No. 11941

Supreme Court of Illinois

People

vs.

Thurber

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Book

The People

vs

Philip Thurber

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1852

11941

Prepared

State of Illinois
County of Cook } Pleas before the Honorable Hugh T. Dickey Judge of the seventh Judicial Circuit of the State of Illinois and presiding Judge of the Circuit Court of Cook County, at a term thereof begun and held at the Court House in the City of Chicago in said County on the first Monday (being the second day) of December in the year of our Lord one thousand eight hundred and fifty, and of the independence of the United States the seventy fifth

Present Hon Hugh T Dickey Judge of said Court
Daniel McIlroy States atty pro tem
William L. Church Sheriff of said County
Attest Lewis D Hoard Clerk

Be it remembered that heretofore to wit: on the thirty first day of October eighteen hundred and fifty, there issued out of the Clerks Office of the Court aforesaid the Peoples writ of summons directed to the Sheriff of said County which is in the words and figures following to wit:

State of Illinois
Cook County } ss The People of the State of Illinois to the Sheriff of said County Greeting:

We command you that you summon Philip Thurber, if he 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 Chicago in the said County, on the

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first Monday of December next to answer unto the People of the State of Illinois Plaintiffs in a plea that he renders to the said plaintiffs the sum of Twenty thousand dollars which he detains, to the damage of the said Plaintiffs as they say in the sum of One thousand dollars. And have you then and there this writ, with an endorsement thereon, in what manner you shall have executed the same Witness Louis D Hoard Clerk of our said Court, and the seal thereof, at Chicago in said County, this 31st day of October AD 1850

L. D. Hoard Clerk

And on the back of said summons was the following endorsements to wit:

The People of the State of Illinois
v
Philip Thurber } Suits in Debt

Executed by reading in presence of Philip Thurber the within Defendant this 20th day of Nov 1850. Fees 1 service 50 Mileage 05. Return 10. $. 65. J. Cook Sheriff By J. W. Fendry. Dep'ty

And the said Plaintiffs by Daniel McIlroy their Attorney filed in the Clerks Office aforesaid their certain declaration in said cause which is in the words and figures following to wit:

State of Illinois
Cook County Circuit Court } Of the December Term of the Cook County Circuit

County of Cook ss. Court in the Year of our Lord one thousand eight hundred and fifty

The People of the State of Illinois plaintiffs in this suit by Daniel McIlroy their attorney complain of Philip Thrubes Defendant in this same suit who has been duly summoned in a plea that the said Defendant render unto the said plaintiff the sum of Seventy thousand dollars which the defendants owes to and unjustly detains from the said plaintiff.

For that whereas heretofore to wit on the first day of January in the year of our Lord one thousand eight hundred and fifty at the city of Chicago in the County of Cook and within the Jurisdiction of this Court the said Defendant did then and there accept the agency of a foreign Insurance Company to wit "The New York Protection Fire and Marine Insurance Company" a company organized and doing business at Home in the County of Oneida in the State of New York under and in pursuance of the laws of said State, and with the design of issuing policies and receiving premiums thereon within the County of Cook in the State of Illinois and the said defendant having so accepted said agency, it then and there became his duty in pursuance of section twenty two of chapter sixty four of the Revised Statutes of the State of Illinois to signify his acceptance of said agency to the Clerk of the County Court of Cook County aforesaid to be by the said Clerk filed before he the said defendant should issue any Policy of Insurance for and in behalf of said Company. And also the said defendant was bound and it became his duty

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in pursuance of the twenty third section of the same Chapter of the said revised statutes to pay over to the said Clerk three per cent on the amount of premiums charged by the said Defendant on all Policies by him issued from the time of his said acceptance of said agency up to the first day of July next. thereafter on or before the said last mentioned day, and in default or failure of the said defendant to pay over to the said Clerk said three per cent on all premiums charged by him on all policies by him issued he became liable in pursuance of the twenty fourth section of said Chapter of said Revised Statutes to pay and is thereby subjected to pay a fine double the amount of the premiums upon which he should fail to pay said three per cent to be recovered by action of Debt in the name of the People of the State of Illinois. And the said plaintiff in fact says and avers to be true that although the said Defendant did so accept such agency aforesaid at the time & place aforesaid he did not signify said acceptance in writing to the said Clerk of said County Court of the County of Cook then or any time since then, And the said plaintiff also in fact says that the said Defendant after his said acceptance of the agency aforesaid at Chicago in the County of Cook and before the first day of July then next thereafter did issue a large number of policies to citizens of said County for and in behalf of said New York Protection Fire and Marine Insurance Company upon which said policies the said Defendant did then and there to wit at the City of Chicago aforesaid charge and receive as premiums a large amount of money. To wit the sum of ten thousand dollars

