of said cause defendants
will give in evidence that plaintiff agreed
to furnish good material and build
and erect the said Houses mentioned
in the plaintiffs declaration and also
build good fences around each of the
said houses and erect said houses
according to certain specifications
which defendants will offer in evidence
and also to dig a cellar under each of
the said houses of certain dimensions
agreed upon between the plaintiffs
and defendants and erect and make said
Cisterns according to agreement to
dig said cellars and build said fences
and complete the whole work within
months from the making of said
agreement which agreement said defendants
will offer in evidence on the trial of
said cause together with all the
original plans and specifications agreed
upon between the parties Plaintiff will
further take notice that defendants
will give in evidence on the trial of
said cause that Plaintiff wholly and
utterly failed to comply with his
said contract in regard to building
the said Houses and furnishing the
material for the same that the cellars
were not as large as agreed upon
and that the said houses were not
completed in a workman-like manner

626 That the foundations was not substantial and
627 that the plastering was not substantially put
628 on and that the said houses were not
629 completed according to said agreement
630 in any particular that the posts under said
631 houses were not so large as agreed
632 upon nor so many of them that they
633 sunk down in some places from one
634 to two feet lower than they were in
635 others that they became crooked and
636 the floors bulged up in some
637 places and sunk in others that said
638 floors were all spring and other
639 that said doors were made
640 irregular and crooked to suit the
641 irregular and sunken condition of
642 said houses that said defendants have
643 been compelled to expend eight
644 hundred dollars in leveling said
645 houses raised out of the grounds
646 and straightened that all of the
647 plastering cracked and fell off
648 on account of said houses sinking
649 that said houses have not been
650 fit to live in since they were built
651 that said defendants have lost the
652 rent of said houses ever since they
653 were erected amounting to one
654 thousand dollars which defendants
655 will claim as offset that defendants
656 were not to execute deed to Plaintiff
657 for said lots mentioned and described

[2440-11]

658 In Plaintiffs declaration state plaintiff
659 should first complete said houses
660 privies cisterns &c according to the
661 agreement plans and specifications agreed upon
662 between the parties for the furnishing materials and
663 building said houses &c and that said plaintiff
664 did not complete said contract within the
665 time limited nor has he done so since
666 Plaintiff will take notice that defendants
667 will claim a judgment against him for
668 all they have paid him and also for
669 five thousand dollars damage on
670 account of plaintiff not fulfilling and
671 complying with his part of said contract

J A Green Atty for Defts

672 and now comes the plaintiff
673 and demurs to defendants pleas
674 which said demurrer is in the words
675 and figures following to wit
676 Edwin H White
677 vs
678 A G Hobson & Co } In the Pulaski County
Circuit Court
679 April Special Term
680 1860
681 and now comes the said plaintiff
682 and demurs to the said defendants
683 notice given under the plea of
684 the general issue as presenting a
685 defense to the cause of action
686 & not a set off — and of this he
687 puts himself upon the country
688 by Hunter & Wheeler
689 attys —
690 and now comes the defendants
691 and moves the court to strike
692 demurrer to plea from the files
693 sustained and cause continued —
694 And afterwards to wit
695 at a circuit court begun and
695 held at the court house in
696 North Cairo in Pulaski County
697 and State of Illinois, commencing
698 on the second monday in the
699 month of April A.D. 1860 —
700 the following proceedings were
701 had and entered of record
702 in said court to wit

Edwin H White

vs

John W Manahan
William H Stokes
John W Cochran
George W Carter
Samuel Weeks
Isaac W Manfort
Burkett Cloake
A G Halsan
E H Halsan r
A & S Lindsley

Case and now on this day comes the plantiff thereupon comes the defendants Stokes, Cochran Carter, Cloake and A & S Lindsley, and the cause was submitted to the court for trial thereupon the proofs being heard the court finds the plantiffs damages to be Eight hundred and forty dollars. it is therefore considered by the court that the plantiff recover against the said defendants. ~~the defendants~~ Stokes, Cochran, Carter Cloake and Lindsley the sum of Eight hundred and forty dollars damages and costs of suit. and it is ordered that plantiff have Execution for the same —

thereupon the defendants except and asks 30 days to prepare

734 and file Bill of Exceptions

735

736 April Term Circuit Court 1860

737 B W White

738 vs } Case

739 A G Holman & Co } For Bill Clerk Fees

740 Search Sum 3 terms 30

741 July 7 papers 35 - Ent appearance 15 50

742 Sum & July 40, alias do. do 40 80

743 Jos 6 Subp & July $2.40 Mark 2 Cans 40 2,80

744 Smen Writ 30 Tak 5 - off Writ Clam 30 80

745 Ord Co 20 ord for Inst 20 Inst 25 65

746 Sat 15 Search Inst 15 - ord for Ex 20 50

747 Ord grant Com Ex 20 Ex & July 40 60

748 Search & Ent Sats 25 - Bill Cost 30 55

749 Copy 25 - Cert of & Seal 35 60

750

751 Sheriff Fees

752 Serv Sum mileage & Ret $5.10

753 Serv Subp mileage & Ret 3 20

754 Serv Subp - mileage & Ret 2,00

755 do do 2.35 do do 3.10 5 45

756 Serv Subp mileage & Ret 85 do 85 - 1,70

757 Witness claims

758 J J Freeman 8 days 8,00

759 J S Hawkins 10 days 10,00

760 Timothy Barker 2 days 2,00

761 James Holmes 3 days 3,00

762 J R Ensie 1 day 1,00

763 Sealer Fee 1,25

764

765 Defendants Bill

766 Ent opp & ally 15 - July 4 witness 20 35 -
767 Iss 7 Subpt July 2.80 Swear Wit 35 - 3,15 -
768 Cole 7 aff Wit claim 70 Bill 30 1,00
769 Copy 25 - Certif & Seal 35 - Ent Aff 25 - 85 -
770
771 Sheriff Fees
772 Serv Subp multiple Wit 7,70
773 Serv Subp multiple Wit 4 80
774 Serv Subp multiple Wit 3,70
775
776 Witness claims
777 J J Freeman 8 days 8,00
778 N Rice 4 days $4,00 J Hawkins 10
779 days $10,00 N L McKinnie 6 days 15,00
780 Jas Holmes 3 days 2,00
781 N L McKinnie 6 days 6,00
782 Jas Anly 2 days 2,00
783
784 State of Illinois } Sct
785 Pulaski County } I Henry M Smith
786 Clerk of the Circuit Court
787 in and for the County and State aforesaid
788 Said do hereby certify that the foregoing
789 is a full true and perfect and Comp-
790 lete transcript from the files and
791 Records in my Office in the afore
792 going Entitled Cause,
793 Witness Henry M Smith
794 Clerk Cf. Court Said
795 Pulaski County Circuit Court
796 and the Official Seal thereof
at Caledonia this 7th day July 1842

State of Illinois

Let the ~~Supersedeas~~ writ of error in this case be made a supersedeas upon the plaintiffs in error entering into bond in the penal sum of Eighteen hundred dollars with Newton R Casey as security conditioned according to law.

