No. 11920

Supreme Court of Illinois

Prentice

vs.

Coon

71641 7

No. 13.

Lewis Prentice

vs

Nathan Coon

1850

11920

State of Illinois
Kane County and Circuit Court thereof: of the
January Special Term AD 1849

Nathan Coon
v
Lewis Prentice } Attachment

Be it remembered that on the fifth day of April AD 1848 the plaintiff filed in the Circuit Clerks Office of Kane County Circuit Court a declaration of which the following is a Copy.

State of Illinois
Kane County ss } Kane Circuit Court April Term AD 1848

Nathan Coon the plaintiff in this suit complains of Lewis Prentice defendant who has been attached &c: in a plea that he render unto said Nathan Coon the sum of Four hundred Dollars lawful money of the United States which he owes and unjustly detains from him

For that whereas the said defendant heretofore to wit on the 13th day of June in the Year of our Lord 1846 at Dundee in the County of Kane and State of Illinois to wit at Geneva at Kane County aforesaid. Made his Certain promissory Note in writing. bearing date a certain day and year therein mentioned to wit the year & year aforesaid: And then and there delivered the said Note to said plaintiff. by which said Note he the said defendant then and there promised to pay one year from the first

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day of September next after the date thereof. to the order of the said plaintiff. the sum of One hundred and four dollars ($104.00) for Value received. by means whereof and by force of the Statute in such Case made and provided. the said defendant then and there became liable to pay the said plaintiff the said sum of Money. in the said promissory Note specified according to the tenor and effect of the said promissory Note. and although the said sum of Money in the said promissory Note specified. hath been long since due and payable. according to the tenor and effect of said Note. yet the said plaintiff in fact saith that the said defendant although often requested so to do did not nor would pay the said sum of ($104.00) in the said Note specified or any part thereof to the said plaintiff in manner aforesaid or otherwise whatsoever: but hath hitherto wholly neglected and refused so to do. whereby an action hath accrued to the said plaintiff to demand and have of and from the said defendant the said sum of $104. dollars in said Note specified. parcel of the said sum above demanded

2 And whereas also the said defendant. afterwards to wit on the first day of May AD 1847 at Kane County aforesaid was indebted to said plaintiff in the sum of One hundred Eighty Dollars ($180) like lawful Money for divers goods wares and merchandize and promissory Notes. by the said plaintiff before that time sold and delivered to the said defendant. and at his instance and request. And also in the further sum of three hundred and fifty dollars like lawful Money for Money. by the said plaintiff before that time lent and advanced to the said defendant. and

at his like instance and request; and for other money by the said plaintiff before that time paid laid out and expended for the said defendant and at his like instance and request; and for other money by the said defendant before that time had and received to and for the use of the said plaintiff; and being so thereto and in consideration thereof; the said defendant afterwards, to wit on the same day and year last aforesaid at Kane County aforesaid, undertook and agreed with the plaintiff to pay him the said several sums of money above mentioned, when he should be thereto afterwards requested: yet the said deft. hath not paid to said plaintiff the whole or any part of the said several sums of money above mentioned, although often requested so to do &c: but to pay the same or any part thereof to the said plaintiff the said defendant hath hitherto wholly neglected and refused, and still doth neglect and refuse to the damage of the said plaintiff of Two hundred dollars.

And whereas the said defendant afterwards to wit on the day and year last aforesaid at Kane County aforesaid accounted with said plaintiff of and concerning divers other sums of money, before that time and then due and owing, and in arrear, and unpaid, from the said defendant to the said plaintiff and upon that accounting, the said defendant was then and there found, to be in arrear and indebted to the said plaintiff in the further sum of two hundred dollars of like lawful money to be paid by said defendant to the said plaintiff; when he the

said defendant should be thereunto afterwards requested. Whereby and by reason of the said last mentioned sum of money being and remaining wholly unpaid, an action hath accrued to the said plaintiff to demand and have of and from the said defendant the said last mentioned sum of two hundred dollars, residue of the said sum above demanded; yet the said defendant although often requested so to do hath not as yet paid the said sum of Four hundred dollars above demanded or any part thereof to the said plaintiff, but he to do this hitherto wholly refused and still doth refuse to the damage of the said pltff one hundred dollars ($100.) and therefore he brings his suit

A. R. Coon
Atty for Pltff

Copy of Note and account delivered as
Dempsey June 23d 1840

$104.00

For Value Recd. I promise to pay to the order of Nathan Coon the sum of one hundred and four dollars ($104.00) one year from ~~the first~~ day of September next with use

(Signed) Levi Rintee

Levi Rintee to Nathan Coon Dr.

