

11846

No.

Supreme Court of Illinois

Bell, et al.

vs.

Sheldon, et al.

71641 7

McHenry

Thomas Bell et al.

vs
Henry Sheldon et al.

9.

1846

1851

Prepared

United States of America

State of Illinois
McHenry County

Plas before the Honorable
Hugh Henderson Judge of the Eleventh judicial
Circuit of the State of Illinois and presiding
Judge of the McHenry County Circuit Court. At
a Circuit Court began and held at the Court
house in Woodstock in said County on the fourteenth
day of April in the Year of our Lord one thousand
Eight hundred and fifty one and of the Independ-
ence of the United States the twenty fifth.

Present the Hon Hugh Henderson
Judge

Attest
Jed W Johnson
Clerk

P. H. Platt
State attorney
John Brink
Sheriff

Be it remembered that heretofore to wit on the 14th
day of March in the year of our Lord one
thousand Eight hundred and fifty one at the
office of the Clerk of the Circuit Court of the County
of McHenry and State of Illinois, at Woodstock in
said County, a certain proof of summons was
issued out of said Office in the words and
figures following to wit

State of Illinois, The People of the State of
McHenry County of Illinois to the Sheriff of

Said County Greeting. We Commanded Now that you
Summon Thomas Devo and Christopher Walker
if they shall be found in your County personally to be
and appear before the Circuit Court of said County on
the first day of the next Term thereof to be holden at
the Court House in Woodstock in said County to answer
unto Henry Sheldon Mr Henry Sheldon George Byrby
and Levi Chestnutwood in a plea of Trespass on the
Case on premises to the damages of said Plaintiff as
he says in the Sum of One thousand Dollars. And have
you there and there this writ with an endorsement thereon
in what manner you shall have executed the same.

(Seal)

Witness Joel H. Johnson Clerk of the
said Court, and the seal thereof at
Woodstock aforesaid this 19th day of
March A D 1851.

J. H. Johnson

Clerk of the Circuit Court

Which said Summons has endorsed thereon.

Personally served this Sum. by reading to and in the hearing of the
within named Tho Devo & Christopher Walker March 23rd 1851

John Brinn Sheriff By Robert Green Deputy.

Done April 5th 1851

J. H. Johnson

And thereafter to wit
on the 1st day of April in the year last aforesaid
the said Plaintiff filed in the office of the Clerk of the
Circuit Court of said County his declaration in writing and
which said declaration is in the words and figures
following to wit,

State of Illinois Circuit Court of McHenry
McHenry County County of the April term in
the year of our Lord one
thousand eight hundred and fifty one.

Henry Sheldon
William Henry Sheldon George Poyly & Seth Christman
of the City County & State of New York late partners
doing business under the name & firm of Henry
Sheldon & Company Plaintiffs in this suit by Henry Sperry
their attorney Complain of Thomas Bell and Christopher
Waltke Defendants in this suit in custody &c. of a
plea of trespass on the case on premises. For that whereas
the said Defendants on the twentieth day of November in the
year of our Lord one thousand eight hundred and
fifty one at Woodstock in said County made their cer-
tain promissory note in writing bearing date the same
day and year aforesaid and thereby they and their promised
to pay to Thomas Taylor or bearer the sum of two
hundred and fifty dollars with interest after six months
from the date thereof nine months after the date of
said promissory note and then and then advanced the same
to the said Thomas Taylor. And the said Thomas Taylor
to whom or to whose order the payment of the said sum of
money in the said promissory note specified was to be made
after the making of the said promissory note and before
the payment of the said sum of money therein specified to him
on the day aforesaid assigned the said promissory note by which
said assignment he the said Thomas Taylor ordered & assign-
ed ^{the} said sum of money in said promissory note specified to be
paid to the plaintiffs and advanced said promissory note
to assigned to the plaintiffs.

Says for that whereas the said
defendants Thomas Bell & Christopher Waltke did on the

twentieth day of November, in the Year of our Lord One
thousand Eight hundred forty nine at Woodstock in the
said County of McHenry make their certain other promising
note in writing bearing date the same day and year last
aforesaid and thereby then and there promised to pay to the said
Taylor or bearer hereunto months after the date thereof the sum
of two hundred and fifty Dollars with interest after five per cent
from the date thereof, and then and there delivered the said promising
note to the said Threman Taylor.

