

Royal A. Nott
vs
Valentine S. Auglin

Valentine S. Auglin

Pleas held before
the Hon. Justin Barber
Judge of the Clark Circuit
Court at the Court House
in Marshall on Saturday
the 4th day of November A.D. 1837 in a certain
action of assumpsit wherein Royal A. Nott
is Plaintiff and Valentine S. Auglin is defendant

Be it Remembered that here tofore to wit
on the 30th day of November A.D. 1837 the
Plaintiff in his own proper person filed
with the Clerk of this Court his procepe
in the words and figures following to wit

Royal A. Nott

vs
Valentine S. Auglin

In assumpsit
Damages \$500

The Clerk of the Clark Circuit Court
Missouri will please issue a summons
in the above stated cause against
Valentine S. Auglin returnable to the
above stated Term of Court

20th Oct 1837

Wm. H. C. Nourse
P. A. Nott Plff

And there upon the following
summons
State of Missouri
Clark County Let the People of the State
of Missouri to the Sheriff of Clark County
executing

12

12

10

We command you that you summon
Valentine S. Anglin if he may be found
in your county personally to be and appear
before the Clark Circuit Court on the first
day of the next Term thereof to be holden
at the Court House in Marshall on the
third day of November next to answer unto
Royal A. Nott in a plea of assumpsit to the
damage of him the said Royal A. Nott Five
Hundred Dollars and have you there this
Writ - Witness the Hand of Clerk and the official
Seal of said Court at Marshall this 30th day
of October A.D. 1837

Teste

U. Maulsby
Clerk

upon which is the following Sheriff's return
to wit - Executed October 23rd 1837

J. Stockwell Sheriff

And afterwards to wit on the 31st day of
October A.D. 1837 the Plaintiff filed in the
Clerk's office of this Court his Declaration
which is in the words and figures following
to wit

State of Illinois Clark Circuit Court
November Term A.D. 1837

Clark County to wit Valentine S. Anglin
(who signs his name Valentine Anglin) was
summoned to answer Royal A. Nott who
signs his name R. A. Nott of a plea of assumpsit
and therefore the said Royal A. Nott complains of that
whereas we heretofore to wit on the Eleventh
day of February in the year of our Lord and

P. 2.

Thousand eight hundred and thirty six at the
County and Circuit aforesaid by a certain agreement
in writing (not under seal) then and there
made by and between the said Royal A. Holt
and the said Valentine S. Auglin it was
agreed that the said Royal A. Holt should
lease hire and to farm let to the said Valentine
S. Auglin for the Term of one year then next
ensuing from and after the day and year
aforesaid upon certain conditions and stipulations
named and set forth in said agreement to wit
one hundred and fifty acres of tilable land
with a part of a certain messuage thereupon
situate and being the east half of a
certain field in Walnut Prairie in the County
aforesaid to be cultivated according to and
in the manner specified in said agreement
by the said Valentine S. Auglin which said
agreement is to the Court now here shown
and is in the words and figures following
to wit "Articles of agreement made and
entered into at Darwin in Clark County Illinois
by and between R. A. Holt of the one part
and Valentine S. Auglin of the other part
Metropolis, that the said Holt doth
agree to furnish the said Auglin one
hundred and fifty acres of Prairie
land for the present season being the
East half of his field in Walnut prairie
more or less also three good mares, three
sets of gears & three plows also as much
of his frost bitten corn as is sufficient

or as much as said Anglin may need to
feed as much team as is necessary to tend
the above mentioned one hundred and fifty
acres of land and the said Anglin on his
part agrees to furnish the balance of team
seam and plows that may be necessary to
attend the above mentioned one hundred and
fifty acres of land, and to attend the above
mentioned land in the following manner
The ground to be well broken up, laid off
and planted in rows both ways in due time
and after to be attended well and in a
workmanlike manner, and said Anglin agrees
to gather the said corn and deliver to the said
Nott in his cribs at Prev's Landing and in
Darwin, one half of the corn that may
grow on the above mentioned land. The
said Nott agrees to furnish one waggon
and team to assist in gathering, and when
the above crop shall be gathered and
divided the above contract to be completed
and finished but should the said Anglin
sell the said partnership crop the whole
crop to remain good to the said Nott for the
said contract until completed for the performance
of the above contract we the parties bind
ourselves in the sum five hundred dollars
for the liquidation of any damages either
party may sustain in consequence of non
performance of the athen signed at Darwin
Feb'y 11th A.D. 1836.

