

8446

No. \_\_\_\_\_

# Supreme Court of Illinois

Morgan & Huntley

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vs.

Fallenstein & Gauss

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71641  7

Know all men by these presents that  
we James M Morgan Robert M Hurdley  
William L Johnson & Samuel Morgan  
are well and firmly bound unto  
Charles B Hallenstern & Charles W  
Gaus Copartners under the firm  
name of Hallenstern & Gaus in the  
penal sum of Twelve hundred  
dollars good & lawful money  
of the United States for the paymen-  
t of which well & truly to be  
made we bind ourselves our  
heirs executors and administrators  
jointly severally and firmly by  
these presents Witness our hands  
and seals this 13<sup>th</sup> day of  
July AD 1860

The Condition of the above  
obligation is such that whereas  
the said Charles B Hallenstern and  
Charles W Gaus Copartners as  
aforesaid did on the 17<sup>th</sup> day of  
May AD 1860 in the Circuit Court  
in and for the County of Jackson  
and State of Illinois recover a  
judgment against the above  
bounden James M Morgan  
and Robert M Hurdley for the  
sum of \$ 897 <sup>62</sup>/<sub>100</sub> Dollars damages (in  
a certain action of Rescousment)  
and <sup>870</sup>/<sub>100</sub> Dollars Costs from  
which said judgment of the said  
Circuit Court the said James  
M Morgan & Robert M Hurdley

are about to prosecute a writ of  
Error to the Supreme Court of said  
State for the reversal thereof and  
the said writ of Error being about  
to be sued out - Now if the said  
~~At~~ James M Morgan and Robert  
M Hundley shall duly prosecute  
their said writ of Error with  
effect and moreover pay the  
amount of the judgment Costs  
interests & Damages incurred and  
to be rendered against them in  
Case the said judgment shall  
be affirmed in the said Supreme  
Court then the above obligation  
to be void otherwise to remain in  
full force & effect

J M Morgan Seal  
R M Hundley Seal  
William C Johnson Seal  
Samuel Morgan Seal

12

Morgan & Hundley

us

Halstead & Gump

Bank

Filed July 28. 1860 -  
N. Johnston Clk

IN THE SUPREME COURT OF ILLINOIS,

FIRST GRAND DIVISION-----NOVEMBER TERM, 1861.

ABSTRACT.

*Morgan & Hundley,*  
VS.  
*Fallenstein & Gauss.*

} ERROR TO JACKSON.

1 The record in this case shows that an action of Assumpsit was brought in Jackson Circuit Court, at May Term, 1860, by the Appellees against the Appellants. The Declaration counts first upon a promissory note for \$886.55, with the usual money counts added.

4 The Defendants pleaded first the general issue, and secondly, a plea of partial failure of consideration to the first count ; the 2d plea alleging that the "sum of fifty-nine dollars was included in said note, and in consideration of the agreement and promise of the said plaintiff at the time of making said note, and contemporaneously therewith that they, the said plaintiffs, would not institute a suit upon said note, or attempt by legal process, to collect it of said defendants or demand payment thereof of them, until after the first day of June, 1860, and which said time has not yet elapsed, and plaintiffs have instituted this suit and demanded payment of the said sum of \$59 before the said first day of June, 1860, by means  
5 whereof, the consideration of the said note has failed and this they are ready to verify ; wherefore they pray judgment, &c.

To this 2d plea a general demurrer was filed and the court sustained the demurrer. A trial was then  
7 had upon the general issue, and the jury returned a verdict against the Appellants, for \$897.62. Motion for new trial overruled by the court, and judgment rendered upon the verdict of the jury. From this judgment, Morgan & Hundley appealed to this Court.

The Errors assigned are :—1st, That the Court erred in sustaining demurrer to 2d plea. 2d, That the Court erred in overruling motion for new trial, and entering judgment upon the verdict.

10 The main question raised and relied on is, that the Court should have overruled appellees demurrer to appellant's 2d plea, that plea being good as a plea of part failure of consideration.

—See Hill ET AL vs. Enders ET AL 19th Ill. 163.

WILLIAM J. ALLEN,  
*Attorney for Appellants.*

STATE OF ILLINOIS

RETURNED FROM THE

IN THE COURT OF THE COMMON PLEAS

IN AND FOR THE COUNTY OF [illegible]

vs

[illegible]

[illegible]

[illegible]

[illegible]

RETURNED FOR THE

8446  
Fallenstein & Gans

81198

R

Murphysboro July 14<sup>th</sup> 1840

W<sup>th</sup> John H Mulkrey Esqr.

Dear Sir

Enclosed you will find  
find Record in Case of Wallenstein & Gausz vs  
Morgan & Hundley, which is made up correct  
I think.

Yours H

James P. Watson.

P.S. A. W. Rogers Esqr of Carbondale wishes me  
to Remind <sup>you</sup> of some papers he sent with you  
to be filed in this Office. Please send them to me  
also the papers in the Case of Mason vs Miles &  
Bridges. (Mechanics Lien)

Yours

J. P. W.

San Juan Isles

July 28<sup>th</sup>

To the Clerk &c

Dear Sir I herewith send  
you the Record bond Procepe & the  
accompanying fee of five dollars  
in the case of Hallenstein & Saup  
vs Morgan & Hundley. I hope  
you will name the Supremas at  
as early a moment as you conven-  
iently can for the execution has  
been out some time and the  
Sheriff is getting somewhat  
restless - Enclose the writs  
to me at this place and I  
will see to their delivery

Yours very respectfully

John H. Mulkey



To the C. S. R.