And the said Threman
Taylor or whom or to whose order the payment of the said
sum of money in the said promising note specified was to be
made after the making of the said promising note and
before the payment of the said sum of money therein speci-
fied went on the day specified aforesaid assigned the said
promising note, by which said assignment he the said
Threman Taylor ordered and appointed the said sum of
money in said promising note specified to be paid to the
Plaintiff and delivered said promising note so assigned
to the Plaintiff.

By reason whereof and by force of the Statute in
such case made and provided the said Defendants became
liable to pay the said Plaintiff the said sum of money men-
tioned in the said note according to the time and effect
thereof. And being so liable and in consideration thereof
the said Defendants afterwards went on the same day
and year aforesaid at the place McHenry County aforesaid
and there and there faithfully promised the said
Plaintiff to pay the said sum of money mentioned in
the said note according to the time and effect thereof.
And whereas also the said Defendants afterwards did not
on the seventh day of March in the year of our Lord
Eighteen hundred and fifty one at the place aforesaid

1207. Two months after date per value received me or either of us promised to pay to Abraham Taylor or bearer the sum of two hundred and fifty dollars with interest after five months from date. No. 307544 Pay to the order of Henry Sheldahl Co. Attorney Taylor.

were indebted to the said plaintiff in the sum of six hundred dollars for divers goods wares and merchandize by the said plaintiff before that time sold and delivered to the said defendants and at their instance and request. And also in the further sum of six hundred dollars for money by the said plaintiff before that time lent and advanced to the said defendants and at their like instance and request, and for other money by the said plaintiff before that time paid laid out and expended for the said defendants and at their like instance and request, and for other money by the said defendants before that time had and received to and for the use of the said plaintiff. And being so indebted and in consideration thereof the said defendants afterwards on the same day and year last aforesaid at the place situate in Henry County aforesaid voluntarily and lawfully promised the said plaintiff to pay them the said several sums of money above mentioned when they should be thereto afterwards requested. Yet the said defendants have not paid to the said plaintiff the whole or any part of the said several sums of money above mentioned although often requested &c but to pay the same or any part thereof to the said plaintiff the said defendants have hitherto wholly neglected or refused, and still do neglect and refuse to the damage of the said plaintiff of one thousand dollars and therefore they bring suit &c. Anson Sherry Attorney for Plaintiff

Copy of Note and account declared upon.

\$250
Two months after for value received me or either of us promised to pay to Abraham Taylor or bearer the sum of two hundred and fifty dollars with interest after five months from date. No. 307544
Pay to the order of Henry Sheldahl Co.
Abraham Taylor
Thomas Bell
Christopher, Markrup

Thomas Bees & Christopher Matkups
vs
Henry Sheldon & Co. Dr

1851. March 7. To Goods wares & merchandise sold you \$ 600.00
" " " " Money lent & advanced you 600.00
" " " " Cash paid, laid out & expended for you 600.00
" " " " Money had received by you for us 600.00
Which said declaration has endorsed therein.

Dated April 4th 1851

J. H. Johnson Att.

And thereafter to wit. On the 14th day of April in the year
of our Lord one thousand Eight hundred and fifty one
the said Circuit Court of said County then being in session
at Woodstock aforesaid, it being one of the days of the
regular April term of said Court A.D. 1851. The following
order was entered of record to wit.

Henry Sheldon et al

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Thomas Bees & Matkups

vs
Attampsit

And now come the
plaintiff by Henry his attorney
and on his motion it is ordered that the defendants
shall herein by Thursday morning at Eight o'clock

And thereafter to wit. On the 21st day of April in the year
of our Lord one thousand Eight hundred and fifty one
the said defendants filed in the office of the Clerk of the Circuit
Court of said County, the said Court then being in session at
Woodstock aforesaid that certain fees in writing in the words
and figures following to wit.

Two & Matkups

vs

Bees & Mat Rupt

H. Sheldons ^{att} others v. April the said defendants by C. McClure
their atty. denies the injury &
injury when so and says actor now because they say they did
not promise undertake in manner of form as the said plaintiff
saw thereof in his said declaration complained against them
& of this they put themselves upon the country &c.
C. McClure deft. atty.

