No. 8643

Supreme Court of Illinois

H.B.Lucas

vs.

S. S. Farrington

71641 7

Harvey B. Lucas, pltff in Error,

vs

S. S. Farrington, Defendant in Error,

In the Supreme Court, State of Illinois, November Term, AD 1857, for the 1st Grand Division.

Came this day the appellant by Walker & Robinson his attorneys, and say that in the record and proceedings and and process aforesaid, there is manifest error in this that the Circuit Court of Washington County, rendered a judgment as in said record set forth in favor of the ~~appellee~~ defendant in error, whereas, by the law of the land the said judgment ought to have been in favor of the plaintiff in error, and this he is ready to verify, &c, and for assigning errors specially on the record as aforesaid the plaintiff in error avers that the said Circuit Court erred in this, 1st The court erred in overruling the motion to dismiss the suit for want of cost bond. 2d The court erred in overruling the demurrer to the replication to plaintiffs plea in abatement. 3rd The court erred in rendering judgment by default for $72.55, part of declaration unanswered. 4th The court erred in overruling motion to discontinue suit, after rendering judgment for the part unanswered as aforesaid. 5th The court erred in empanelling a jury to try said cause after the suit was discontinued in law, and rendering judgment for $186, and costs against plaintiff in error on the verdict of the jury. 6th The court erred in not specifying whether said judgment was for debt or damages.

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or what portion of the claim of the defendant the said judgment was rendered for. 7th The court erred in rendering two judgments against the plaintiff in error, in one suit.

Whereupon the said plaintiff says that for the errors aforesaid, apparent in the record and proceedings aforesaid, the said judgment of the said circuit court of Washington county ought to be reversed

Nelson & Johnson,
for pltff in Error.

I Join in Error
S. Y. Hicks for
Deft —

(1)

Copy of Declaration

State of Illinois } Of the March term of the Washington
Washington County } Circuit Court AD 1857

S. S. Farrington
vs } Debt $372.55
Harry B Lucas } Damage 200.00

S. S. Farrington Plff in this suit complains of Harry B Lucas Deft in this suit summoned &c of a Plea that he render to the said Farrington the sum of three hundred & seventy two Dollars & 55 cents of lawful money of the United States which he owes to & unjustly detains from him, for that whereas the said Defdt heretofore to wit on the 12th day of October 1853 at St Louis, to wit at the County of Washington & State of Illinois (& within the Jurisdiction of this Court) made his certain promissory Note & the sd ~~xx~~, in writing bearing date a certain day & year therein mentioned to wit the day & year aforesaid & then & there delivered the sd promissory Note to the sd Plff by which said Note he the sd Defdt then & there promised to pay four months after the date thereof, three hundred & seventy two Dollars & 55 cents to the sd Plff for value recd, by means whereof & by force of the Statute in such case made & provided the sd Defdt then & there became liable to pay to the Plff the sum of Money in the sd promissory Note specified according to the tenor & effect of the sd promissory Note and although the sd sum of Money in the sd promissory Note specified, hath been long since due & payable according to the tenor & effect of the said Note - yet the said Plff in fact saith that the sd Defdt (altho often requested so to do) did not nor would pay the sd sum of three hundred & seventy two Dollars & fifty five cents in the sd Note specified

[8643-2]

or any Part thereof to the sd Plf, in manner & form aforesaid, or otherwise however, he hath hitherto wholly neglected & refused & still doth neglect & refuse so to do to the damage of two hundred Dollars & therefore he sues

S G Hicks Atty for Plf

Copy of note sued on

$372.55 St Louis October 28 1853

Four Months after date I the Subscriber of Richmond County of Washington and State of Ills promise to pay to the order of S. S Farrington the sum of three hundred & seventy two 55/100 Dollars for value received, negotiable and payable without defalcation or discount

at (signed) H. B Lucas

Credited on the back as follows

$150 00 Rec'd on this note one hundred & fifty Dolls by M Barnes

Nov 28th 1854

Endorsed filed 10th March 1857 H H Talbot Clk

Copy of Summons

State of Illinois } The People of the State of Illinois
Washington County } To the Sheriff of Washington County Greeting

