No. 8576

Supreme Court of Illinois

Edward I. Ross

vs.

Garrett Clawson

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State of Illinois
City of Cairo } ss
County of Alexander

Pleas before the Honorable Court of Common Pleas of the City of Cairo held at the Court House in said City on Friday the Twenty eighth day of February A.D. 1868. of the February Term A.D. 1868. of said Court Present The Hon. John Olney Judge of the 19th judicial Circuit of the State of Illinois and presiding Judge of the Alexander County Circuit Court, holding said Court.

Alexander H. Irvin Clerk
John Hogan City Marshal
Fontain E. Albright States Attorney

Be it remembered that heretofore to wit: on Monday the Twenty Seventh day of January A.D. 1868. there was filed in the Clerks office of said Court a declaration in the following Styled cause, which is in the words and figures following to wit:

Garrett Clawson
vs
Edward J. Ross &
George M. Kinckley firm
of Ross & Kinckley } Assumpsit

"State of Illinois
"County of Alexander } In the Court of Common Pleas,
" City of Cairo" } February Term A.D. 1868,

"Garrett Clawson plaintiff in this suit "by Mann & Pope his attorneys complains of Edward "J. Ross and George M. Kinckley partners doing business "under the name Style & firm of Ross and Kinckley, defen-"dants of a Plea of Trespass on the Case on promises "for that whereas the defendants on the Second day "of September in the Year One thousand Eight hundred & "Sixty Seven at Cairo Illinois to wit: at the City of Cairo in "the County of Alexander and State of Illinois aforesaid "made their promissory note in writing and delivered "the same to the plaintiff and thereby promised to

[8576-1]

"pay to the plaintiff or order the sum of two hundred
"and thirty dollars and twenty five cents for value
"received in thirty days after the date thereof, which
"period has now elapsed and the defendants then
"and there in consideration of the premises promised
"to pay the amount of said note to the plaintiff acc=
"ording to the tenor and effect thereof; and whereas
"also the defendants on the day and year aforesaid
"at Cairo Illinois to wit: at the City of Cairo County
"of Alexander and State of Illinois aforesaid was and
"still is indebted to the plaintiff in the sum of three
"hundred dollars for goods wares and merchandise
"before that time sold and delivered by the plaintiff
"to the defendants at their request; and in the sum of
"three hundred dollars for money before that time
"paid laid out and expended by the plaintiff for the
"use of the defendants at their request: Yet the defen=
"dants have disregarded their promises and have
"not paid the said several sums of money in the
"said several counts mentioned, or either of them
"or any part thereof, though often requested so to do,
"To the damage of the plaintiff of three hundred
"dollars and therefore he brings suit

"By Munn & Pope his Atty."

"Note & Copy of Account

"Dated on,

"Thirty days after date for value received we promise
"to pay to G. Clawson or order the sum of two hundred
"and and thirty dollars and twenty five cents.

"Cairo Sept 2nd 1867. Ross & Winckley

"United States Stamps Sixteen Cents properly Cancelled

"Ross & Winckley To
Garrett & Clawson Cr

"To Goods wares and Merchandise $300.00/100

"" Money laid out and Expended $300.00/100

whereupon there was issued out of the Clerks Office of said Court a writ of Summons which is in the words & figures following to wit:

State of Illinois } The People of the State of Illinois
City of Cairo }
Alexander County } To the City Marshal of said city — Greeting:
We command you, that you summons Edward S Ross & George M Hinckley if they shall be found in your city, personally to be and appear before the Court of Common Pleas of the City of Cairo on the first day of the next term thereof, to be holden at the Court House in the City of Cairo in said County, on the third Monday of February next to answer unto Garrett Clawson in a plea of Assumpsit to the damage of said plaintiff, as is said, in the sum of Three Hundred Dollars and have you then and there this Writ, with an Endorsement thereon in what manner you shall have executed the same.

Witness: Alexander H Irvin, Clerk of said Court, and the seal thereof, at the City of Cairo in said County this 27" day of January A.D. 1868. —

(Seal) Alex H. Irvin Clerk —

Which said writ was afterwards to wit: on Monday the Third day of February AD 1868, returned into the Clerks office of said Court with the following endorsement thereon to wit:

"Executed this writ by reading the within to Edward "S. Ross this 28, day of Jan. 1868, as I am therein "commanded.

"John Hogan City Marshal"

"The within named George M Hinckley not found "in my bailiwick this 3rd day of February 1868."