P. H. Walker
Justice Sup. Ct.

[8490-14]

E S White
vs
A. G. Stolson & Co

Copy of Record

Fees — $6.50

8490

Filed Aug. 11. 1862.
N. Johnston Clk

New Advertisements.

SUPREME COURT OF ILLINOS,
FIRST GRAND DIVISION,

NOVEMBER, A. D. 1862.

George W. Carter, et al, Plaintiffs in error, vs. Edward H. White, Defendant in error.	Error to Pulaski.

AN affidavit being filed setting forth that the said defendant is a non-resident of this State, he, the said defendant, is hereby notified that the record of the Circuit Court in the foregoing case has been filed in the Clerks office of this Court, and a writ of Error and Scireifacias sued out, the Scirefacias directed to the Sheriff of Pulaski county, commanding him to summon said defendant to appear before this court on the first day of the next term, to be commenced and holden at Mount Vernon on the first Tuesday after the second Monday of November next, and show cause, if any he has, why the said Judgment shall not be reversed; and unless he does so appear, the cause will proceed as if he had been personally served with process.

Witness—Noah Johnston, Clerk of said court day of August, A. D. 1862.

NOAH JOHNSTON, Clerk.

GEORGE H. PIDGEON,
Att'y for Plaintiffs in Error. [9]

Noah Johnston
Clk Sup Court
Mt Vernon Co
Jefferson
Illinois

DOUGHERTY & PIDGEON,
Attorneys at Law,
CAIRO, ILL.

Published in Mt Union
Guardian Aug 27. 1862

DOUGHERTY & PIDGEON,

Attorneys at Law,

Make Collections; Prosecute Claims against the Government for **Pensions, Bounty, Back-Pay, Loss or Damage;**

Attend promptly to Suits in the Courts of Alexander, and adjoining Counties, Pay Taxes, &c. &c.

Cairo, Ill. Aug 10th 1864

Noah W Johnson Esq
Mt Vernon
Ills — Dear Sir

Your letter to me dated in May last about the fees due you in case of Carter et al vs Edwin White was mislaid & so overlooked & in looking over letters today I noticed it & write to say to you that I will see Carter in short time and if he has not remitted or paid the amount I will have him do so

Yours Truly
Geo S Pidgeon
Cairo Ills

George W Carter Et als
vs
Edward H White Deft

Sup Court 1st Gr Div
Error to Pulaski

This affiant being first duly sworn deposes and says that he has made diligent enquiry to learn the residence or post office of Edward H White the defendant in error in the above entitled cause and that he has been unable to do so -

Geo L Pidgeon

Subscribed & Sworn to this 9th day of Nov 1863 —

Noah Flinton Clk

3

Geo. W. Cates et al

vs

E. H. White

Affdt

Filed Nov. 9- 1863.

N. Johnston Cl

Carter et als
vs
White

In Supreme Court
Dec Term 1863
Error from Pulaski

The plaintiff cannot except to the affidavit filed here by Defts.

1 Because no sufficient diligence is shown in writing a letter ten days before the delivery of this Cause to the clerk of Pulaski Co without also tendering fees is no diligence whatever in law

2 Because it is not shown in the affidavit that Defts expect to be able to procure the record by the next Term of this Court

[8490-97]

D Barksdale
for pltff

Carter et als
vs
Whit et

Exceptions to
affidavit for
Continuance

Filed Nov 12th 1863
N. Johnson Clk

George W Carter et al
vs Plf in error
Edward C White Deft

Supr Court 1st Div
State of Illinois Nov Term 1863
Error to Pulaski

And the said Plaintiffs for replication to the plea of the said defendant by him above pleaded say precludi non because they say that there is not any record of the said supposed writ of injunction injoining and restraining the said defendant from further proceeding &c in respect of the said judgment at law remaining in the Circuit Court of said Pulaski County State of Illinois in manner and form as the said defendant hath above in his said plea alledged and of this the said plaintiffs ~~ask and to verify their where~~ ~~to be heard in such manner as the~~ and of this the plaintiffs pray the judgment of the Court ~~shall~~ ~~now direct or appoint~~ &c

John Dougherty
& JS Rogers all for Plf in error

And Defendant doth demur

SP Wheeler
W L Green
for Deft in Error

3

G W Curtis et al

vs

Edward W Wheeler

Replication

Filed Nov. 11. 1863

N. Sylvester Clk

Doolittle & Pidgeon

Solicitors for Plfs

Edward H. White
Deft in Error
als
George W. Carlin.
Wm. H. Stokes. &
John. Monohon.
Plffs in Error

Supreme Court. State of Illinois
First Grand Division
November. Term. AD 1863.

Error to Pulaski

Now comes the said defendant by S. P. Wheeler and W. H. Green his attorneys and says the said plaintiffs ought not to have and maintain their aforsaid action against him because he says. that they together with their codefendants below. towit John. W. Cochran Daniel. Wible. Isaac. W. Montfort. Burkit Cloak. A. S. Hobson. E. H. Hobson and A. V. S. Lindsley. after the rendition of the judgment in regard to which said plaintiffs have as aforsaid. assigned the said errors. exhibited their bill in chancery. against the said defendant. before the Hon James. M. Davidge. Master in Chancery in and for the County of Pulaski and State of Illinois. and exercising chancery jurisdiction in and for said county. for the purpose of enjoining this defendant. from further proceeding on and by virtue of the judgment aforsaid. and for a new trial. that the said Master in Chancery. exercising as aforsaid. chancery jurisdiction in the premises. granted an order in writing for said injunction. that George

[3496-01]

O. Carter, and Wm H. Stokes - with N. R Casey as security, executed a bond, conditioned as the law directs, in a certain penalty therein expressed That afterwards the Clerk of the Circuit Court of said County issued a writ of injunction, under his hand and the seal of said Court, restraining and enjoining the said defendant from further proceeding in the premises, until the adjudication of the said proceeding in Chancery, and that afterwards said injunction was dissolved - All of which the said defendant is ready to verify, as appears by the records of said Circuit Court of the County of Pulaski Whereby the said errors so assigned as aforesaid by the said plaintiffs, have been, were, and are released, wherefore &c

S P Wheeler
W. H. Greene
Defts Attys.