We command you to summon Harvey B Lucas if to be found in your County, to appear before the Circuit Court of Washington County, on the first day of the next Term thereof, to be holden at the Court house in Nashville on the fourth Monday in the Month of March inst to answer S. S Farrington in a plea of Debt — Debt $372.55 three hundred & seventy two Dollars & fifty five cents & damages $100, one hundred Dollars and hereof make due return to our said Court as the Law directs

Witness H. H Talbot, Clerk of our said Court, and the Judicial seal thereof at Nashville, this fourth day of March A D 1857

H H Talbot Clerk

Endorsed not served this 14 of March 1857 - John White Sheriff

Copy of Summons

State of Illinois } The People of the State of Illinois
Washington County } ss To the Sheriff of Washington County - Greeting

We command you to summon Harvey B Lucas if to be found in your County, to appear before the Circuit Court of Washington County, on the first day of the next Term thereof to be holden at the Court house in Nashville, on the 4th Monday in the Month of August to answer S. S. Farrington in a Plea of Debt - Debt $372,55 three hundred & seventy two Dollars & fifty five cents - Damages $200, or two hundred Dollars and have you make due return to our said Court as the Law directs

Witness H. H. Talbot Clerk of our said Court, and the Judicial Seal thereof, at Nashville, this 21st day of May A D 1857

H. H. Talbot Clerk

Endorsed - Served the within summons by reading to H. B. Lucas this 25th day of May 1857 - John White Sheriff W. C.

Copy of Affidavit

H. B. Lucas
as
Samuel S. Farrington
sued by the name of
S. S. Farrington } Washington Circuit Court
August Term A D 1857

This Affiant Harvey B. Lucas being first duly sworn according to Law deposes & says that just before and at the time of the issuance of the Writ in the above styled cause the said Plaintiff was & still is a Non-resident of the State of Illinois, to wit a resident of the State of Missouri, as he verily believes

H. B. Lucas

Subscribed and sworn to
this August 25th 1857
H. H. Talbot Clk

Copy of Judgment of Court disallowing Motion &c
and now on Friday Morning to dismiss for want of
Bond for costs - denied -

[DC43-8]

(4)

Copy of Plea

Harvey B Lucas
as
Samuel S Farrington
who sues by the name of
S. S. Farrington

Washington Circuit Court
August Term A D 1857

And Harvey B Lucas against whom the said Plaintiff has issued his said Writ and declared thereon by the name of S. S. Farrington in his own Person comes and defends the wrong &c. and prays Judgment of the said Writ, because he says the Sd Samuel S. Farrington the Plaintiff now is, and before, and at the time of the commencement of this Suit was called and known by the Christian name of ~~the~~ Samuel S. to wit, at the County aforesaid without this that the said Farrington the now Plaintiff now is, or before, or at the time of the commencement of this suit, called or known by the name of S S ~~Farrington~~ as in and by the Writ is above supposed, and this he the Sd Defendant is ready to verify, Wherefore he prays Judgment of the said Writ, and that the same may be quashed &c

Nelson & Johnson for Defts

This Affiant Harvey B Lucas being first duly sworn according to Law deposes and says that the foregoing Plea is true in substance and in fact to the best of his knowledge and belief

Subscribed & sworn to before me
this 25th day of August 1857
H H Talbot Clk

H B Lucas

Endorsement on Plea — filed 25th August 1857 - H H Talbot Clk

Copy of Repication

S. S. Farrington
vs
H. B Lucas } Defts

And the said Pltf by Hicks his Atty comes & say that the sd Pltf is as well known by the name of S. S Farrington as by the name of Samuel S Farrington and of this he puts himself upon the Country. Wherefore he prays Judgment &c

S. G. Hicks Atty
for Pltf

Copy of Demurrer

Harvey B Lucas
vs
Samuel S Farrington
who sues as S. S Farrington } Defts

And the said Defendant by Nelson his Attorney comes & says that the said Pltf's repication and the matters and things therein contained are not sufficient in Law & that he is not bound by law to answer the same Wherefore &c

Nelson for Deft

And for special cause of Demurrer Deft shows that the sd Repication ought to concude with a rejoication instead of concluding to the Country &c

Nelson for Deft

~~Copy of Plea of Coll. [illegible]~~

Copy of 2no Plea

Harvey B Lucas
vs
S. S Farrington } Defts

And the said Defendants by Nelson & Johnson his Attorney as to the sum of three hundred dollars parcel of the sum above demanded says, Actio non, because he says that he the Defendant at the request of the sd Pltff made in favor of him

the said Plff his Bill of exchange for the sum of three hundred Dollars parcel of sum ate by him demanded which was received by him the sd Plff in full satisfaction of the said sum of three hundred Dollars & this he the said Defendant is ready to verify Wherefore he prays Judgment &c