And the said defendant for better and further plea in this
behalf says actor now because they say that that the said
promissory notes mentioned and in said plaintiff declaration
now executed by the defendants to one Thomas Taylor for a
large quantity of merchandize purchased of the said Taylor
by the said defendants Bees and that the time of said sale
and purchase the said Taylor warranted said merchandize
to be sound fit for sale in the market in the County of
McClure when in truth and in fact said merchandize
was not so fit for sale as aforesaid, but was wholly
worthless and unsalable of which the said plaintiffs had
notice & this they are ready to verify wherefore they pray judge-
ment.

And the said defendants for ^{other} ~~and further~~ and further
plea says actor now in this behalf says that the
said notes now executed without any good & valuable consid-
eration & this they are ready to verify
C. McClure for Deft.

And for other further plea say that said notes were procured through
fraud & misrepresentation & this they are ready to verify &
wherefore they pray judgment.

McClure for Deft.

which said plea was returned & entered at New York April 28th 1831. J. H. Johnson Clk

And afterwards to wit on the 24th day of April in the year
of our Lord one thousand Eight hundred and fifty one, it
being one of the days of the late April term of said A.D. 1851
the said Court then being in session at Woodstock aforesaid
the said plaintiff filed in the Clerk's office of the Circuit Court
of said County his replication to the first plea of the said
defendants in the behalf by them pleaded and which is in
the words and figures following to wit

Henry Sheldon et al

vs
Thomas Bew & McKee

And the said plaintiff as to the
first plea of the said defendants
above pleaded and wherein they

put themselves upon the County, do the like

Sperry, Puff Atty.

Ordered thus

Attest April 24th 1851

J. A. Johnson Clerk

And thereafter to wit on the 24th day of April in the year
last aforesaid the said Circuit Court being then in session as
aforesaid, the said plaintiff filed in the said Clerk's office
of said Court then annexed to the second third & fourth pleas
of the said defendants separately, and which said annex is in
the words and figures following to wit.

Henry Sheldon et al

April Term A.D. 1851

vs
Bew & McKee

And the said plaintiffs as to the said
pleas of the said defendants by them

secondly thirdly & fourthly pleaded separately say that the same
and the matters therein contained in manner and form as the
same are above pleaded and set forth are not sufficient in
law to bar or preclude them from having or maintaining

then aforesaid action thereof against the said defendants and
that they the said plaintiff are not bound by law to answer
the same. And this they the said plaintiff are ready to verify.
Wherefore by reason of the insufficiency of the said plea in this
behalf the said plaintiffs pray judgment and their damages
by reason of the not performing of the said several promises
and undertakings in the said declaration mentioned to be
adjudged to them.

And the said plaintiffs state & show how the
following cause of damages to the said second plea that is
to say that there is no ^{averment} ~~averment~~ in said second plea that
the plaintiffs had knowledge of said warranty & failure at and
before the assignment of said promissory notes to plaintiffs by said
Taylor and also that said second plea is in other respects uncertain
informal & insufficient.

And to the third plea of said defendants
above pleaded the said plaintiff show the following cause of damages
that in said plea there is no averment of notice to the plaintiff
at & before the assignment of said promissory notes to them by
said Taylor of the failure of consideration and that said third
plea is in other respects informal & insufficient & uncertain.

And to the fourth plea of said defendants above pleaded the
said plaintiff show the following cause of damages to wit; that
in said plea there is no averment that the Equations of said
promissory notes were obtained through or were obtained through
fraud & circumvention and that said plaintiffs had notice
thereof at and before the assignment of said promissory notes
by said Taylor to the plaintiff and that said fourth plea is in
other respects uncertain, informal & insufficient,
which has prejudiced them.

Filed April 24 1881

J. A. Johnson Clerk

And the said Court being in session at the Court house in
Woodstock on the 23rd day of April A.D. 1857: the following pro-
ceedings ensued to wit.