3

Carter Elal

vs

White

Defts plea release of errors

Filed Nov. 11-1863-

A. Johnston Clk

George M Carter et al
Pltffs in Error
vs
Edward H White
Deft in Error

Supreme Court State of Illinois
First Grand Division
November Term 1868

S. P. Wheeler of lawful age - being first duly sworn according to law deposes and says that he is one of the attorneys for said defendant. That after the rendition of the judgment - in regard to which the errors by the plaintiffs are assigned, they together with their codefendants below, exhibited their bill in Chancery to James M Davidge, Master in Chancery in and for the County of Pulaski - and exercising Chancery jurisdiction for the purpose of awarding injunctions - in which this defendant - was defendant praying that he might be enjoined from further proceeding under and by virtue of his said judgment to collect the same - That the said James M. Davidge exercising the jurisdiction aforesaid - granted an order in writing - awarding said injunction - upon filing a bond with the clerk of said Court. That George M Carter and William H Stokes two of the plaintiffs with H. R. Casey as security executed and filed a bond conditioned as the law directs - and in a penalty therein named and in accordance with said order. That the Clerk of the said Court issued a writ under his hand and the seal of said Court - enjoining this defendant from the further prosecution of his execution until the determination and adjudi-

[8490-23]

-ducation of said proceeding in Chancery. That the said writ was served. and that afterwards the the injunction was dissolved - This deponent further says - that more than ten days before the sitting of this Court, he requested the Clerk of the said Circuit Court - by letter - to make out and certify the record of the proceeding in said cause. That on monday last - he received a letter from said clerk - stating that he had been sick and unable to make out said record. That the said defendant cannot safely proceed to the hearing of this cause, without the said record. That he has filed at the present term of this Court a plea - that the errors if any exist in the record. have been, are and were released - by said appeacolation and award of an injunction, That he has no means of proving said plea except by said record. and that it is material in this cause - for the reasons before stated that he should have the same properly certified in this Court. That the letter written by this deponent to the clerk aforesaid had but nine miles to go to reach him - and this deponent verily believes that he would have received said record - had the clerk aforesaid. not been sick, That ample time was given him to make out said record. This deponent also says that he was not advised of the illness of said

Clerk with the exception of his letter the day before the sitting of this Court - neither was his client as he has not been in the State for several months.

S. P. Wheeler

Sworn to and subscribed before me 11th Nov. 1863.
N. Schuster Clk

The defendant moves the court for a continuance of this cause, and bases his motion upon the aforesaid affidavit

S P Wheeler
W H Green
his atty

[8490-24]

3

Carter et al
vs
White

Affidavit for Continuance

Filed Nov. 22 1863
A. Johnston Clk

G W Carter et al
vs
E H White et al

In the Supreme Court
1st Grand Division
June Term 1862

State of Tennessee }
Tulahoma County }

G W ~~Tedford~~ Carter being first duly sworn
deposes and says that upon diligent
inquiry the residence of E H White the defendant
in error in this cause cannot be ascertained
and further he says not &c

G W Carter

Sworn to and subscribed
before me this day of
June 1862 Witness my hand
& seal of Court this 13th ~~day~~
day of November 1862 Witness
Henry M Smith Clerk of the Circuit
Court for Tulahoma
Co Tenn and the seal thereof

Sec 23 & Rule 30 rules

[8490-25]

Filed Nov. 10. 1863
A. Johnston Clk

State of Illinois } ss. Be it remembered
Pulaski County } that heretofore
to wit at a circuit
Court, began and held at the Court
House in Mount Caledonia in the
County and State aforesaid, at the
September Term AD 1863. Court
on the Second Wednesday of said
Term aforesaid the Same being
the 30th day of said month of
September in the year aforesaid
the following proceedings was had
and made at Matter of Record
to wit Said Court viz.

Edwin H White
vs
John W Monahan
William H Stokes
John W Cochran
George W Carter
Samuel Weehl
Isaac W Mandport
Burkit McCook
A G Hobson
C K Hobson &
A & S Lindsley, Partners
under the Style of
A G Hobson & Co

} Motion to
Amend Record
So as to conform
to the Rules &c
now on this day
comes the Plaintiff
by S P Wheeler
his attorney
and the defendants
by Geo S. Pierson
their attorney
And upon
motion of

[8490-26]

of Plaintiffs attorney orders that Sheriff have leave to amend his Return. Return amended and proof of Publication of the notice to the defendants being made proof heard and the Court being sufficiently advised of and concerning the premises, orders and decrees that the Judgment heretofore entered at the April Term of said Court A.D. 1860. against defendants Stokes Cashman Coster Black and Lindsley be so amended as be against all of said defendants including John W. Monahan Leander Keehl Isaac W. Manifort A. G. Holzman and E. H. Holzman, their appearance having been fully entered at the said April Term A.D. 1860 and that the said plaintiff may have judgment for his costs D.E.W.

State of Illinois } Sc
Pulaski County } I Henry M. Smith Clerk of the Circuit Court in and for the County

and State aforesaid do hereby certify that the foregoing is a full true and perfect Transcript from the Records in my office as made at September Term A.D. 1863 of said Court in said Entitled Cause

Witness my hand and the Seal of said Court at office in North Carolina this 9th day of November A.D. 1863

Henry M. Smith Clerk

[5490-27]

3

Carlin et al
vs
White

Amendments to the record
filed by deft in error

Filed Nov. 10. 1863.
N. Johnston Clk

November term. Supreme Court A.D. 1863.

Carter et al vs White } Error to Pulaski. Judgment affirmed.

44
14
176
44
616
20
2.20
7
9.40

Plffs Costs

1862.	To filing Transcript 20 - Docketing Cause 12 -	32.
	" " Papers	50.
	" Writ of Error - Mandate - Supersedeas	1-00
	" Sci fa	1-00
	" Entering Motions & Orders	1-00
1863 -	" filing Papers 50. Swearing to Affdt 12.	62.
	" Abstracts (600 words each) & filing	8-82
	" Entering motions & orders	2-00
	" " Opinion of Court	50.
	" Cost bill & entering Sum 37 - Postage 30	67
	" Fee-Bill	50
		16.93
	Printers fee - Paid by Clerk	3-00
	Circuit Clerk. N. M. Smith. fee for Record's	8-00
		27.93

Defts Costs -

Swearing to Affdt & filing Papers	50
Ent. Mots & Orders	1-00
Cost bill & Ent. Sum 37 - Postage 6.	42
Ex & C	50
	2.42