Nelson & Johnson for Defdt

Copy of Replication

And the said Plff comes &c and for Replication to Defendants Pleas as ate pleaded says that the sd Defendant did not pay a Bill of exchange nor did the Plff accept the same in full payment of the sum of three hundred Dollars as alleged in sd Defts Plea & of this he the sd Plff puts himself upon the Country, Wherefore prays Judgment &c

S. G. Hicks for Plff

Copy of Order

March term Washington Circuit Court Tuesday March 24 - 1857

S. S Farrington
vs
Harry B Lucas } Debt

On this day comes Plff by Hicks his Atty & it appearing that Defdt had not been served an Alias is awarded and this cause continued &c

Copy of Order

August term Washington Circuit Court Friday August 28 - 1857

S. S Farrington
vs
Harvey B Lucas } Debt

This cause was continued from last term for want of service on said Defendant — And now on Monday comes said Plaintiff by Hicks his Atty & said Defendant by Nelson his Atty — And now on Tuesday comes said Defdt & an affidavit filed moves the Court to dismiss suit for want of Bond for costs — Motion denied — And now comes said Defdt

& files his Pleas to Plffs Declaration — And now said Plff files his Replication to Defdts Pleas — And now Defdt demurs to Replication filed by Plff — Demurrer argued & over-ruled — And now on Friday Judgment is entered by default as to $72.55 Part not answered by Defdts Plea — And now Defendant moves the Court for discontinuance — Motion over-ruled — And now this Cause being at issue there comes a Jury to wit John S Davis, Frederick Ellerbush John W Yost, John S Brown, John Mitchell, James R Logan John Atkins, John M Rountree, Robert C Kennedy, Alexander P Shipley, James H Jemison & Hiram G Barrett twelve good & lawful Men of said County who being first duly sworn, and after hearing the evidence and argument of Counsel, retire to consider of their Verdict — And said Jury returned into Court the following Verdict — We the Jury find for the Plaintiff the sum of one hundred & Eighty six Dollars Part of the Debt in declaration mentioned — It is therefore considered by the Court that said Plff have & recover a Judgment of & from said Defdt the sum of one hundred & Eighty six Dollars as well as his Costs & charges about this suit by him in that behalf expended & Execution is awarded therefor —

State of Illinois } I Harry H Talbot Clerk of the
Washington County } Circuit Court in and for said County do certify that the foregoing is a true & complete Transcript of the Record in the foregoing entitled cause as taken from the Papers on file & records of said Court in said cause

Given under my hand & the seal of said Circuit Court this October 13 — 1857

H H Talbot Clerk

Clks Fees for Transcript $3.00

[2643-8]

S. T. Farrington
vs
H. B. Lucas

No

Transcript

Harvey B. Lucas
plaintiff in error &
defendant in Court below
of Oregon & Washington
Samuel T. Farrington
who is sued by the
name of S. T. Farrington
defendant in error
and plff in Court
below

The clerk of the
Court will place
upon their records
in the above Cause
Nelson & Solomon
for the plaintiff

Filed 30. Nov. 1857.
N. Johnston Clk
Paid $5.00 by Nelson

On reading this record I do allow a bond
to be filed in the penalty of Two
Hundred Dollars with Wm. M. Logan
his security in the penalty of three hundred Dollars
conditioned according to law
Feb. 6. 1858
Sidney Moore
Justice of the Court

Phœnix print, Richview, Illinois.

IN THE SUPREME COURT, STATE OF ILLINOIS.

For the 1st GRAND DIVISION.

November Term, 1857.

HARVEY B. LUCAS, *Plaintiff in Error,*
vs.
SAMUEL S. FARRINGTON, who sues as S. S. FARRINGTON,
Defendant in Error.

Error to
WASHINGTON.

ABSTRACT OF PLAINTIFF'S CASE.

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2 Summons in debt, issued 4th March, 1857, against plaintiff in error, in favor of defendant in error, plaintiff in the Court below, for $372,55,—damages $100, returnable to March Term, A. D. 1857, of said Court. Returned, "not served."