John Hogan
City Marshal"

Ans 90 4

[8576-3]

And afterwards to wit: on Friday the Seventh day of February AD 1868, there was filed in the Clerk's office of said Court, the plea of defendant which is in the words and figures following to wit:

"Edward M. Rodd impleaded
"with George M Huckley
"Vs
"Garrett Chandler

In the Circuit Court of Cumberland Pleas of the City of Cairo Feby Term 1868,

"Now comes the said defendant by Wheeler his atty "defends the wrong and injury when &c. and says "he did not undertake and promise in manner and "form as the said plaintiff hath by his said declaration "complained against him & of this he puts himself "upon the country &c.

"S. P. Wheeler.
"Atty for. deft"

"And the plaintiff doth the like
Munn & Pope Attys for Pltff."

And now to wit: at the time and place herein aforesaid the following further proceedings were had and order made and entered of record in said cause by said Court to wit:

"Garrett Chandler
"
"vs
"Edward S. Rodd ~~impleaded~~ &
"~~with~~ George M Huckley
"firm of Rodd & Huckley —

Assumpsit

"And now on this day comes the plaintiff by Munn & Pope "his attorneys & also the defendant Edward S. "Rodd (who alone had been served with process herein,) "and the defendant thereupon moves the court to quash "the writ of summons herein, and the court being "now fully advised in the premises overrules said "motion, and thereupon trial by jury having been "waived this cause is submitted to the court "for trial, and the court after hearing the testimony and "being now fully advised in the premises, finds the

"issues for the plaintiff and assessed his damages at "the sum of Two Hundred and Thirty six dollars, "The ~~same~~ defendant thereupon moved the court for a "new trial therein and the court being now fully advised "in the premises overruled said motion. The defendant "thereupon moved the court in arrest of judgment "which motion is also overruled by the court. It is "therefore considered by the court that the said ~~defend-~~ "~~ant~~ plaintiff have and recover of said defendant Edward "T. Rudd, the sum of Two Hundred and Thirty six "dollars his damages so assessed as aforesaid and "also his costs herein expended taxed at $ ..... "and that in default of payment execution issue "therefor."

And thereupon there was filed in the Clerks office of said Court a bill of Exceptions which is in the words and figures following to wit:—

"Garrett Clayton
"vs.
"Edward T. Rudd impleaded
"with George M. Hinckley

In the Court of Common Pleas of the City of Cairo, Feby Term 1865.
Bill of Exceptions.

"Be it remembered that when this case came on to be "heard on the 25th day of February AD 1865 of the term "aforesaid the issues were submitted to the court the "Hon John Olney presiding a jury being waived.
"Thereupon the plaintiff to maintain the issues on his "part offered in evidence a note of which the following "is a true copy to wit:
"Thirty days after date for value received we promise "to pay to T. Clawson or order the sum of Two Hundred "and Thirty dollars and twenty five cents.
"Cairo Sept 2nd 1864. Rudd & Hinckley

16 cts Rev.
Sts on Note

To the introduction of this note in evidence the defendant by his counsel then and there at the time, objected, which

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"objection was overruled by the court, to the overruling of
"said objection by the court the defendant thereupon then
"and there excepted, Whereupon said note was read in
"evidence,
"This was all the evidence offered or introduced in said
"cause, Thereupon the court found the issues for the plain-
"tiff and assessed his damages at $286.00, Whereupon
"the defendant ~~the defendants~~ entered a motion for a
"new trial which said motion was overruled by the court
"to the overruling of said motion the defendants by his
"counsel then and there at the time excepted, Whereupon
"the defendants entered a motion in arrest of judgment
"which was by the court overruled to the overruling of
"said motion the defendant by his counsel then and there
"at the time excepted, Whereupon the court rendered
"final judgment on said finding, to which the defendant
"then and there at the time excepted and asks that this
"his bill of exceptions may be signed & made a part of
"the record in this cause, which is accordingly done
"This 28th 1868 in term time,

John Olney Clerk
Judge

STATE OF ILLINOIS,
CITY OF CAIRO,
ALEXANDER COUNTY. } SS.

I, ALEXANDER H. IRVIN, Clerk of the Court of Common Pleas of the City of Cairo, hereby certify that the foregoing is a true transcript of the proceedings had and order made and entered of record in said cause, by said Court, as copied by me from the records in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the Seal of said Court, this Twenty Seventh day of March A. D. 1868.

Alex. H. Irvin Clerk.

[0576-6]

In the Supreme Court of the State of Illinois. Third Grand Division June Term A.D. 1868.