Cr. Paid $8-00
" Abs furnished. 1-20
9-20

28H90-28

Pltffs costs due Clk. Supr. Court 16-93.
Defts. do 2-42
19.35
Ex. Amt. Prepaid 8-00
Bal. due $11.35

Dr with Pelham & Alley
at Law May 27-64

Costs on Writ

3

Compared

Entd on Page 582
and been credited
Prepaid & Bal Due
Alley - is hereby
with Pelham in the
Case

Know all men by these presents that we

are held and
firmly bound unto Edward H White in the
sum of eighteen hundred dollars lawful
money - to be paid to the said Edward H
White his heirs executors administrators or assigns
for which payment well and truly to be
made we bind ourselves our heirs
administrators executors and assigns
jointly severally and firmly by these
presents Witness our hands and seals
this day of July AD 1862

The condition
of the above obligation is such that whereas
the said Edward H White having obtained
a Judgment in the Circuit Court of
Pulaski County State of Illinois at the
April Term thereof AD 1860 for the sum
of eight hundred and forty dollars and
costs of said suit against George W
Carter John W Monohan William H Stokes
John W Cochran ~~[illegible]~~ Burkett Cloak ~~[illegible]~~
~~[illegible]~~ and N. W. L. Lindsay. Copartners under
the name and style of A G Hobson & Company,
And the said A G Hobson & Company being about
to sue out of the Clerks Office of the first
grand division of the Supreme Court of the
State aforesaid a Writ of Error to operate as
a supersedeas Now if the said A G Hobson

28490-29

and Company shall well and truly prosecute this said suit with effect and pay or cause to be paid to the said Edward A White whatever judgment may be awarded against the said A L Hobson & Company upon the trial hearing or disposal of said suit and all such costs and damages as the said Edward A White shall sustain by reason of the wrongfull suing out of said writ then this obligation to be null and void otherwise to remain in full force

Geo W Carter Seal
W H Stokes by Seal
Geo W Carter Seal
N. R. Casey Seal
John M. Monohan Seal

State of Illinois
Fulton County } ss

I Geo S Pidgeon having been first duly sworn do depose and say that I am acquainted with the above named ~~Obligors~~ Newton R Casey and verily believe that the said ~~Obligors~~ ~~are~~ ~~well~~ ~~worth~~ ~~the~~ ~~sum~~ ~~of~~ ~~Real~~ Newton R Casey is ~~worth~~ and possessed of Real and personal ~~value~~ subject to execution sufficient to pay and satisfy the foregoing bond over and above all indebtedness and further this deponent saith not

Geo S Pidgeon

Sworn to & subscribed before me this 11th 1862

P. H. Walker
Clerk Supr. Ct.

State of Illinois
Pulaski County } ss

I Henry M Smith Clerk of the Circuit Court of said County do hereby certify that George A Sedgwick the above named affiant this day personally appeared before me and was duly sworn to and subscribed the foregoing affidavit in witness whereof I have hereunto written my name and affixed the seal of said Court at my Office in Mound Caledonia This the 8th day of July AD 1862

Henry M. Smith Clerk

[8490-29A]

18

Sup Court Term AD 1862

G W Carter et al
~~Appell affts~~

vs

Edward H White
~~Appell defendants~~

Bond

Filed July 29. 1862.
N. Johnston Cl

G S Pickens Cl

George W Martin et al
vs
Edward H White Deft

State of Illinois First
Mondivision Nov Term AD 1862
Error to Pulaski

George D Ridgeway being
first duly sworn says that Edward H White
the defendant in Error in the above
styled suit has gone out of this State
so that process cannot be served on him
and that upon diligent inquiry he believes
the residence of the said defendant to be
Mound City Pulaski County State of Illinois
but that his present post office address can
not be ascertained & further saith not

Geo D Ridgeway

State of Illinois
Pulaski County } Sct –

Signed and sworn to before
me Henry M Smith Clerk of the Circuit Court of the
County & State aforesaid in witness whereof
I have hereunto written my name
and affixed the seal of
said Court at my office
at Caledonia this 15th day of
August AD 1862

Henry M Smith
Clerk

[5490-30]

3 FB.

Contents
of
Mutiny

Aft

Julia August
29th. 1862.
N. Johnston Capt

State of Illinois
Pulaski County } ss

George W Carlin et al Plfs
vs
Edward H White defdt

State of Illinois
Jefferson County } ss
1st Grand Division
Supreme Court
November Term AD 1862
Error to Pulaski

George S Pidgeon being first duly sworn deposes and says that Edward H White the defendant in error in the above styled suit has gone out of this State so that process can not be served upon him and further saith not —

George S Pidgeon

State of Illinois
Pulaski County } ss

Subscribed and sworn to before me Henry M Smith Clerk of the Circuit Courts of the County and State aforesaid in witness whereof I have hereunto written my name and affixed the seal of said Court at Mound Caledonia this the 4th day of August AD 1862

Henry M Smith clerk

[8490-3]

Carter et al
vs
White

Aff'dt for notice

Filed Aug. 12. 1862
N. Johnston Clk

George W Carter
William H Stokes
John W Monohan
Plfs in Error

Edward H White
Deft

State of Illinois at the November Term Supreme Court first Grand Division AD 1867

Error to Pulaski

Noah Johnson Esq Clerk Sup Court will please issue a writ of Supersedeas in the above entitled cause to reverse the Judgment in the Case of Edward H White Plaintiff Vs George W Carter William H Stokes John W Monohan John W Cochran Daniel Wilk Isaac W Montfort Benket Cloak A G Hobson E H Hobson & A V S Lindsey defendants Judgment for $840 and costs of suit at the April Term of the Pulaski Co Circuit Court AD 1860 – Returnable on the 1st day of the next term &c & oblige

Geo S Pedigo
Atty for Plfs in error

Carter Stokes & Monohan only are plfs in error

[4490-32]

18 3

Appeal from Sup Court
1st Division

W Lewis
Wm H Hoke
Mott McKeehan
Plfs
vs
Ed H White

Error

Praecipe for writ
of
Error

Filed July 29. 1862.
A. Johnston Clk
"

Paid on Record $5.00
" " Abstract 3.00
$8.00

State of Illinois,
SUPREME COURT,
First Grand Division. } ss

The People of the State of Illinois,

To the Clerk of the Circuit Court for the County of Pulaski Greeting:

Because, *In the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of* Pulaski *county, before the Judge thereof between* Edwin H. White plaintiff and George N. Carter, William H. Stokes, John N. Monohan, Daniel Milk, Isaac N. Montfort, Burkett ~~plaintiff and~~ Clark, A. G. Hobson, E. H. Hobson & A. V. I. Lindsey

defendants it is said manifest error hath intervened to the injury of the aforesaid George N. Carter, William H. Stokes and John N. Monohan *as we are informed by* this *complaint, and we being willing that error, if any there be, should be corrected in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given; you distinctly and openly without delay send to our Justices of our Supreme Court the record and proceedings of the plaint aforesaid; with all things touching the same; under your seal, so that we may have the same before our Justices aforesaid at* **Mount Vernon,** *in the County of Jefferson, on the* first Tuesday after 2d Monday in November *next, that the record and proceedings, being inspected, we may cause to be done therein; to correct the error, what of right ought to be done according to law.*

WITNESS, *the Hon.* John D. Caton *Chief Justice of the Supreme Court and the seal thereof, at* MOUNT VERNON, *this* twenty-ninth *day of* July *in the year of our Lord one thousand eight hundred and* Sixty-two.