3 On the 21st day of May, 1857, another summons issued from said Court against plaintiff, and in favor of defendant, returnable to August Term of said Court; returned "served," on the 25th day of May, 1857. On the 25th of August, 1857, motion was made by plaintiff in error, on affidavit, for a bond for cost, which motion was denied.

4 At the August Term, A. D. 1857, plaintiff in error pleaded in abatement that the plaintiff in the Court below and defendant in error, who sued as S. S. Farrington, was called and known by the name of Samuel S. Farrington, instead of S. S. Farrington; to which, the defendant in error replied, that he was as well known by the name of S. S.
5 Farrington as by the name of Samuel S. Farrington;—whereupon, the plaintiff in error filed a demurrer to said replication, which was overruled by the Court.

6 Plaintiff in error, at same Term of Court, then filed a plea setting up that, as to the sum of $300—parcel of the sum above demanded—he had paid and satisfied the same by bill of Exchange, which was received by the defendant in full satisfaction of the sum of $300,—which plea the defendant traversed in his replication. Defendant in error then asked for judgment by default, which was entered for $72,50—part not answered by plea. Plaintiff in error then moved for a discontinuance of the suit, which motion was overruled.
7 A jury was empanneled, by order of the Court, who returned a verdict for the sum of $186,00, and costs, upon which the Court rendered judgment for $186,00, and costs.

The plaintiff brings the cause into this Court by writ of error, and seeks to reverse the judgment of the Circuit Court of Washington County: 1st. Because the Court overruled the motion to dismiss for want of cast bond. 2nd. Because the Court overruled the demurrer to replication to plaintiff's plea in abatement. 3rd. Because the Court rendered judgment by default for $72,55,—part of declaration unanswered. 4th. Because the Court overruled the motion to discontinue suit, after rendering judgment for the part unanswered, as aforesaid. 5th. Because the Court empanneled a jury to try said cause after the suit was discontinued in law, and rendered a judgment for $186, and costs, against plaintiff in error on the verdict of the jury. 6th. Because the judgment of the Court does not specify whether said judgment was rendered for debt or damages, or what portion of the claim of the defendant in error the said judgment was rendered for. 7th. Because there are two separate final judgments rendered against the plaintiff in error in one suit.

For these reasons, the plaintiff in error asks that the judgment of the Circuit Court of Washington County may be reversed.

NELSON & JOHNSON, *for Plaintiff in Error.*

H. B. Lucas, *Plaintiff in Error,*

vs.

S. S. Farrington, *Defendant in Error.*

ABSTRACT.

ERROR TO WASHINGTON

Know all Men by these presents that we Harvey B. Lucas principal and William M. Logan security are held and firmly bound unto Samuel S. Farrington alias S.S. Farrington in the penal Sum of three hundred dollars Lawfull Money of the united States for the payment whereof well and truly to be Made unto him the said Samuel alias S.S. Farrington we do bind & oblige ourselves our heirs Executors and administrators firmly by these presents. Witness our hands & seals this 19th day of Feby A.D. 1858

The Condition of the forgoing obligation is such that whereas the said Samuel S. Farrington by the Name of S.S. Farrington has obtained a Judgment against the above bounden Harvey B. Lucas for the Sum of one hundred and Eighty two dollars or thereabouts in an action of debt in the Circuit Court of Washington County State of Illinois at the last August term of said Court for the reversal of which said Judgment the said Harvey B. Lucas has sued out a writ of error from the Supreme Court of this State. Now if the said Harvey B.

[8145-1]

or liability whatever and exclusion of all debts

Subscribed & sworn to
before me this 19th
February AD 1858

Henry B. Luce

A. J. Hosmer Notary

[8643-8]

26 40/64

7 6/42

4 60/55 1/2

Phœnix print, Richview, Illinois.

IN THE SUPREME COURT, STATE OF ILLINOIS,

For the 1st GRAND DIVISION,

November Term, 1857.

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vs.
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NELSON & JOHNSON, *for Plaintiff in Error.*

H. B. Lucas, *Plaintiff in Error,*

vs.

S. S. Farrington, *Defendant in Error.*

ABSTRACT.

ERROR TO WASHINGTON

Filed 30. Nov. 1857.

N. Johnston Clk

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H. B. Lucas

by

S. S. Farrington

H643