Edward T. Rees impleaded with George M. Hinckley.
Deft in error

vs

Garrett Clawson
Deft in error

Error to the Court of Common Pleas of the City of Cairo

Assignment of Errors.

1st The Court erred in admitting the note in evidence.

2nd The Court erred in overruling the motion for a new trial.

3rd The Court erred in overruling the motion in arrest of judgment

4th The Court erred in rendering judgment for the plaintiff

Sonder in Error
Mason & Pope
Atty's for Deft in Error

S. P. Wheeler.
Atty for Deft in Error

The writ of error will be issued upon the plaintiff in error entering a bond in the penalty of five hundred dollars with Samuel Walters his security conditioned according to law. Given under my hand this 9th day of May 1868

Lyman Trumbull
Ch. J.

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Edward S. Reed

v.

Jarrett Rawlins

Record

from

The Court of Common Pleas

of the City of Cairo

Filed 20th May 1868

W. H. Williams

Clk

[E-1487]

Supreme Court of the State of Illinois.

FIRST GRAND DIVISION.

June Term, A. D. 1868.

EDWARD T. ROSS, impleaded with GEORGE M. HINCKLEY, *Plaintiff in Error.* vs GARRETT CLAWSON, *Defendant in Error.*	Error to the Court of Commom Pleas of the City of Cairo.

BRIEF OF PLAINTIFF IN ERROR.

This was an action of assumpsit commenced by Garrett Clawson, against Edward T. Ross and George M. Hinchley, and tried before John Olney, Judge, without a jury.

The first paper filed, as appears from the record, was the declaration.

The plaintiff therein complains of Edward T. Ross and George M. Hinckley, *partners doing business, &c.*, as *Ross & Hinckley.*

In the declaration there is no averment of the style by, or the character in which the defendants made the note declared on.

The writ runs against defendants jointly and not as partners.

I therefore insist:

First. That the words "partners, &c.," are merely descriptive of the persons of defendants, and have nothing to do with the character in which they executed the note.
See Johnson impl. etc vs Buel et al, 26 Ill. R., page 66.

Second. The only averment in declaration is that "defendants made their promissory note in writing," and does not aver that they executed the note as partners.
Ibid. Hurd et al vs Curlies et al, 18th Ill. R. p 188; Brent vs Shook, 36th Ill. R. p 125.

Third. The note offered in evidence, and admitted against the objection of plaintiff in error, shows clearly that it was executed by Ross and Hinckley as partners, and therefore was not admissable in evidence.

Fourth. The note offered in evidence was payable to G. Clawson. There is no averment in the declaration that Garrett Clawson, the plaintiff, is the same party named in the note, and no offer or attempt to prove it. This, I insist, is clearly a variance.

Fifth. For these reasons, I respectfully insist, that the note was improperly admitted in evidence, and the motion for a new trial should have heen allowed.

S. P. WHEELER, Att'y for Plff. in Error.

27

Ross impl'd
vs
Clemson
" "
Brief of Plff in error

Filed 2nd June 1868.
R H Williams
Clk

In the Supreme Court of Illinois.

FIRST GRAND DIVISION.

JUNE TERM, A. D. 1868.

EDWARD T. ROSS, impleaded with GEORGE M. HINCKLEY, *Plaintiff in Error.* *vs.* GARRETT CLAWSON, *Defendant in Error.*	Error to the Court of Common Pleas of the City of Cairo.

Brief of Defendant in Error.

This was an action of assumpsit commenced by Garrett Clawson against Edward T. Ross and George M. Hinckley, upon a note, signed "Ross & Hinckley."

The first paper filed was a declaration, wherein the plaintiff complains of Edward T. Ross and George M. Hinckley, as *partners doing business under the firm* name and style of *Ross & Hinckley*, and alleges that they made their certain promissory note to plaintiff, &c. On the trial the defendant in error introduced in evidence the note signed "*Ross & Hinckley*" which was admitted by the Judge, which we claim was proper under the declaration.

In support of our views see, 1 ~~Wend. 218-19. Also~~,
Manhattan Co. vs. Ledyard. 1. Gaines' Reports 192; and Wardell and others, vs. Pinney, 1 Wend. 217. -18-19

We claim that the allegation that "Ross & Hinckley" were *partners*, and that the Note was made by them, is sufficient to rebut any objection of a variance arising from the fact that it was not made by them in their individual names, and that the motion for new trial was properly overruled.

MUNN & POPE, Att'y for Defdt. in Error.