To Goods, Wm and Merchandise	$80 Dollars	$80.00
" Note against Harry Warren	$100.00	100.00
" Money lent	$150.00	150.00
" " paid laid out & expended	$150.00	150.00
" " lent and received	$100.00	100.00
" " on account stated	$200.00	200.00

A. R. Coon
for Pltff

And afterwards to wit on the 26th day of April AD 1848 the said defendant filed his plea which is as follows to wit

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Lewis Prentice

Kane Circuit Court April Term AD 1848

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And the said defendant by Findley his Attorney comes and defends the wrong and injury when &c and says that he does not owe the said sums of money above demanded, or any part thereof in manner and form as the said plaintiff hath above thereof complained against, and of this he the said defendant puts himself upon the country

B F Findley
Attorney for the defendant

And for a further plea the said defendant says that the said note in said plaintiffs declaration was made and entered into without any good or valuable consideration, and of this he is ready to verify

B F Findley
Atty for defendant

And for a further plea the said defendant says that the said note in the said declaration mentioned has been fully paid and discharged by the defendant and of this he puts himself upon the country &c

B F Findley
Atty for defendant

And the said plaintiff as to the above & 3d plea by the defendant above pleaded says precludi non because he says, that the said note in said plaintiffs declaration

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mentioned, has not been paid and discharged in manner and form as the said defendant in said plea has alleged, and as he has put himself upon the country the Plaintiff doth the like

by A. P. Coon Plff Atty

And afterwards, to wit on the 20th day of February AD 1849 the following bill of Exceptions was filed to wit

State of Illinois
Kane County and Circuit Court thereof: Of the January Special Term AD 1849.

Nathan Coon
v
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Be it remembered that in the commencement of this suit, an attachment bond was filed by Plaintiff of which the following is a copy viz:

"Know all Men by these presents that we Amos
3 "P. Coon and Joel N Johnson are held and firmly bound
"unto Lewis Prentice his heirs or assigns in the penal sum
"of Three hundred and twenty Dollars the payment of
"which well and truly to be made, we bind ourselves our
"heirs Executors Administrators and assigns jointly severally
"and firmly by these presents; Signed with our hands and
"sealed with our seals this 27th day of January AD 1848

"The Condition of this Obligation is such that
"whereas the above bounden Amos P. Coon as Agent and
"Attorney of Nathan Coon, hath on the day of the date
"hereof prayed an attachment out of the Circuit
"Court of Kane County State of Illinois at the

"suit of Nathan Coon against the Estate of the above
"named Levi Prentice for the sum of One hundred and
"fifty one 32/100 Dollars ($151 32), and the same being
"about to be sued out of said Court returnable on
"the first day of the next term of the said Circuit Court
"then to be holden; Now if the said Nathan Coon
"shall prosecute his suit with Effect, or in case of
"failure therein, shall well and truly pay and satisfy
"the said Levi Prentice all such Costs in said suit
"and such Attorney as shall be awarded against the
"said Nathan Coon his heirs executors or administrators
"in any suit or suits, which may hereafter be brought
"for wrongfully suing out the said Attachment, then
"the above Obligation or bond to be void in Law, otherwise
"to remain in full force and effect

A. N. P. Coon (Seal)
L. A. Johnson (Seal)

that at the second day of said term, plaintiff by his
Attorney, moved the Court to permit him to file a new Attachment
bond, and to discharge Amos Bloom one of the makers
of the original Bond, from his liability on said bond:
that he might call said Amos Bloom as a witness
on the trial of said cause - that on the fourth day of said
term, this motion came on to be heard, whereupon plaintiff
by his Attorney produced in open Court and offered to file his
new Attachment bond, of which the following is a copy:

"Know all Men by these presents, that we
"Nathan Coon and Richard R. Simpkins, are held and
"Levi Prentice his heirs or assigns in the penal sum of Four
"hundred dollars, the payment of which well and truly to
"be made, we bind ourselves our heirs executors

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"And Administrators and Assigns. Jointly Severally
"and firmly by these presents. Witness our hands and
"seals this 11th day of January AD 1849.