12

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 *Jackson* 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 *Jackson* county, before the Judge thereof between *Charles B. Hallenstein & Charles W. Gauff* Copartners under the firm name of *Hallenstein & Gauff* plaintiffs and *James M. Morgan & Robert M. Humbley* Copartners under the firm name of *Morgan & Humbley* defendants it is said manifest error hath intervened to the injury of the aforesaid *James M. Morgan and Robert M. Humbley* as we are informed by *their* 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 *1<sup>st</sup> Tuesday after 2<sup>nd</sup> Monday of 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. Catton* Chief Justice of the Supreme Court and the seal thereof, at MOUNT VERNON, this *twenty eighth* day of *July* in the year of our Lord one thousand eight hundred and *sixty*.

*Wm. Johnston*

Clerk of the Supreme Court.

This writ of error is made a Supersedeas, and  
is to be obeyed accordingly.

Wm. Johnston Ck



12  
SUPREME COURT.  
First Grand Division.

James M. Morgan &  
Robert M. Sundry

Plaintiffs in Error,

VS.

Charles B. Kellenstein &  
John W. Gump  
Defendants in Error.

WRIT OF ERROR.

Resurre, made a  
Supersedeas  
and FILED July 28/86.  
Wm. Johnston Ck

STATE OF ILLINOIS }  
SUPREME COURT }  
FIRST GRAND DIVISION }

Murphyboro Ill

Dec 15<sup>th</sup> 1860

W Johnson Esq  
Mt Vernon Ill }

Dear Sir - At the late  
term of the Supreme Court the  
suit of Morgan & Munday vs Fallen-  
Stein & Gaup (N<sup>o</sup> 12) was dismissed.

An order was left with you  
I believe for a copy of record to be  
sent to Clerk of Jackson Co.

Nothing has been received  
here from Mt Vernon in respect  
to said cause.

Your attention will  
oblige yours very truly  
Cornelius S. Ward

Margaret Munday

my

Fallenstein & Guise

Letter of U.S. Ward

Paper sent to Ann

Dec 12. 60 -

Handwritten notes on the left side of the page, including the name "Margaret Munday" and other illegible text.

Large block of faint, illegible handwritten text in the center of the page, likely bleed-through from the reverse side.

Vertical handwritten notes on the right side of the page, including the name "Margaret Munday" and other illegible text.

State of Illinois } November Term  
Supreme Court } Adl 1860

James M Morgan &  
Robert M Handley  
Co partners under the  
firm name of  
Morgan & Handley

In Error

vs  
Charles B Hallenstein  
Charles W Gaup Cop  
artners under the firm  
name of Hallenstein & Gaup

The Clerk of  
the Supreme Court will please  
issue the writ in this case  
and direct the same to  
the Sheriff of Jackson  
County & oblige

Paresh Kluff & M. W. M.

12

Morgan & Hundley

by S

Halenstem & Gaup

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Procepi

Filed July 28. 1860.  
N. Johnston M

State of Illinois,  
SUPREME COURT,  
First Grand Division.

} SS

The People of the State of Illinois,

To the Sheriff of Jackson 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 Jackson county, before the Judge thereof between Charles B. Hallenstein & Charles W. Gauff copartners under the firm name of Hallenstein & Gauff plaintiffs and James M. Morgan & Robert M. Humbley copartners under the firm name of Morgan and Humbley defendants it is said that manifest error hath intervened to the injury of said James M. Morgan and Robert M. Humbley 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 Charles B. Hallenstein & Charles W. Gauff

that they 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 they 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 Hallenstein & Gauff notice together with this writ.

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

Noah Johnston

Clerk of the Supreme Court.



SUPREME COURT.  
First Grand Division.

James M. Morgan &  
Robert M. Newley  
Plaintiffs in Error,

vs.

Charles B. Hallenstein &  
Charles W. Gauss  
Defendants in Error.

SCIRE FACIAS.

FILED.

State of Illinois,  
SUPREME COURT,  
First Grand Division.

Executed the within writ by reading to  
D. S. Ward Plaintiff's Attorney August  
24 1860  
R. G. Davis Clerk of  
Jackson, Calhoun's

Sept 25  
Sewing 6 1/2  
Out 1 1/2  
Balance 5 00

The writ of error which has been issued and  
filed in this cause, is now a Supremacy, and  
as such is to be obeyed by all concerned.  
R. G. Davis  
Clerk

WITNESSETH the Clerk of the Supreme Court and the Clerk of the District Court, that the within writ was duly executed and served on the parties to the said cause, and that the same is now a Supremacy, and as such is to be obeyed by all concerned.

No 12

Nov. Term 1860

Morgan & Sturdy  
vs

Fallenstein & Geuss -

Dismissed for want of  
prosecution -

Leave to withdraw the  
venue -

Venue withdrawn -

Entered on page 426 -

8446