[8576-9]

27

Edward. I. Ross.
Implead with
George M. Hornsby
vs
Garrett Clawson

Error to the Court
of Common Pleas
of the City of Cairo

Filed 2nd June 1868
R. A. D. Williams
Clk

Mission & Popen
Copies from Deft in Error

~~Brief Ch. L~~ This was an action of assumpsit brought to the Court of Common Pleas of the city of Cairo by Garrett Clawson against Edward T. Rofs and George M. Hinckley as partners on the following note: "Thirty days after date for value received, we promise to pay G. Clawson or order, the sum of two hundred and thirty dollars and twenty five cents - Cairo Sept. 2. 1847.

Rofs and Hinckley."

The declaration in the introductory part describes the plaintiff as ~~George~~ Garrett Clawson and the defendant Edward T. Rofs and George M. Hinckley partners, doing business under the name and style of Rofs and Hinckley, and then avers that they made their promissory note in writing and delivered the same to the plaintiff.

~~On~~ With this special count on the note, were the common counts. Process was served on Rofs only, and the general issue being pleaded by him, the cause was submitted to the Court without a jury.

On putting the note ~~in~~ as evidence, the defendant objected, but the Court admitted it in evidence and the defendants excepted.

This was all the evidence and the Court found for the plaintiff and assessed.

[85-76-10]

the damages at two hundred and thirty six dollars, and after overruling a motion for a new trial, entered judgment for that amount.

To review this judgment, the defendant brings the record here by writ of error, and makes the objection that the note was improperly admitted as evidence.

Counsel in support of the objections refer to the case of Johnson impleaded &c. vs Beal et al. 20 Ill. 66.

That case is not like this. There it is substantially averred in the declaration, that the note was executed by the defendants as partners. There was no such averment or one equivalent to it in the case cited.

It differs from the case of Hurd et al. vs Cutler et al. 18 ib. 388 also cited by plaintiff in error. In that case, the declaration averred that the note was executed by Brad A. Hurd, William C. Hurd and John M. Nottler as joint makers of the note. There was no allegation that they were partners, or that they used the signatures of Hurds and Nottler, hence, the note offered did not support the simple allegation that Brad A. and William C. Hurd and John M. Nottler

executed the note. It did not show that they were the words and letters, who signed the note.

The case of Brent vs Spook 35 ib. 125, does not appear to us, to have any bearing on this case. Not merely decides, that a plaintiff, describing himself as administrator, suing upon a note executed to him as administrator, and not making proof of his letters of administration, shall be considered as suing in his own right, and the addition of "administrator" held to be merely descriptio of the person.

In this case ~~then~~ it is substantially alleged, that the note was executed by the defendants as partners, and under the general issue, this liability as such was admitted.

As to the remaining objection that the note was payable to E. Clawson and there was no account that Everet Clawson is the same person, and no offer or attempt to prove it, under the authority of the case of Everett vs Kip 3 Scam. 351, and of Pickering vs Pulsifer 4 Gilm. 79, that fact will be presumed. In Kips case, the note was found to be made payable to Theodore H. H.

[8576-72]

Kip. The production of a note signed J. H. H. Kip, was held to shut out the account without further proof.

In the other case, the declaration around that Loring Pickering made the note. A note signed L. Pickering was the only evidence offered on the trial, and it was held the account was supported. See also on this point Cooper vs Bailey 52 Maine 230.

Perceiving no error in the record the judgment must be affirmed.

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Rob. impl.d by
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Clarson

opinion by
Reese Ch. J.

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In the Supreme Court of the State of Illinois. ~~Third~~ First Grand Division
June Term A.D. 1868.

Edward J. Ross, impleaded with George M. Hinckley.
Plff in Error
vs
Garrett Clawson
Defd in Error

Error to the Court of Common Pleas of the City of Cairo.

Abstract of Record.

Page of record.

1 Declaration. Garrett Clawson plaintiff complains of Edward J. Ross and George M. Hinckley partners doing business under the name and style of Ross & Hinckley defendants of a plea of trespass on the case on promises.

"For that whereas the defendants on the second day of September 1867 at (venue) made their promissory note in writing and delivered the same to the plaintiff, and thereby promised to pay to the

2 plaintiff or order the sum of two hundred and thirty dollars and twenty five cents for value received, thirty days after the date thereof, which period has elapsed"

Usual conclusion to this Count.

Common Counts for goods, wares and merchandise, and for money laid out

[8676-14]

and expended.

Copy of note sued on attached.

