McHenry
John E. Dow imprint
of
Saml. Rattle

10

1825

Repaired

1851

United States of America

State of Illinois } ss.
McHenry County }

Pleas 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, begun 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 Independence of the United States the Seventy fifth

Present the Hon Hugh Henderson
Judge

P W Platt States Attorney

Attest
A. H. Johnson
Clerk

John Brink
Sheriff

Be it remembered that heretofore to wit, on the third day of January in the year of our Lord one thousand Eight hundred and fifty one, a certain writ of summons was issued out of the office of the Clerk of the Circuit Court of said County in the State of Illinois, in the words and figures following to wit:

State of Illinois } ss. The People of the State of
McHenry County } Illinois to the Sheriff of said County greeting.

We command You that you summon John E. Doe & William Doe 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

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at the Court house in Woodstock in said County on the second Monday of April next to answer unto Samuel Rattle in a plea of Assumpsit to the damage of the said plaintiff as he says in the sum of four hundred dollars. And have you then and there this writ with an Endorsement thereon in what manner you shall have executed

the same. Witness Joel H. Johnson Clerk of our said Court and the seal thereof at Woodstock aforesaid this 3d day of January A.D. 1851.

Seal

J. H. Johnson
Clerk of the Circuit Court

Which said writ of Summons has endorsed thereon.

Personally served by reading the within to the within named John E. Doe, William Doe not found in the County

Jan 4th 1851.

John Brink
Sheriff

Filed Jan 9th 1851

J. H. Johnson Clk

And thereafter to wit on the 21st day of March in the year of our Lord one thousand eight hundred and fifty one the said plaintiff filed in the Clerks office of the Circuit Court of said County his certain declaration in writing in the words and figures following to wit:

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

Samuel Rattle

plaintiff in this suit by Anson Spury his attorney complains of John E. Doe and William Doe defendants

in this suit in custody &c. of a plea of trespass on the case on promises. For that whereas the said defendants on the third day of April in the year of our Lord one thousand Eight hundred and fifty at Chicago in the County of Cook, to wit in said County of McHenry made their certain promissory note in writing bearing date the same day and year aforesaid and thereby then and there promised to pay by the name style and description of John E Dow & Son (the defendants meaning) to Rose & Rattle or bearer two hundred and fourteen dollars & Eighty four cents for value received. And the said Rose & Rattle to whom or to whose order the payment of the said promissory note and before the payment of the said sum of money therein specified, to wit, on the day aforesaid assigned the said promissory note to the plaintiff, by which said assignment the said Rose & Rattle ordered & appointed the said sum of money in the said promissory note specified to be paid to the plaintiff & delivered said promissory 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 mentioned in the said note according to the tenor and effect thereof and being payable and in consideration thereof the said Defendants afterwards to wit on the same day and year aforesaid at the place to wit McHenry County aforesaid, undertook and then and there faithfully promised the said plaintiff to pay him the said sum of money mentioned in the said Note according to the tenor and effect thereof.

And whereas also the said Defendants afterwards to wit on the 7th day of March in the year of our Lord ~~one thousand~~ Eighteen ~~Eight~~ hundred and fifty one at the place McHenry County aforesaid were indebted to the said

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Plaintiff in the sum of four 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 four 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 to wit on the same day and year last aforesaid at the place aforesaid undertook and faithfully promised the said plaintiff to pay him 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 so 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 four hundred dollars and therefore he brings suit &c

Anson Spurr
Attorney for Plaintiff

Copy of Note and Accounts declared upon.
$214.84. "Sir Messrs Rose & Rattle or bearer Two hundred and Fourteen & 84/100 dollars for value received Chicago April 3rd 1855 John E. Dow & Son
Pay Samuel Rattle, Rose & Rattle."

John E. Dow & Son

To Samuel Rattle Dr

1851 Mar 7th	To Goods Sold & delivered	$400
" "	To money lent & advanced	1000
" "	To Cash paid out & Expended	600
" "	To Money had & received by you	400

Which said declaration has Endorsed thereon

Filed March 21st 1851

J. H. Johnson Clerk

And afterwards to wit on the fourteenth day of April in the year last aforesaid the said Circuit Court of said County being then in session at Woodstock in the County aforesaid the following order was entered of record to wit:

Samuel Rattle
vs
John E. Dow & Wm. Dow } A. in Assumpsit.

And now comes Spurr Attorney for plaintiff and on his motion it is ordered that the defendants plead herein by Thursday morning at Eight o'clock

And thereafter to wit: on the 17th day of April in the year last aforesaid said Court being then in session as aforesaid the said defendants Dow filed in the office of the Clerk of the Circuit Court of said County his demurrer to said plaintiffs declaration in the words and figures following to wit:

J. E. Dow & others
vs
Samuel Rattle } And the said defendants by C. McClure their attorney comes & defends the wrong & injury when

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&c and says that by reason of any thing in the first count of plaintiffs declaration set forth in manner & form as therein set forth, ought not to have and maintain his aforesaid action thereof against them and that they are not bound by law to answer the same wherefore they pray judgment &c

C. McClure defts atty

And for plea to the remainder of the said declaration the defendants say that they did not promise and undertake as the said plaintiff hath thereof alledged against them & of this they put themselves upon the country &c

C. McClure for defts

Which demurrer has endorsed thereon.
Filed Apl 17th 1851.
J. H. Johnson
Clk

And thereafter, towit on the 18th day of April in the year last aforesaid the said Court being then in session as aforesaid the following proceedings were had towit

Samuel Rattle
vs
John E Dow with
William Dow in plaudum } Assumpsit.