Yet the said Plaintiff avers that he the said defendant did not on or before the said first day of July then next thereafter nor has he at any time paid over to the said Clerk of the County Court of Cook County three per cent on such premiums or any part thereof, and by means thereof by force of the statute the said Plaintiff is entitled to demand and receive from the said defendant double the amount of the said premiums so by him as aforesaid charged and received on Policies issued by the said defendant as such agent as aforesaid which amounts to a large sum of money. To wit the sum of twenty thousand dollars. and which said debt the said defendant wrongfully withholds from the said plaintiff to the damage of the Plaintiff of one thousand dollars and therefore suit is brought &c

D M Ilsley
Plfs Atty

And afterwards to wit on the twenty sixth day of December in the year last aforesaid it being one of the days of the term of said Court came the said defendant by Wilson & Frink his attorneys and filed his certain demurrer which is in the words and figures following to wit

Cook County Circuit Court

Philip Thurber
vs
The People of the State of Illinois

And the said defendant by Wilson & Frink his attorneys comes

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and defends the wrong and injury when &c and says that the said plaintiff ought not to have or maintain this aforesaid action thereof against the said defendant because he says that the said matters in said declaration stated in manner and form as the same are alleged and set forth are not sufficient in law to entitle the said plaintiffs to have or maintain this aforesaid action against the said Defendant wherefore he prays the Judgment of this Court whether the said plaintiffs ought further to maintain their aforesaid action against him and that they may be barred therefrom

Nelson & Frink
Attys for Defendant

And afterwards to wit on the twenty first day of May it being one of the days of the May Term of said Court in the year aforesaid the following among other proceedings were had

The People of the State of Illinois
vs
Philip Shurber } Debt

This day again came the parties by their attorneys & the Court being ~~advised~~ now fully advised as to the demurrer of the said defendant to the declarations of the said plaintiff. It is ordered that said demurrer be sustained.

Therefore it is ~~ordered~~ considered that the said People take nothing by their said writ but that the said defendant

go thereof without day

State of Illinois
County of Cook } I Louis D Hoard Clerk of the Circuit Court of the County of Cook in the State of Illinois do hereby certify that I have compared the aforegoing with the original files & records in the above entitled cause in my office, and that the same is a true and perfect transcript of such records & files and the whole thereof.

Certified under my hand & the seal of said Court at Chicago this 9th day of June AD 1851

Louis D. Hoard, Clerk,

And now come the said People by their Attorney and say that there is manifest error in the decision of the said Circuit Court, and assign for special cause of error

That the Circuit Court erred in sustaining the demurrer filed by the defendant to the declaration of the plaintiffs.

McRoy & Peck
for Plffs in error

In nullo est erratum —

H Finch
Atty for Deft

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Cook County Circuit
Court

The People
vs
Philip Thurber
Debt

Transcript

Filed June 11. 1857.
L. Leland Clk.

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 Cook — **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 Cook — county, before the Judge thereof, between The People of the State of Illinois

plaintiffs and Philip Thurber

defendant it is said manifest error hath intervened, to the injury of the aforesaid plaintiffs 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 distintly 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 in June A.D. 1852 ~~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 eleventh — day of June — in the year of our Lord one thousand eight hundred and fifty one —

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L. Leland

Clerk of the Supreme Court.

Cook

The People &c.

vs

Philip Thurber

Writ of Error

Filed June 11. 1857.

L. Leland Clk.

STATE OF ILLINOIS, }
Supreme Court. }

The People of the State of Illinois,

To the Sheriff of the County of Cook Greeting:

BECAUSE in the record and proceedings, and also in the rendition of the judgment of a plea which was in the circuit court of Cook county, before the Judge thereof, between The People of the State of Illinois plaintiffs and Philip Thurber

defendant, it is said that manifest error hath intervened, to the injury of the said plaintiffs 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 Ottawa, 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 Philip Thurber

that he be and appear before the justices of our said supreme court, at the next term of said court, to be holden at Ottawa, in said state, on the 2d Monday in June A.D. 1852 ~~next~~, to hear the records and proceedings aforesaid, and the errors assigned, if he shall see fit; and further to do and receive what said court shall order in this behalf; and have you then there the names of those by whom you shall give the said Philip Thurber notice, together with this writ.

Witness, the Hon. **SAMUEL H. TREAT**, Chief Justice of our said Court, and the seal thereof, at Ottawa, this 11th day of June in the year of our Lord one thousand eight hundred and fifty one.

L. Leland **Clerk of the Supreme Court.**

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57) Cook County

The People of State of Illinois

vs

Philip Thurber

Sci. fa.

To June Term 1852.

Pd postage 5 cts.
11 June

Served by reading to the within named Philip Thurber this 17th day of June 1851.

Fees. 1 Service 50
1 Mile 5
Return 10
Postage 05c. .65

Wm L Church Sheriff

Total fees 70 cts.

Filed July 1. 1851.
L. Leland Clk.