R. A. Nott
Valentine Anglin

P. 3-

It is understood the said Auglin is to have the privilege of turning his own stock in the field after the corn shall all be gathered not to exceed twenty head and may commence cutting stock on the first of March next and the within contract is made for this present season of 1836 It is further understood that the said Auglin is to have the use of one of the rooms now on said lease for the use of his family, also the privilege of the pasturing of his horses in the woods pasture during the Summer and fall all of the within and above contract signed in presence of and left with James B. Anderson. Feby 11. 1836

R. A. Nott

Valentine Auglin

and the said agreement being so made and executed by and between the said Royal A. Nott and Valentine A. Auglin afterwards to wit on the day and year last aforesaid at the County aforesaid the said Royal A. Nott in fact saith that he did in compliance of ~~with~~ his said agreement on his part furnish the said Valentine A. Auglin the said one hundred and fifty acres of Prairie Land being the East half of his the said Royal A. Nott's field in Walnut prairie, also three good mares three sets of year & three calves also as much corn as was sufficient or as much thereof as was needfull for the said Auglin to feed as much team as was necessary to tend the above mentioned one hundred and fifty acres of land during the time of and according to his said agreement as aforesaid

And although the said Royal A. Nott hath
always from the time of making the said
agreement as aforesaid hitherto well and
truly performed fulfilled and kept ~~according~~
all things therein contained on his part and
behalf to be performed fulfilled and kept
according to the tenor and effect true intent
and meaning of his said agreement to wit
at the county of ~~ore~~ said, yet the said Royal A.
Nott in fact saith that the said Valentine
S. Anglin, contriving and wrongfully and
unjustly intending to injure the said
Royal A. Nott did not nor would perform
the said agreement nor his said promise
and undertaking therein but thereby craftily
and subtly deceived the said Royal A.
Nott in this to wit that the said Valentine
S. Anglin wholly neglected and omitted to
do and perform certain works which
required and necessary to be done and
performed under and by virtue of said
agreement and according to the tenor and
effect true intent and meaning thereof
this is to say; to furnish the balance of ten
years and plows that were necessary to (attend)
cultivate and husband the grain that did
grow or might have grown on the said land
specified in said agreement to break up the
said ground or land well, to lay off and plant
the same in rows both ways in due time
and to attend and cultivate the said corn well
(when so planted) in a workmanlike manner
And the said Valentine S. Anglin

P4

also thereby craftily and subtly deceived
the said Royal A. Nott in this to wit
that the said Valentine A. Anglin afterwards
to wit on the 11th day of Feb'y 1836 and on divers
other days and times during the continuance of the
time of lease did and performed certain
other work in and about the plowing planting
cultivating husbanding and gathering the
said crop corn and grain which were
requisite and necessary to be done and
performed under and by virtue of ^{the} said
agreement in a bad, negligent, inartificial
and unworkmanlike manner contrary to the form
and effect of the said agreement and of his said
promise and undertaking to wit at the county
of ~~specified~~ wherefore the said Royal A. Nott
with ~~in~~ ~~the~~ ~~county~~ ~~of~~ ~~specified~~ hath sustained damage to the
value of Two Hundred Dollars. And whereas
also heretofore to wit on the 11th day of February
1836 at the county of ~~specified~~ in consideration
of the promise ~~specified~~ contained in said
agreement that the said Royal A. Nott
should do and perform fulfill and keep
all things in said agreement contained as
specified in furnishing the said Anglin
with one waggon and team to assist in gathering
the crop so to be cultivated and raised in
and upon the said ~~land~~ ~~specified~~ in said
agreement which said waggon and team was
furnished by the said Nott to assist in gathering
the crop according to his said agreement in
that behalf. Yet the said Royal A. Nott in
fact saith that the said Valentine A. Anglin

did not gather the said Corn and deliver
to the said Royal A. Nott in his Crib at Prevo's
Landing and in Darwin one half of the Corn that
grew on the above mentioned Land according
to his said agreement but to do and perform the
same the said Valentine S. English has wholly neglected
and omitted to do and perform which were
necessary and requisite to be done and
performed under and by virtue of said
agreement according to the tenor and effect
true intent and meaning thereof according
to his the said Valentine S. English promise
and undertaking to wit at the County of said
wherefore the said Royal A. Nott saith
he is injured and hath sustained damage
to the value of three Hundred Dollars and
therefore he brings his suit