"The Condition of this obligation is such, that
"whereas the above bounden Nathan Coon, (by his
"Agent and Attorney Amos B Coon) did on the 28th
"day of January AD 1848 pray an Attachment out
"of the Circuit Court of Kane County Illinois at the suit
"of Nathan Coon against the Estate of the above named
"Lewis Prentice for the sum of (151 32/100 Dollars and
"the same having been sued out of said Court returnable
"on the first day of the next term of said Court to be
"holden; Now if the said Nathan Coon shall prosecute
"his suit with effect, or in case of failure therein shall
"well and truly pay and satisfy the said Lewis Prentice
"all such costs in said suit, and such damages as shall
"be awarded, against the said Nathan Coon his heirs
"executors or administrators, in any suit or suits which
"may hereafter be brought for wrongfully suing out said
"Attachment, then the above obligation to be void
"Otherwise to remain in full force and effect

Nathan Coon by (Seal)
A B Coon his Attorney in fact
R B Simpkins (Seal)

And to prove the execution thereof, produced in Court
a power of Attorney, which is in the words and
figures following viz!

"Know all men by these presents that I
"Nathan Coon of the County of De Kalb and State of Illinois
"do hereby Constitute and appoint Amos B Coon Esq.
"of McHenry County Ill. my true and lawful Agent ~~Attorney~~

" and Attorney in fact to prosecute to final judgement
" and Collection a certain Claim I now have against
" Lewis Prentice. it being the same that is now in
" suit by Attachment in the Kane County Circuit Court
" against the goods and Chattels Lands, and tenements
" of the said Lewis Prentice. and I do hereby give him
" the said A.B. Coon full power and authority in my
" name and stead to sign my name to all papers or
" bonds for Costs that may be necessary in the prosecution
" or Collection of said suit. and generally to do and
" perform all other acts in my name and stead as fully
" as if myself were present in person. that my said agent
" and Attorney may think proper and aright. either for
" the prosecution of said suit. the final Collection or discharge
" of the same. hereby giving him full power and authority
" to settle. compromise or compound the same. and to appoint
" a substitute or substitutes under seal. giving him or
" them full power to do any or all of the above acts
" specified. hereby ratifying and confirming all of the
" acts of my said agent his substitute or substitutes
" by him thereunto duly appointed. and hereby adopting
" his or their said acts as my own. as fully as if I
" were myself personally present: as witness my hand
" and seal this 22d day of November AD 1848

Nathan Coon (Seal)

" In presence of

And offered the said Amos B Coon as a
witness to prove the execution of said power of
Attorney. to which defendant objects — said A.B. Coon
testified that this power of Attorney was in his hands

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in Court on the second day of this term, and that at time, the name of Charles D Palver was subscribed to the same, purporting to have been subscribed as a subscribing Witness - said A.B.Coon further testified that he was present at the Execution of said power of Attorney by Nathan Coon and saw him sign and seal the same, and that said Palver was not present at the execution thereof, but on a subsequent day, when the said Nathan Coon was not present, said Palver subscribed his name as a subscribing witness to said power of Attorney while the same was in possession of said A.B.Coon - that the same had remained in his possession with Palvers name Attached as aforesaid untill after the second day of this term, when said Witness A.B.Coon, cut off the name of Palver from said power of Authority; the objection of defendant to A.B.Coons evidence was overruled by Court and evidence heard as above.

E.L. Mayo, was then sworn — and defendant objecting thereto, was permitted by the Court to testify and did testify that he had been Recorder of DeKalb County and had Recorded a deed duly acknowledged the which purported to have been Executed by Nathan Coon; also that he had Canvassed Election returns in DeKalb County which purported to have been signed by Nathan Coon as one of the judges of Election - and that said Nathan Coon was in fact at the time one of the judges of Election - that he had never seen the said Nathan Coon write, but in the transaction of business as aforesaid was somewhat acquainted with his hand writing, and Witness

After inspecting his hand writing said Power of Attorney said he believed the signature thereto to be the genuine hand writing of said Nathan Coon: this was all the evidence offered to prove said Power of Attorney. Said Witness A. P. Coon further stated that by authority of said Power of Attorney he had signed and sealed the new Attachment Bond now presented by plaintiff Attorney: Defendant objected to said bond - that the Power of Attorney had been altered by cutting off the name of Pulver as aforesaid; and further that its execution could only be proved by said Pulver, he having signed the same as a subscribing witness: which objections the Court overruled, and held the Execution of said Power of Attorney well proven, and that it remained valid, notwithstanding the excision of the name of Pulver; and that the new bond was well executed. The Court then approved of the new bond allowed it to be filed, and ordered that said A. P. Coon be discharged from all liability on said original Attachment bond: to each of which decisions of the Court excepted, and prays that this his bill of exceptions may be signed sealed and enrolled which is done.