Henry Sheldon & al }
vs } Assumpsit
Thos Burt Christopher, Nathaniel }
And now come
and move the Court for a judgement herein which is awarded
by the Court and thompson and McClure attorney for the defend-
ants and on his motion it is ordered that he have leave to
amend his plea herein instantly,

And thereafter to wit on the 24th day of April in the year
last aforesaid the said Court then being in session at the
Court house in Woodstock aforesaid the following among
other proceedings ensued to wit

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Henry Sheldon William Henry Sheldon }
George Bygby and Levi Chestnutwood } Assumpsit
vs }
Thos Burt and Christopher, Nathaniel }
Spury their attorney and on his motion it is ordered that
he have leave to withdraw his replication to the pleas of the said
defendants in this behalf and thenceforth the said plaintiff by
their said attorney file their demurrer to the second third fourth
fifth and sixth pleas of the said defendants in this behalf filed and
by them in this behalf pleaded in which the said defendants join
and the Court having heard the parties thereon and being fully
advised in the premises sustains the said demurrer of the said
plaintiff. It is therefore ordered and considered by the Court
that the said plaintiff have and recover of the defendants thereon

Costs and Charges in and about their demurrer expensed
and that they have execution therefor. And thereupon the
said defendants by McChesne their attorney stand by their
said pleas and paying nothing further in bar to the action
aforesaid of the said plaintiffs. It is therefore ordered and
considered by the Court that the said plaintiff have judgment
for their damages but because these are uncertain and
unknown to the Court the suit being brought upon an instrument
of writing for the payment of money only it is therefore ordered
that the Clerk assess the same and he having assessed and
reported to the Court the sum of five hundred and thirty
dollars and forty two cents which the Court doth order to
stand confirmed and approved. It is therefore ordered and
considered by the Court that the said plaintiff have and
receive of the defendants the sum of five hundred and thirty
dollars and forty two cents their damages so assessed as
also their costs and charges herein expensed and that
they have execution therefor. And thereupon the said defendants
prayed an appeal herein which is granted on condition that
they enter into an appeal bond within twenty days from the
date hereof conditioned according to law in the sum of one
thousand dollars and thereupon by the agreement of the
parties the Clerk of this Court is authorized and empowered
to approve of the Security upon the appeal bond herein.

State of Illinois
McHenry County
I the undersigned Clerk of
the Circuit Court in and for
the said County and State do certify that the above and
foregoing is a true and correct copy of the record
and papers in the above entitled Cause now on
file in this office and on record.

Witness Joel H. Johnsony Clerk of
our said Court and the seal thereof
at Woodstock in said County this
28th day of May A.D. 1851.

Joel H. Johnsony
Clerk

— Chestnut
Superior Ct
June term AD 1851

Shelburne

Call now

Filed June 19. 1851.
at Kelso O.R.

Sum
Subscribed \$4 57
25
Paid

Thomas Bell & Christopher Walkup

vs
Henry Sheldon, William Henry Sheldon,
George Byrby & Levi Chestnutwood

Defts. Costs -

Error to Mr. Henry.

Apper. 25, fil. & cert. jointer 30, Bill of costs 25, copy 25,	1.05
cert. seal 25, fil. & Dr. 15, Shffs. retn. 10, Dr. for 1.25, satis. for 25,	9.00
Shut.	<u>3.05</u>

State of Illinois, ss.

Supreme Court—Third Grand Division, at Ottawa:

The People of the State of Illinois to the Sheriff of *McHenry* County---Greeting:

WE COMMAND YOU, that of the goods and chattels, lands and tenements of *Henry Sheldon, William Henry Sheldon, George Byrby & Levi Chestnutwood*. you cause to be made the sum of *three* _____ dollars and *five* _____

cents, the amount of the foregoing bill, which is due and unpaid, and is a true copy from the Fee Book in my office; and hereof make due return in ninety days.

WITNESS, the Hon. SAMUEL H. TREAT, Chief Justice of our said Court, and the seal thereof, at Ottawa, this *fourteenth* day of *July* _____ A. D. 18 *51*.

G. Leland Clerk of the Supreme Court.
By *P. K. Leland* Deputy.

Thomas Bell et al.
vs

Henry Sheldon et al.

For bill on \$3,05.

Returned Satisfied
in full
August 5th 1857.

John Brink
Sheriff

Filed August 20, 1857.
J. Leland Clerk
By P. K. Leland Deputy.

STATE OF ILLINOIS, ss.

Supreme Court, Third Grand Division, at Ottawa:

The People of the State of Illinois, to the Sheriff of *M^c Henry* County---Greeting:

We Command You, That of the goods and chattels, lands and tenements, and real estate of *Henry Skeldon, William Henry Skeldon, George Byrby, & Levi Chestnutwood*

you cause to be made the sum of *ten* Dollars and *Eighty Seven* Cents costs in the said Supreme Court, which *Thomas Blu & Christopher Walkup*

lately recovered against *them* before the Justices of our said Supreme Court, as appears to us of record, and make return hereof in ninety days.