3 Summons against Edward T. Ross and George H. Hinckley.

4 Plea of general issue filed by Ross he being only defendant served as appears by return of officer.

5 Issue joined. submitted to court for trial by agreement. Hon John Olney presiding Issue found for Plff - damages assessed at $236.00 Motion by defendant for new trial overruled. Motion in arrest of judgment overruled. judgment &c

Defendant filed bill of exceptions, which shows that plaintiff offered in evidence a note of which the following is a true copy viz

"Thirty days after date, for value received"
"we promise to pay to G. Clawson or order"
"the sum of two hundred and thirty dollars"
"and twenty five cents. Cairo Sept 2nd 1867"
"{To Cl revenue stamp}" Ross & Hinckley "

6 To the introduction of this note in evidence defendant at the time objected, objection overruled, and defendant by his counsel then and there at the time excepted

The note was then read in evidence, and was all the evidence introduced or offered by the plaintiff in this cause

[8571-15]

Bill of exceptions also shows, motion for new trial and overruling of same, and defendants exceptions at the time, Also motion in arrest of judgment, the overruling of same, and exceptions at the time - Also that bill of exceptions was signed and filed in term time.

S. P. Wheeler
Atty for Deff in Error -

Errors assigned on record.

1st - The Court erred in admitting the note in evidence.

2nd The Court erred in overruling the motion for a new trial.

3rd The Court erred in overruling the motion for in arrest of judgment.

4th The Court erred in rendering judgment for the plaintiff.

S. P. Wheeler
Atty for Deff in error.

[P576-16]

27

In the Supreme Court
~~Third~~ First Grand Division
June Term 1868

Edward J Ross impe
lts Deft in error

Garrett Clawson
Dft in error

Abstract of Record

Filed 20th May 1868
A. D. Simmons
Clk

In the Supreme Court of the State of Illinois. ~~Third~~ First Grand Division
June Term AD 1888.

Edward J. Ross impleaded with George M. Hinckley Deft in error	Error to the Court of Common Pleas of the City of Cairo
vs	
Garrett Clawson Deft in Error	Brief of Deft in Error.

This was an action of assumpsit commenced by Garrett Clawson against Edward J. Ross and George M. Hinckley, and tried before John Olney Judge without a Jury.

The first paper filed as appears from the record was the declaration.

The plaintiff therein complains of Edward J. Ross and George M. Hinckley, partners doing business &c as Ross & Hinckley.

In the declaration, there is no averment of the style or character in which the defts made the note declared on ~~[illegible]~~.

The writ runs against defendants jointly and not as partners.

I therefore insist.

First. That the words "partners &c" are merely descriptive of the persons of defend-

[8576-17]

-auto and has nothing to do with the char-
-acters in which they executed the note.

See Johnson impl etc vs Bussey etal
26th Ill. R. Page. 66.

Second The only averment in declaration is that "defendants made their promissory note in writing" and does not aver that they executed the note as partners. Ibid.

Ward etal vs Cullies etal 18th Ill R 188.

Brent vs Shook 36th Ill R 125.

Third. The note offered in evidence and admitted against the objection of pltff in error shows clearly that it was executed by Ross & Hinckley as partners and therefore was not admissable in evidence.

Fourth The note offered in evidence was payable to G. Clawson. There is no averment in the declaration that Garrett Clawson the plaintiff is the same party named in the note, and no offer or attempt to prove it. This we insist is clearly a variance.

Fifth. For these reasons. I respectfully insist that the note was improperly admitted

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In the Supreme Court
~~Third~~ First Grand Division
June Term 1868

Edward J. Ross impl're
Deft in error
vs
Garrett Clawson
Deft in error

Brief of Counsel for
Deft in error

Filed 20th May 1868
R. D. Mussey
Cl

Brief of Counsel for Defendant in error

State of Illinois,
SUPREME COURT,
First Grand Division, } ss.

The People of the State of Illinois,

To the Clerk ~~of the Circuit~~ Common Pleas Court for the ~~County of~~ City of Cairo ..... 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~~ Common Pleas Court of the City of Cairo ~~County~~, before the Judge thereof, between James Dawson .....

Plaintiff, and Edward D. Rose and Henry M. Hinckley, firm Rose and Hinckley .....

Defendants, it is said manifest error hath intervened to the injury of the aforesaid Edward D. Rose .....

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 distinctly and openly, without delay, send to the 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 Mt. Vernon, in the County of Jefferson, on the first Tuesday 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, SIDNEY BREESE, Chief Justice of the Supreme Court, and the seal of said Court at Mt. Vernon, this twenty-sixth day of May in the year of our Lord, one thousand eight hundred and sixty-eight

A. H. Wilbourn

Clerk of the Supreme Court.