Noah H. Christian
Clerk of the Supreme Court.

[8490-33]

3

SUPREME COURT.

First Grand Division.

G. W. Carter et al

Plaintiffs in Error,

VS.

E. A. White

Defendant in Error.

WRIT OF ERROR.

Issue made a Supersedeas and FILED July 29/62,

N. Johnston Clk

This writ of Error is made a Supersedeas; Cause is to be argued accordingly.

N. Johnston Clk

State of Illinois,
SUPREME COURT,
First Grand Division. } SS

The People of the State of Illinois,

To the Sheriff of Pulaski County.

Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Circuit Court of Pulaski county, before the Judge thereof between Edward H. White plaintiff and George W. Carter, William H. Stokes, John N. Monohan, Daniel Milk, Isaac N. Montfort, Burkit ~~plaintiff and~~ Clark, A. G. Hobson, E. H. Hobson & A. V. S. Lindsey defendants it is said that manifest error hath intervened to the injury of said George W. Carter, William H. Stokes and John N. Monohan as we are informed by their complaint, the record and proceedings of which said judgment, we have caused to be brought into our Supreme Court of the State of Illinois, at Mount Vernon, before the justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said Edward H. White that he be and appear before the justices of our said Supreme Court; at the next term of said Court, to be holden at **Mount Vernon**, in said State, on the first Tuesday after the second Monday in November next, to hear the records and proceedings aforesaid, and the errors assigned, if he shall think fit; and further to do and receive what the said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said Edward H. White notice together with this writ.

WITNESS, the Hon. John D. Caton Chief Justice of the Supreme Court and the seal thereof, at MOUNT VERNON, this twenty-ninth day of July in the year of our Lord one thousand eight hundred and sixty two.

Noah Davis

Clerk of the Supreme Court.

[8498-34]

3 ~~18~~

SUPREME COURT.

First Grand Division.

G. M. Carter et al

Plaintiffs in Error,

VS.

E. H. White

Defendant in Error.

SCIRE FACIAS.

FILED.

The writ of Error herein is issued and filed in this Cause, is hereby a Supersedeas, and as such, is to be adjudged by all Courts.

N. Johnston Clk

Submitted on Briefs

Argument waived by Plaintiffs Atty

Oral Argument waived by Defendants Atty

By Agreement

Decided

SUPREME COURT OF ILLINOS,
FIRST GRAND DIVISION,

NOVEMBER, A. D. 1862.

George W. Carter, et al, Plaintiffs in error, vs. Edward H. White, Defendant in error.	Error to Pulaski.

AN affidavit being filed setting forth that the said defendant is a non-resident of this State, he, the said defendant, is hereby notified that the record of the Circuit Court in the foregoing case has been filed in the Clerks office of this Court, and a writ of Error and Scireifacias sued out, the Scirefacias directed to the Sheriff of Pulaski county, commanding him to summon said defendant to appear before this court on the first day of the next term, to be commenced and holden at Mount Vernon on the first Tuesday after the second Monday of November next, and show cause, if any he has, why the said Judgment shall not be reversed; and unless he does so appear, the cause will proceed as if he had been personally served with process.

Witness—Noah Johnston, Clerk of said court this 27th day of August, A. D. 1862.

NOAH JOHNSTON, Clerk.

GEORGE H. PIDGEON,
Att'y for Plaintiffs in Error. [9]

STATE OF ILLINOIS, } ss.
JEFFERSON COUNTY.

I, William ~~We~~, DENLINGER ~~& RUSSELL~~, Editor~~s~~ and Publisher~~s~~ of the **Mt. Vernon Guardian**, a Newspaper published weekly in Mt. Vernon, Jefferson county, Illinois, do hereby certify that the annexed Notice was published weekly in said paper, for eight weeks in succession; the first insertion having been on the 27th day of August, A. D. 1862, and the last insertion on the 15th day of October, A. D. 1862.

Given under our hand and seal, this 23d *day of* October *A. D.* 1862.

Wm. Denlinger
Editor~~s~~ and Publisher~~s~~ Mt. Vernon Guardian.

B 3

Carter etc

vs

White

Published notice
of certificate of
Probate

filed Oct. 28. 1862
N. Johnston Clk

George W. Coerlin et al } Supreme Court State of Illinois
vs } First Grand Division
Edward H. White } November Term 1863.

S. P. Wheeler of lawful age being first duly sworn deposes and says. that he is one of the attorneys for the aforesaid defendant in error. that upon inspection of the amendment to the record filed in this court by the defendant in error. he finds that the imperfections alleged to exist therein in the motion filed by the plaintiff in error in point of fact do exist. viz. The amendment to the record does not show what kind of an action the proceedings were had in. Neither does it show that they were had before any Judge of any Court in this State. Neither does it clearly appear that they were had in this cause. This deponent further says that the original record filed in this Court by the Plaintiffs in error is not a full. true. and perfect record. and that this amendment was brought to this Court by this deponent as said attorney. That the same was sent to him by the Clerk of the Pulaski County Circuit Court. on the morning he left for this place (Mount Vernon) Monday last. that he had no time or opportunity then to examine the same. and that said imperfections have come under his observation this day - and since the filing of said motion. That the County seat of Pulaski County is more than one hundred miles distant from this place (Mount Vernon) and nine miles from any Rail Road. and that over twenty five miles of travel by land would be necessary to reach said County seat. That he has not had time to obtain said record since the discovery of said imperfections - and that it will be impracticable. and

this deponent believes impossible to obtain said record before the adjournment of this Court. That the amendment aforesaid is necessary in this hearing for the proper presentation of the defendant's case. That this is the first term of this Court since the service upon the defendant. That said amendment is necessary for this reason. The original record only shows a judgment against a portion of the defendants before the Court either by service or entry of appearance. While the amendment shows a judgment against all of the defendants. That the proceedings set forth in said record were in point of fact had in this cause. That W H Green Esq is the only person associated with him in the defence in this cause.