And now come the defendant John E Dow by McClure his attorney and files his demurrer herein to the first count of the said plaintiffs declaration in which the said plaintiff by Sperry his attorney joins and the Court having heard the parties thereon and being fully advised in the premises overrules the same to the opinion of the Court in overruling said demurrer the said defendant by his said attorney Excepts. It is therefore

ordered and considered by the Court that the said plaintiff have and recover of the said defendant John E Dow his costs and charges in and about ~~the said expended~~ his joinder in demurrer expended and that he have Execution therefor.

And the said defendant stands by his demurrer and saying nothing further in bar to the said plaintiffs action. It is therefore ordered by the Court that the said plaintiff have judgement for his damages but because these are uncertain and unknown to the court this suit being brought upon an instrument of writing for the payment of money only it is ordered that the clerk assess the same. And he having assessed and reported to the Court the sum of two hundred and twenty eight dollars and thirty nine cents which is ordered to stand confirmed and approved by the court. It is therefore ordered and considered by the Court that the said plaintiff have and recover of the defendant John E Dow the sum of two hundred and twenty Eight dollars and thirty nine cents his damages so assessed as also his costs and charges herein expended and that he have Execution therefor. to the rendering of which judgement by the Court the said defendant by his Counsel Excepts. And thereupon on motion of plaintiffs attorney it is ordered that a scire facias issue herein returnable to the next term of this Court to Wm L. Dow.

State of Illinois }
McHenry County } ss

I the undersigned Clerk of the Circuit Court in and for the said County and State aforesaid do certify that the foregoing is a true and complete and correct copy of the record and papers on file in the above entitled Causes now on file and on record in this office Witness Joel H. Johnson Clerk of our said Court and the seal thereof at Woodstock in said County this 28th day of May A.D. 1857.

Joel H. Johnson
Clerk

McHenry

Supreme Ct

June Term AD 1851

Ross
vs
Kettel

} No Error

Filed June 14. 1851.
L. Leland Clk.

Fees
Cost

2 60
25
$ 2. 85
Paid

State of Illinois
Supreme Court } S.S. } June term in the year of our Lord one thousand Eight hundred and Fifty one.

John E. Ross &
William H. Ross, } In Error.
vs
Samuel Rattel } Afterwards to wit on the day June at this same term of the court before the Justice thereof comes the said John E. Ross ~~and William Ross~~ by O. McClure and T. O. Murphy his ~~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 Samuel Rattel to have or maintain his aforesaid action thereof against ~~them~~ the said John E Ross ~~and William Ross~~. There is also Error in this to wit that by the record aforesaid it appears that Judgment aforesaid in form aforesaid given was given for the said Samuel Rattle against the said John E. Ross ~~and William Ross~~. Whereas by the laws of the land the said Judgment ought to have been given for the said John E. Ross ~~and William Ross~~, against the said Samuel Rattel, because ~~they~~ he say that the court Erred

1st In overruling the Demurrer to the first count of the plaintiffs Declaration

2d The Court Erred in ~~overruling~~ rendering final Judgment, on said Demurrer against John E. Ross

when the said Demurrer had been filed by John E. Dows and William Dows, Jointly.

8°. That the Court

Erred. In rendering final Judgment on said Demurrer against John E. Dows while the plea of General issue to said Declaration/Except to the first count thereof/was undisposed of.

And The said John E. Dows ~~and William Dows~~, prays that the said Judgment aforesaid for the Errors aforesaid and for other Errors apparent in the record and proceedings aforesaid may be reversed annulled and altogether held for nothing and that ~~they~~ he may be restored to all things which ~~they~~ he hath lost, by occasion of the said Judgment, &c.

A. McClure and T. C. Murphy
attys for plaintiff in Error.

Supreme Court
June Term A.D. 1851

Doe and Doe
vs } In Error
Samuel Rattee

Assignment of Errors

[5-5287]

Assumpsit against two; one only served with process. The defendants demurred to the first count, and pleaded non assumpsit to the second. The court overruled the demurrer, and, without noticing the plea, ~~[illegible]~~ rendered judgment against the defendant served with process. That judgment must be reversed on two grounds. It was error to enter final judgment for the plaintiff, before disposing of the issue tendered by the plea. It was also error to enter judgment against one of the defendants, without disposing of the case as to the other. Both were before the court, and the case had to be tried as to both, before any final judgment could ~~be~~ properly entered.

The judgment is reversed, and the cause remanded.

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Dow et al. v. Rattle.

Opinion.

Treat.

Recorded

Prepared

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 ——

Samuel Rattle — plaintiff — and John E. Dow impleaded with William Dow ——

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 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 2d Monday in 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.*

McHenry

John E. Dower

v

Saml. Rattle

writ of error

Filed June 19. 1854.

L. Leland Clk.