Royal A. Nott
Plff

And then to wit at a Circuit Court
held for Clark County at the Court House
in Marshall on Saturday the 4th day of November
1837 the following order was made of said
Circuit Court in said cause to wit

Royal A. Nott

vs. } Appellant. And now at
Valentine S. English } this day came the plaintiff
by his attorney and on his motion it is ordered
that the defendant file his plea herein
by 9 o'clock tomorrow morning

and again at another day of the said Term to wit on Tuesday the 7th day of November 1837 the following order was entered of Record in the cause to wit Royal A. Nott vs Augustin - Approposuit - and now at this day came the plaintiff by his Attorney and the Defendant by his Attorney moved the court to dismiss this cause for insufficiency of the Summons The court not being sufficiently advised took time to consider thereof. And again at another day of said Term to wit on the 3rd of November

9th 1837 the following order was made by said court to wit
Royal A. Nott }
" " } Approposuit } And now at this day
Valentine J. Augustin } came the plaintiff by

his Attorney and the court being sufficiently advised upon the motion made by the Counsel for the Defendant to quash the writ herein for want of sufficiency the court overruled said motion to which opinion of the court the Defendant by his Attorney excepts thereto and filed his Bill of Exceptions herein which Bill as Exceptions is in the words and figures following

to wit Royal A. Nott }
" " } Approposuit & R. it
Augustin }

Remembered that on the calling of the above cause the Defendant by his Attorney moved to quash the Summons herein which is in the words and figures following to wit.

" State of Missouri / The People of the "
" Clark County / et. State of Missouri "
" the Sheriff of Clark County greeting. We "
" command you that you summon Valentine J. Augustin "

" if he may be found in your county personally to be "
" and appear before the Clark Circuit Court "
" on the first day of the next Term thereof to be "
" holden at the Court House in Marshall "
" on the third day of November next "

to answer unto Royal A. Nott in a plea
of Assumpsit to the Damage of him
the said Royal A. Nott Five Hundred
Dollars. and here you then there this
2000.

Witness Our Mauly Clerk and
the officid seak of said court
at Marshall this 20th day of
October A.D. 1837

Teste

W. Mauly Clerk

and dismiss said suit which motion was averuled by the
court to which opinion of the court in averuling said
motion the defendant by his counsel except and
for the bill of exceptions to be signed
and made a part of the Record - which is done

J. Harlan

And after words on the same day of said Term of said court to wit
on Thursday the 9th of November 1837 the following order and
proceeding were made and entered of record. to wit

Royal A. Nott } Assumpsit - And now at
Valentine S. Lughin } this day came the plaintiff
by Cooper and McRobert his
Attornes. and the defendant although three
times called came not, and remains
wholy undefended herein, and because it is
unknowen to the court what Judgement to
give therefor it is ordered that the Sheriff
return into court a Jury to ascertain what
Damage the plaintiff

has sustained in the premises and therefore
 the Sheriff returned into Court the following
 named Jurors to wit John R. Fitch David Reynolds
 Samuel Gilbreath James Dunlop David Cole
 Darius Phillips Daniel W. Elledge James M.
 Dixon George M. Snider Robert Cairns Thomas
 Cairns and Samuel Claypool Twelve good and
 lawful men who being duly elected tried
 and sworn to inquire of afeff the plaintiffs
 damages herein upon their oaths do say
 We the Jury afeff the plaintiffs damages to
 one hundred and seventy five dollars
 Darius Phillips
 foreman

It is therefore considered and adjudged by
 the Court that the plaintiff recover of
 the defendant the said sum of one
 hundred and seventy five dollars

ofore said by the Jurors ofore said in
 manner and form ofore said afeff
 Together with his costs and charges about his
 suit in that behalf laid out and
 expended and that he have thereof Execution
 and on Friday the 10th day of November 1837 the following
 was made of Record to wit

"Royal A. Holt } and now at this day came the
 Valentine S. Duphin } Deft. by his attorney and prayed an
 arrest herein which is granted upon condition that
 the defendant execute an appeal with an appeal bond
 this Court an appeal Bond with Moses Duphin
 or John Davidson as his securities within Ten
 days from this date in the penal sum of
 Three Hundred Dollars"

Valentine Co

Right A. M. P.