S. P. Wheeler

Sworn to & Subscribed before me 13th Nov. 1863.
A. Johnston Clk

W H Green being also duly sworn deposes and says that the imperfections in the amendment to the record in this cause referred to in the foregoing affidavit came to his notice this day and not before. That the original record in this case is not a complete record of the proceedings had in this case, and that said amendment was brought here by the defts attorney without a certiorari to the clerk, and that is a part of the record in this case

W. H. Green

Sworn to & Subscribed before me 13th Nov. 1863.
A. Johnston Clk.

The deft in error makes a motion. that a certiorari issue - directed &c. commanding the clerk to send up a full true & perfect transcript of the record and that this cause be continued.

S P W Weller
W H Green
Attys for Deft in Error

3

Carter et al
v
White

Affidavit suggesting
imperfections in record

Filed Nov. 13. 1863.
N. Johnston Clk

George W Carter et al
vs
Edmund White

In the Supreme
Court New Term
1863
Error to Pulaski

Plff Comes & moves the
Court to strike from the files
in this Cause paper marked
amendment to the record
filed by Deft in error
also marked Filed Nov 10 1863
J Johnson clk

1 Because it does not appear
what action or kind of action
the pretended proceedings were had
in

2 Because it does not appear
that the same proceedings were
had before any judge of any
Court in this State.

3 Because it does not appear
that the proceeding was had in this
Cause

4 No leave of Court to file.

L Dougherty for plff

[4490-38]

3

Carter et al

vs

White

Motion to strike

Paper from the

files

Filed Nov. 13. 1863

A. Johnston clk

George W Carter
Wm H Stokes &
John Monohan Plfs in error
vs
Edward H White
Deft in Error

Supreme Court
Fall Term AD 1862

Error to Pulaski

Page of Record

47 to 50 & 97 to 99 This was an action of trespass on the Case, — June 1st/59 Plaintiff below filed his praecipe directing the clerk to issue summons in case to George W Carter William H Stokes John W Monohan John W Cochran Daniel Wilk Isaac N Montfort Burkett Cloak A G Hobson E H Hobson and

13 to 22 A V S Lindsay defendants Damages $5000.00

55 to 58 June 2nd summons issued as directed
June 3rd summons returned served on Stokes Cochran Carter Cloak & Lindsay

65 to 75 As to others not served

81 to 83 July 28th Plf filed his declaration 1st & 2nd

Counts in case 98 to 301 Counts in case — 3 & 4th common counts in assumpsit

Common counts 301 to 335 with copy of contract attached

Contract 340 to 386 Aug Term 1859 — Default taken against parties

387 to 400 served — & sci fa to the remainder
At same term upon affidavit of G W Carter default set aside and leave to

411 to 436 plead — Plf served notice on defts atty

443 to 447 to produce original contract

[8490-39]

Cause Continued generally to April
Term —

464 to 491 December 13th 59 — Alias Summons issued
to Daniel Mills Montfort A H Hobson
A G Hobson and John W Monohan —

492 to 497 Jany 14th 1860 Summons returned not served
At the April Special Term 1860 — the
523 to 525 appearance of all the defendants entered
and Defendants filed general demurrer
Defendants asked leave to withdraw
demurrer and plead — leave granted
Demurrer withdrawn and defendants
536 to 561 filed plea of General issue in assumpsit
563 to 671 and Notice of Set off — Plfs demurred
681 to 687 to defts notice of set off — on motion
demurrer stricken from the files —
690 to 693 and cause Continued Issues made up
Bonds 559 to 561 April Term 1860 Cause submitted to the
Court — evidence being heard the Court
found the issue for Plaintiff — assessed
his damages at $840.00 and rendered
Judgment against the defendants Stokes
705 to 733 Cochran Carter Cloak and Lindsey
Imdg for the same and Costs of said suit
First Count in ~~Pltfs~~ declaration Plaintiff
declares in case for the violation of a
certain Contract thereunto filed by
which defendants agreed to pay plf
certain sums of money according
to the terms of said Contract and upon
performance of Plaintiff part of said

contract to convey to Plf certain lots in
90 to 264 Mound City valued at $840.00
Declaration does not aver that on
Plaintiff's completion of said contract
He requested the defendants to convey
said lots to him — But that the defts
had not nor ever had any title
254 to 256 to said lots — To prove that defendants
had no title James M Davidson testified
that he was county recorder and had the
custody of the records and that said
defendants had no title of record to
the lots in question — which was all
the evidence offered on this point
it was further proven on said trial
that the defendants had paid to the
Plaintiff all the money due Plaintiff
under said contract and that defendants
had not conveyed said lots to said Plaintiff

~~Edward H White vs Sam Carter Estate – Trespass on case~~

The Plaintiff in Error make the following assignment of errors in above cause

1st The Joinder of counts in Trespass on the Case with counts in assumpsit –

2nd Court erred in rendering Judgment against Stokes Carter Cochran Cloud and A V S Lindsay – part of defendants the appearance of all the defendants below having been entered and joined in the pleading and issues

3rd The court erred in trying said cause without issue taken on the 1st & 2nd Counts of said declaration

4th Court erred in assessing Plaintiffs damages Defendants not waiving a Jury

5th The court erred in holding the allegation of want of title in 1st Count sufficiently proven the Plaintiff below not averring any special request to convey.

6th Court erred in rendering Judgment against defendants on said 1st Count
Said Count being Double and Repugnant

7th The court erred in rendering judgment against defendants on said 2nd & 1st Counts said Counts not alleging that the plaintiff had performed and completed his contract with said defendants according to the plans and specifications therein referred to —

8th The Court erred in rendering judgment against said defendants on 3 4 & 5th Counts — said Counts not asking any request to said defendants to pay said several sums of money

9th The court erred in rendering judgment against said defendants in said action of "trespass on the case" the general issue in assumpsit with notice of set off being ~~[illegible]~~ ~~[illegible]~~ a nullity

10th Court Erred in rendering judgment against defendants below because the same judgment could not be given on all the Counts in declaration

11th The court erred in rendering judgment for the plaintiff on the 1st Count said Count being double & repugnant and on 2nd Count said counts not alleging either time or venue

Joinder in Error – S. Patterson & W. H. Green for defts in error

Brief

Counts ~~Actions~~ Ex contracto can not be joined with ~~actions~~ counts ex delicto Chitty 201 11th Ed – Tidds practice –

An action on the case for violation of contract was plaintiffs appropriate remedy Chitty 81-135

Pleas in abatement to an action of trespass on the case – are nullities

McNamara on Nullities title plea 81

All the defendants having appeared & pleaded Judgment could not be rendered against part only Kimmel vs Shultz Binn 128

That Defendants had no title of record Not evidence of want of title

R S Chap 24 Sec 22 23 & 24

Also Stewart on pleading 250, 292, & 377

Chitty Vol 1 — 199 & 384

Wright et al vs Mendell 4th Scam 361

Frick vs Jones 4th Scam 170

[8490-42]

3 ~~18~~

Carter et al

vs

White.