J. L. Dickey
Judge

Be it further remembered, that on the trial of this cause, plaintiff by his Attorney having read in evidence a promissory note in the words and figures following viz: "Deerfield June 3rd 1860

7 "$104.00 For value rec'd I promise to pay to the order of Nathan Coon
"the sum of one hundred & four dollars ($104.00) one year from the first day
"of September next with use Lewis Prentice"

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Ackland his Evidence closed; thereupon defendant
8 proved by Levi Willard, that sometime in fall of 1841
he saw in possession of plaintiff a horse which he had
formerly seen running about the premises occupied
by Mrs Prentice wife of defendant; defendant had then
left this region of Country; Witness further stated, about
the time he first saw said horse in the possession of
plaintiff, plaintiff told witness that he got the horse
from Mrs Prentice, that he had been out to see Prentice
and Prentice had let him have the horse on a Note
and directed him to get the horse from Mrs Prentice;
that plaintiff further ~~stated~~ said, that Prentice was
poor, and that was all he could expect to get of him.
Witness further stated that said horse was worth about
thirty dollars

Defendant then introduced Harriet Prentice
9 who formerly had been the wife of defendant, but who was
divorced by a decree of a Court of Competent Jurisdiction
from the defendant some three years ago, and had not
been the wife of the defendant since said divorce - and
offered to prove by her that at the time plaintiff recd.
the horse spoken of by Witness Willard (which was before
the divorce) she was the wife and agent of defendant
and that plaintiff called on her and stated that he
(plaintiff) and Prentice (defendant) had agreed that
plaintiff should have said horse, and take him in
full payment and satisfaction of the said Note, and
that Prentice had directed him to call on her for the
horse, and that she accordingly let plaintiff have said
horse and that plaintiff took and accepted said
horse in full payment of said Note; to the

introduction of which testimony plaintiff by his Counsel objected upon the ground that said Harriet was not a Competant Witness - which objection the Court sustained and refused to allow said Witness to testify to which decision of the Court the defendant by his Counsell excepted -

10 Amos B Coon an Attorney at law, and the Attorney of the plaintiff in this Suit, and one of the obligors in the original attachment bond given in the Commencement of this Suit, the son of the plaintiff and the agent of the plaintiff in Conducting this Suit then offered himself as a Witness for the plaintiff; defendant objected to the Witness being sworn or giving testimony and proved the foregoing facts to the Court, but the Court overruled the objections and held said A B Coon a Competant Witness, and permitted him to testify and he did testify, that he had a Conversation with Prentice in DeKalb County after the plaintiff got the Loan spoken of by Witness Willard, When Prentice defendant said that the horse was not to apply as payment on the Note herein sued on, but was to apply in payment of another and different Matter; to which decision of the Court in overruling defendants objections and permitting said testimony to be given to the Jury, the defendant by Hedley his Attorney excepted, after verdict defendant moved for new trial, which the Court refused and defendant excepted; and at his request this bill of exceptions is signed sealed and made part of the record

T. L. Dickey Judge 9th Circuit (Seal)

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Pleas before the Hon Theophilus L Dickey Judge of the Sixth Judicial Circuit at a Special Term of the Circuit Court begun and held at the Court house in Geneva in on said County on the Seventeenth day of January in the Year of our Lord One thousand Eight hundred and forty Nine. the said term having been called according to Law by an order of the Hon Theophilus L Dickey Judge of the Sixth Judicial Circuit of said State. dated the 4th day of December AD 1849 which was duly filed and recorded

Present Hon Theophilus L Dickey Judge
P. C. Yates Sheriff
R. C. Cook State Atty
Attest C. P. Owen Clk

Be it Known that on the 6th day of February AD 1849 it being one of the days of the said January Special Term AD 1849. the following among other proceeding were had to wit

No 54 Nathan Coon v Lewis Prentice } Attachment

This day comes the plaintiff by Jones his Attorney and the defendant by Fidley his Attorney also come and upon motion of the plaintiff it is ordered by the Court that a jury come. whereupon came a jury of good and lawful men to wit

E B Hall Joseph C Stevens Wm Hight
Timothy Wossley Julius Alexander Edwin Clark
Ira Tyler J H Whipple James Kean
Wm C Wilder Levi Brown John Montanye

being severally elected tried and sworn also came. after hearing the evidence and argument of Counsell retire under Charge of an Officer of the Court to Consider of their Verdict: subsequently returned into Court. and upon their Oaths for a Verdict say that we the jury find the defendant indebted unto the plaintiff in the sum of One hundred and fifty seven dollars and Eighty two Cents; whereupon the defendant moves for a new trial by Fidley his Attorney.