WITNESS, the Hon. Samuel H. Tregt, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this *fourteenth* day of *July*, in the Year of our Lord One Thousand Eight Hundred and Fifty-*one*.

L. Seland, Clerk of the Supreme Court.
By P. K. Seland Deputy.

Thomas Bell et al.
vs
Henry Sheldon et al.

Execution,

Bill of costs \$10,87
Fee Bill — 3,05
Amt, \$13,92

Received July the 19th
AD 1857 at 10 O'clock AM

John Brown

Sheriff

Returned Satisfied in full
by cash paid - and Received
my fees in full

August 8th 1851

John Brown

Sheriff of

McHenry Co., Ill.

Filed August 20, 1857.
L. Leland Clerk,
By P. R. Leland Deputy.

State of Illinois, sct.

WRIT OF ERROR—FREE TRADER PRINT.

The People of the State of Illinois,
To the Clerk of the Circuit Court for the County of *McHenry* — 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 *McHenry* county, before the Judge thereof, between *Henry Sheldon, William Henry Sheldon, George Byrby,*

Levi Chesnutwood — plaintiffs and *Thomas Bell and Christopher Walkup*

defendants, it is said manifest error hath intervened, to the injury of the aforesaid *Bell & Walkup* 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 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 *2^d of 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 *19th* day of *June* — in the year of our Lord one thousand eight hundred and fifty *one*.

L. Leland Clerk of the Supreme Court.

W. Henry

Bell et al. vs Sheldon et al.

Writ of error

Filed June 19. 1854.
A. Deland Clk.

State of Illinois, etc.

The People of the State of Illinois

CHIEF JUSTICE

State of Illinois, etc.

[Faint, mostly illegible text from the reverse side of the page, including names like 'Sheldon' and 'Bell', and legal terms like 'writ of error' and 'judicial error'.]

This judgment must be reversed. After
sustaining a demurrer to several special pleas,
the court proceeded to render a final judgment
against the defendants, without noticing a plea
of non assumpsit. The issue presented by that
plea had to be tried and found against the
defendants, before the plaintiffs were entitled
to judgment.

The judgment is reversed, and the cause
remanded.

Bill et al. v. Sheldon et al.

Opinion.

Treat.

Record

Depace

State of Illinois
Supreme Court

vs et.

June term in the
Year of our Lord
one thousand Eight hundred and Fifty one

Thomas Bell &
Christopher Mallup

In Error.

Henry Sheldon
William H. Sheldon
George Byrter &
Levi Chesnutwood.

Afterwards to wit
on the day of June
1851.

at this same term of the Court before the
Justice thereof comes the said Thomas Bell
and Christopher Mallup by O. M. Clure and
S. D. Murphy their attorneys and says that
in the record and proceedings aforesaid, and also in
the rendition of the Judgment aforesaid there
is manifest Error in this to wit that the declaration
aforesaid and the matters therein contained are not
sufficient in law for the said Henry Sheldon
William H. Sheldon George Byrter & Levi
Chesnutwood to have or maintain his aforesaid
action thereof against them the said Thomas Bell
& C. Mallup There is also ^{Error} in this to wit that by
the record aforesaid it appears that the Judgment
aforesaid in form aforesaid given, was given
for the said Henry Sheldon and others against
the said Bell & Mallup whereas by the
laws of the land the said Judgment ought to
have been given for the said Thomas Bell &
Christopher Mallup and against the said
Henry Sheldon et. al.

because they ^{say} that the Court Erred

1st In sustaining the Demurrer to the B^d
and H^d pleas pleaded by the said
Thomas Bell and Christopher Walkup

2. The Court Erred In rendering final
Judgment, on the said Demurrer while
the plea of the General issue to the
~~whole of the~~ whole of the said Declaration
was in and underposal of.

And the said Thomas Bell and Christopher
Walkup, prays that the Judgment aforesaid
for the Error aforesaid and for other Errors
Apparent in the record and proceedings aforesaid
may be reversed annulled and altogether
held for nothing. And that they may be
restored to all things which ^{they} ~~have~~ lost by
occasion of the said Judgment. &c

A. McClure and J. W. Murphy
atty for plaintiff in Error.

Substance of
June Term 1857

The Governor
No

Wm. A. Mahan

Assignment of Error