Valentine L. Oglin

Copy of Record

No 93

Filed Nov 12th 1837

M. S. Duncan

Judgment Rendered

December Term

1837

Copy 2

State of Illinois / I certify that Valentine
Clark County J. C. Oglin did on the
17th day of November 1837 file in this office
a bond with John Davidson as his security conditioned
as required by Law and the order of said court

V. Maulsby Clerk

State of Illinois

Clark County J. V. Maulsby Clerk of the
Circuit Court of said County do certify that
the within and annexed is a complete record

of the proceedings in the Clark Circuit Court at the
November Term thereof 1837 - as appears to me
of Record. Witness my hand and Seal of said
Court at Marshall Mo. the Eleventh day of November
1837

V. Maulsby Clerk

Valentine & Anglen

Royal a note }
25

The record in this case shows that upon the first calling of the first appearance of the defendant by his counsel in the court below, that he moved the court to quash the summons, for several grounds, one of which was that the summons was not issued under the seal of the court. This motion the court overruled, and the Def. making no further defence, judgment by default was rendered against him. The statute authorising a summons to issue in a case like the present, is explicit as to the manner of its authentication, it declares in express terms, that it shall be under the seal of the court, and as the Def. did not ~~use~~ by his appearance or otherwise ~~procure~~ dispense with this requisite of the statute, and the defect appearing upon the face of the process, the court should have sustained the motion & quashed the summons. The judgment of the court below is therefore reversed with costs.

W. Wilson

Clarke Nov. 1837.

Executed October 23rd 1837, J. Stockwell S. J.

Bill of exceptions - Just. Nil obicit

Angela
"Mott

2

Remuda

Filed Dec 23

1837 Amesbury

Recorded page 50

(233)

Ditch
Edmunds.

Process

3 Chit Proc Note
Process.

Proc. at. Title Stat.
book. vol 1.

13 Dec. 127

2 " 190

5 " 166

5 Names 121

1 Chit Proc. from
of accin

Proc. 486-7.

Hicklin for
Appellant

Copy for app.

Voluntone ~~Strong~~ vs Supreme Court
Royal at N^o 11
Dec Term 1833

And now comes O'Neil
= An of Counsel for appellant, and says that
in the record and proceedings in said Court
in the Court below and in sending Judgment
therein there is manifest error.

In this

- 1st That the defendant in the said cause
is not legally entitled as to the form of
action
- 2^d That the said process is not legally
served.
- 3^d That the said writ is a nullity, having
no legal authentication —
- 4th That that the said Person purporting to
open and serve the said process have
not subscribed their names to their respective
acts. In these & other matters apparent
- 5th on the record the said Judgment is erroneous
The time of service & of return of officers & costs of service
not endorsed

Nott vs Anglin
The action is miscon-
ceived. The summons
wants no return
There is no seal to it
There is no return
There is no return
see Gatch vs Edwards
manuscript opinions
p. 176 - Bacon Report

page 3 -
vol 3^d Chittys
Practise with Poynt
Bacon Assignment
with Abolument
vol. 15th
Johnson. Reports
vol. 13. page 127
vol 2^d 190
vol 5th 166
5th manuscript Reports
page 121
Chittys' Pleaching
vol 1st form of action
Revised laws of Mass

page 466 7 -

(333)

331

De la Roche

rows to manuscript

Nott vs Anglin

and Anglin prays that judgment be reversed
herein and that plaintiff pay costs of said
Ficklin
for appellant

And the said Royal J. Hall comes and says
that in the record & proceedings aforesaid, and
in the rendition of the judgment aforesaid there
is no error &c. wherefore he prays said judgment
to be affirmed &c.

Cooper for
plaintiff