Abstract

Filed Sept. 27. 1862.

A. Johnston Clk

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0.1.4.4
3.1
8.8

IN THE SUPREME COURT OF ILLINOIS.

FIRST GRAND DIVISION----------NOVEMBER TERM, 1863.

George W. Carter, Wm. H. Stokes and John Monohon, Pl'ffs in Error,
VS.
Edward H. White, Defendant in Error.
} Error to Pulaski.

Abstract filed by the Defendant in Error.

Line of Record.

This action is entitled "Trespass on the case," but in point of fact is an action of assumpsit. The first and second counts of the declaration are meaningless, and surplusage. The third, fourth and fifth counts in assumpsit.

11 to 24] June 1st, 1859. Precipe filed—damages $5000. Summons issued as prayed against

29 to 58] George W. Carter, William H. Stokes, John W. Monohon, John W. Cochran, Daniel Wielk Isaac W. Montfort, Burket Cloak, A. G. Hobson, E. H. Hobson, and A. V. S. Lindsley, June 2d.

65 to 79] Summons returned served on Stokes, Cochran, Carter, Cloak, Lindsley—other defendants not found, June 3d.

80 to 335] July 28th, plaintiff filed declaration—1st & 2d counts as stated above, and 3d, 4th & 5th counts in assumsit,

340 to 386] Copy of contract attached to declaration.

393 to 400] August Term, 1859—Default as to defendants served, alias to balance.

401 to 406] Default set aside upon filing affidavit of George W. Carter, one of defendants.

462 to 491] Dec. 13th, 1859—Alias summons issued.

496] Jan. 14th, 1860—Alias summons returned not served.

512 to 527) April Special Term—Defendants filed general demurrer.

528 to 532) Demurrer withdrawn and leave to plead.

536 to 671] Plea of general issue in assumsit filed by all the defendants and notice of special matter.

576 to 693) Demurrer to notice—Demurrer stricken from the files—issue taken on plea.

703 to 734) April Term, 1860—cause submitted to the court, proofs heard, and judgment for $840 damages against defendants, Stokes, Carter, Cloak and Lindsley, and costs of suit. Defendants except and ask 30 days to prepare and file bill of exceptions.

Page of amendment to record.

1. Sept Term A. D., 1863. Defendant in Error filed motion to amend the records in this case so that the same might conform to the files of the court. Both parties appeared by Attorney.

2. Proof of publication to defendants. (Plaintiffs in Error.) Proofs heard and ordered by the court that Clerk amend the record of judgment heretofore entered at April Term, 1860, against Stokes, Cochran, Carter, Cloak and Lindsley, so that it be against all of said defendants, including John W. Monohon, Daniel Wiehl, Isaac W. Montfort, A. G. Hobson, and E. H. Hobson, their appearance having been fully entered at said April Term.

[8490-43]

The plaintiffs waived their demurrer by withdrawing the same and pleading. Nye vs *Wright*, 2d Scam, 223.

The judgment as appears by the amendment to the record, is against all of the defendants.

The court below had the right to amend the record so that the same might conform to the files of the court, or the same might be amended in this court. O'Conner et al, vs Mullen, 11th Ill. 118, Duncan vs McAffe 3d Scam. 93. Statutes 1856 chap 5, Secs, 1, 3, 9. Coughran vs Gutchens, 18th Ill, 390. Frink et al, Schroyer, ibed 419.

The court can treat the first and second counts of the declaration as surplusage, as they are meaningless and, the court below is presumed to have rendered judgment upon any good count in the declaration. 2d Johson, 283. 13th Pick, 451. Burnap vs Wright, 14th Ill. 302-3. Snyder vs Gaither, 3d Scam. 91. Anderson et al, vs Semple, 2d Gil, 455.

Counts in trespass on the case, and assumpsit may be joined, the judgment in both cases being in damages. 1 Ch. Pleading, 229. 1 Tidd's practice 11 Hayes vs Borders, 1 Gil., 50.

The plaintiffs released all errors in the record and proceedings, in regard to which they have assigned the said errors, by resorting to a court of Chancery, and enjoining defendant from collecting his judgment.

Revised Statute, Page 147, Section 11. McConnell vs Ayers, 3d Scam, 210.

S. P. WHEELER &
W. H. GREEN.
For Def't in Error.

[P490-45]

3

Carter et al

vs

Chile

Abs of Brief of Debt

Filed Nov. 12. 1863.

A Johnston Clk

In the Supreme Court of the State of Illinois.

FIRST GRAND DIVISION, AT MOUNT VERNON.

NOVEMBER TERM, A. D. 1862.

GEORGE W. CARTER, WM. H. STOKES and JOHN MONOHAN, Plaintiffs in Error,

vs.

EDWARD H. WHITE, Defendant in Error.

Error to Pulaski.

Page of record.

47 to 50 and 97 to 99. This was an action of trespass on the case. June 1st, 1859. Plaintiff below filed his precipe directing the Clerk to issue summons in case to George W. Carter, William H. Stokes, John W. Monohan, John W. Cochran, Daniel Weilk, Isaac W. Montfort, Burkett Cloak, A. G. Hobson, E. H. Hobson and A. V. S. Lindsay. Damages $5000.

13 to 22.

55 to 58. June 2d, Summons issued as directed.

June 3d, Summons returned served on Stokes, Cochran, Carter, Cloak and Lindsay; as to others, not served.

65 to 75.

81 to 83. July 28th, Plaintiff filed his declaration, 1st and 2d counts in case—3d 4th and 5th common counts in assumpsit—with copy of contract attached.

Counts in case 98-301.
Common counts 301 to 335.
Contract 340 to 386.
387 to 400.
411 to 436
443 to 447.

Aug. Term 1859, Default taken against parties served, and sci. fa. to the remainder. At the same term, upon affidavit of G. W. Carter, default set aside and leave to plead. Plaintiff served notice on defendants' attorney to produce original contract. Cause continued generally to April term.

446 to 491. December 13, 1859—Alias Summons issued to Daniel Weilk, Montfort, E. H. Hobson, A. G. Hobson and John W. Monahan.