And Adjourned, to sit on the 20th day of February AD 1849 it being one of the days of the aforesaid term the following proceeding was had

No 54

Nathan Coon
v
Lewis Prentice
} Attachment

This day comes on again to be heard the defendants Motion heretofore entered for a New trial. after argument of Counsell: it is Considered by the Court that the Motion be overruled, and that the plaintiff have and recover of the defendant the sum of one hundred and fifty seven dollars and Eighty two Cents and his Costs in this suit. and have Special Execution to sell the Lands Attached in this suit which is as follows! "the South West quarter

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of Section Number three. Township No forty two
Range No Six East of the third principal Meridian
and if such Sale does not satisfy the judgment
that he have Execution for the balance

State of Illinois }
Kane County ss }

I Charles B Wells Clerk of
Kane County Circuit Court do hereby Certify. that
the foregoing are true Copies of the Declaration. Plea
and the Bill of exceptions on file in my Office. and
a true Copy of the Record so far as appertains to
the final Judgment

Witness my name and Seal
of said Court at Geneva this
2d day of June AD 1849

C. B. Wells
Clk

Nathan Coon
vs
Lewis Prentice

Supreme Court of the
Illinois June Term AD 1849

And the said Lewis Prentice the Defendant by Fridley his attorney Come and Say that in the Record and proceeding of the Court and in the Rendition of the judgement afore said there is manifest error in this to wit that it appears by the Record aforesaid that the Circuit Court rendered a judgement in favour of the Plaintiff and against the Defendant Prentice whereas the judgement Should have Been rendered against the Plaintiff Coon and in favour of the Defendant Prentice

And for further errors in the Record and proceedings of the Court Below the said Defendant Prentice assigns the following to wit

1 The Circuit Court erred in discharging A B Coon from his liability on the the original Attachment Bond

2 The Court erred in permitting A B Coon to give evidence as to the proof of the Execution of the Power of Attorney

3 The Court erred in permitting the power of attorney to be filed

4 The Court erred in not permitting Harriet Prentice to give evidence

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5 The Court erred in permitting A B Coon to give evidence on the Trial of the Cause for the Plaintiff

6 The Court erred in over Ruling the Defendants Motion for a new Trial

7 The Court erred in Rendering Judgement against the Defendant

R. Hilley
attorney for Defendant
Pro tem

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Nathan Coon
v
Lewis Prentice

Record from Kane County

Filed June 15th 1849.
J. Leland Clk.

Collins

WRIT OF ERROR.—FREE TRADER, OTTAWA.

State of Illinois, Set.

The people of the State of Illinois,

To the Clerk of the circuit court for the county of Kane — 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 Kane county, before the Judge thereof, between Nathan Coon

plaintiff and Lewis Prentice

defendant it is said manifest error hath intervened to the injury of the aforesaid Defendant as we are informed by his 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 the 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 Ottawa, in the county of La Salle, on the Second Monday of June 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. Samuel H. Treat Chief Justice of our said Court, and the seal thereof at Ottawa, this 16th day of June in the year of our Lord one thousand eight hundred and forty-nine.

S. Leland

Clerk of the Supreme Court.

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Prentiss vs Coon

Writ of Error

Filed June 16. 1849.
S. Leland Clk.

State of Illinois } ss
Lasalle County }

Nathan Coon
vs } Writ of Error in the Supreme Court of the June Term AD 1850
Lewis Prentice

Nathan Coon the Defendant in this suit being duly sworne doth depose and say that the plaintiff in this suit Lewis Prentice was not at the time of the commencement of this suit a Resident of this State and that he was at and before the filing of the Record in this case and the allowing the writ of Error a non Resident of this State and has continued so continued to be a non Resident of this State and still is a non Resident of this State and further saith not

Nathan Coon

Subscribed & sworn to before me June 11. 1850.
L Leland Clk. S. C.

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Prentice vs Coon

Appeal. —

Filed June 12. 1882.
C. Leland Clk.

Lewis Prentice
vs
Nathan, Coon

And now comes the defendant by A. Bloom his attorney and moves the court to dismiss the writ of Error in this case for the Reasons that there is no security filed for costs. the Plaintiff being a non-Resident, as per affidavit of defendant filed herein

A. Bloom atty for Dft

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5th " " 20

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Prentiss vs Coon

Mo. to dis.

Filed June 12. 1850.
L. Leland Clk.