492 to 497. January 14, 1860—Summons returned not served.

523 to 525. At the April special term, 1860—The appearance of all the defendants entered, and defendants filed general demurrer. Defendants asked leave to withdraw demurrer and plead. Leave granted—demurrer withdrawn—and defendants filed plea of general issue in assumpsit, and notice of set-off. Plaintiff demurred to defendants' notice of set-off. On motion, demurrer stricken from the files and cause continued. Issues made up.

536 to 561
563 to 671
681 to 687
690 to 693

Joinder 559 to 561

705 to 733 April term, 1860, cause submitted to the court. Evidence being heard, the court found the issue for plaintiff, assessed his damages at $840, and rendered judgment against the defendants Stokes, Cochran, Carter, Cloak and Lindsay only for the same and costs of said suit. First count in declaration plaintiff declares in case for the violation of a certain contract therewith filed, by which defendants agreed to pay plaintiff certain sums of money according to the terms of said contract, and upon the performance of plaintiff's part of said contract, to convey to plaintiff certain lots in Mound City, valued at $840. Declaration does not aver that on plaintiff's completion of said contract, he requested the defendants to convey said lots to him, but that the defendants had not, nor ever had any title to said lots. To prove that defendants had no title, James M. Davidge testified that he was county Recorder and had the custody of the records, and that said

90 to 264

254 to 256.

[491-45]

defendants had no title of record to the lots in question—which was all the evidence offered on this point. It was further proven on said trial that the defendants had paid to the plaintiff all the money due plaintiff under said contract, and that defendants had not conveyed said lots to said plaintiff.

ASSIGNMENT OF ERRORS.

The Plaintiffs in Error make the following assignment of errors in the above cause:

1st. The joinder of counts in Trespass on the case with counts in Assumpsit.

2d. Court erred in rendering judgment against Stokes, Carter, Cochran, Cloak and A. V. S. Lindsay—part of defendants. The appearance of all the defendants below having been entered and joined in the pleading and issues.

3d. The Court erred in trying said cause without issue taken on the 1st and 2d counts of said declaration.

4th. Court erred in assessing plaintiff's damages, defendants not waiving a jury.

5th. The Court erred in holding the allegation of want of title in 1st count sufficiently proven,—the plaintiff below not averring any special request to convey.

6th. Court erred in rendering judgment against defendants on said 1st count,—said count being double and repugnant.

7th. The court erred in rendering judgment against defendants on said 2d and 1st counts,—said counts not alleging that the plaintiff had performed and completed his contract with said defendants according to the plans and specifications therein referred to.

8th. The court erred in rendering judgment against said defendants on 3d 4th and 5th counts, said counts not avering any request to said defendants to pay said several sums of money.

9th. The court erred in rendering judgment against said defendants in said action of "Trespass on the case,"—the general issue in assumpsit, with notice of set-off, being a nullity.

10th. Court erred in rendering judgment against defendants below, because the same judgment could not be given on all the counts in declaration.

11th. The court erred in rendering judgment for the plaintiff on the 1st count, said count being double and repugnant; and on the 2d count, said count not alleging either time or venue.

BRIEF.

Counts *ex contractu* cannot be joined with counts *ex delicto*. Chitty 201, 11th Ed. Todd's Practice.

An action on the case for violation of contract was plaintiffs appropriate remedy. Chitty, vol. 1, 135.

Pleas in assumpsit to an action of trespass on the case, are nullities. McNamara on Nullities, title plea 81.

All the defendants having appeared and plead, judgment could not be rendered against part only. Kimmel vs. Shultz. Breeze 128.

That defendants had no title of record, not evidence of want of title. R. S. chap. 24, sec. 22, 23 and 24. Also, Stevens on Pleading, 250, 292 and 377. Chitty, vol. 1, 199 and 384. Wright et al vs. Meredith, 4th Scam 361. Frick vs. Jones, 4th Scam. 170.

Printed at the "Guardian" Office, Mount Vernon, Illinois.

In the Supreme Court of the State of Illinois.

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vs.

EDWARD H. WHITE, Defendant in Error.

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VS.
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3d. The Court erred in trying said cause without issue taken on the 1st and 2d counts of said declaration.

4th. Court erred in assessing plaintiff's damages, defendants not waiving a jury.

5th. The Court erred in holding the allegation of want of title in 1st count sufficiently proven,—the plaintiff below not averring any special request to convey.

6th. Court erred in rendering judgment against defendants on said 1st count,—said count being double and repugnant.

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8th. The court erred in rendering judgment against said defendants on 3d 4th and 5th counts, said counts not avering any request to said defendants to pay said several sums of money.

9th. The court erred in rendering judgment against said defendants in said action of "Trespass on the case,"—the general issue in assumpsit, with notice of set-off, being a nullity.

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George S Pidgeon atty for Plfs in error

Printed at the "Guardian" Office, Mount Vernon, Illinois.

John Dougherty

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Carter et al

vs

White

Freeman

Abstract.

Mr Green withdrew the plea.

Mr Dougherty argued for pltf 13 Nov 63

Mr. Green argued for deft.

Mr Wheeler also for deft.

Mr Dougherty concluded for pltf

Filed Sept 27. 1862.

A. Johnston Clk

BRIEF.

The plaintiffs waived their demurrer by withdrawing the same and pleading. Nye vs Wright, 2d Scam, 223.

The judgment as appears by the amendment to the record, is against all of the defendants.

The court below had the right to amend the record so that the same might conform to the files of the court, or the same might be amended in this court. O'Conner et al, vs Mullen, 11th Ill. 118, Duncan vs McAffe 3d Scam. 93. Statutes 1856 chap 5, Secs, 1, 3, 9. Coughran vs Gutchens, 18th Ill, 390. Frink et al, Schroyer, ibed 419.

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Counts in trespass on the case, and assumpsit may be joined, the judgment in both cases being in damages. 1 Ch. Pleading, 229. 1 Tidd's practice 11 Hayes vs Borders, 1 Gil., 50.

The plaintiffs released all errors in the record and proceedings, in regard to which they have assigned the said errors, by resorting to a court of Chancery, and enjoining defendant from collecting his judgment.

Revised Statute, Page 147, Section 11. McConnell vs Ayers, 3d Scam, 210.

S. P. WHEELER &
W. H. GREEN.
For Def't in Error.

1 Ch Pl 290 note

[490-45]

3

Carter et al
v
Cohile

Abs of Brief of deft

Freeman

Filed Nov 12. 1863.
N. Johnston Cl

3-16

G Carter et al

vs

E. H. White

Nov Term 1863

8490