[2872-25]

27

SUPREME COURT

FIRST GRAND DIVISION.

Edmund S. Rose

PLANTIFF IN ERROR

VS.

Garrett Lawson

DEFENDANT IN ERROR.

WRIT OF ERROR

Issued June

FILED 20 May 1857
R. J. Williams
Clk

This bill of error is made a supersedeas and is to be signed accordingly
R. J. Williams Clk

State of Illinois, }
SUPREME COURT, } ss.
First Grand Division, }

The People of the State of Illinois.

To the Sheriff of Alexander *County:*

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which was in the Court of Common Pleas for the City of Cairo ~~Circuit Court of~~ ~~County~~, before the Judge thereof, between Garrett Clawson

Plaintiff, and Edward J. Roff and George M. Hinckley, from of Roff and Hinckley

Defendants, it is said manifest error hath intervened to the injury of the aforesaid Edward J. Roff

as we are informed by his 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 Garrett Clawson

that he 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 in June next, to hear the records and proceedings aforesaid, and the errors assigned, if he 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 Garrett Clawson notice together with this writ.

WITNESS, SIDNEY BREESE, Chief Justice of the Supreme Court, and the seal of said Court at Mt. Vernon, this twentieth day of May in the year of our Lord, one thousand eight hundred and eighty-eight

R. S. Williamson

Clerk of the Supreme Court.

[8576-21]

27

State of Delaware
Alexander County } ss

Executed the within by reading the same to Garrett Clawson Sworn this 25th day of May A.D. 1868

Sheriffs fees
$ 1.25

Jacob G. Morgan Sheriff
of said County
Ezekiel Myers Deputy Sheriff

SUPREME COURT

FIRST GRAND DIVISION.

Edward I. Rose

PLANTIFF IN ERROR

VS.

Garrett Clawson

DEFENDANT IN ERROR.

SCIRE FACIAS

FILED: 26th May 1868
R. D. Williams
Clk

In the Supreme Court of Illinois.

FIRST GRAND DIVISION.

JUNE TERM, A. D. 1868.

EDWARD T. ROSS, impleaded with GEORGE M. HINCKLEY, *Plaintiff in Error.* *vs.* GARRETT CLAWSON, *Defendant in Error.*	Error to the Court of Common Pleas of the City of Cairo.

Brief of Defendant in Error.

This was an action of assumpsit commenced by Garrett Clawson against Edward T. Ross and George M. Hinckley, upon a note, signed "Ross & Hinckley."

The first paper filed was a declaration, wherein the plaintiff complains of Edward T. Ross and George M. Hinckley, as *partners doing business under the firm* name and style of *Ross & Hinckley*, and alleges that they made their certain promissory note to plaintiff, &c. On the trial the defendant in error introduced in evidence the note signed "*Ross & Hinckley*" which was admitted by the Judge, which we claim was proper under the declaration.

In support of our views see, ~~1 Wend. 218-19. Also,~~ Manhattan Co. vs. Ledyard. 1. Gaines' Reports 192; and Wardell and others, vs. Pinney, 1 Wend. ~~217~~. -18-19

We claim that the allegation that "Ross & Hinckley" were *partners*, and that the Note was made by them, is sufficient to rebut any objection of a variance arising from the fact that it was not made by them in their individual names, and that the motion for new trial was properly overruled.

MUNN & POPE, Att'y for Defdt. in Error.

[3576-22]

27

Edward T. Ross
Impleaded with
George M Hinckley
vs
Garrett Clawson

Error to the Court
of Common Pleas
of the City of Cairo

Filed 2nd June '58
R A Wilkinson
Clk

Allison & Pope
Attys. for Defts in Error

State of Illinois } In Supreme Court.
First Grand Division } ss To June Term AD 1868

Edward T. Ross impleaded with
George M. Hinckley
Deft in error
vs
Garrett Clausen
Pltf in error

} Error to the Court of Common Pleas of the City of Cairo.
} Assumpsit.

The Clerk will please issue a writ of error in the above styled cause to the Sheriff of Alexander County commanding re, returnable to the above term, Please endorse the writ in accordance with the order of Chief Justice Breese, attached to record

Respy

S. P. Wheeler
Atty for Deft in Error

To the Clerk of Supreme Court
First Grand Division

27

In Supreme Court
First Grand Division

Edward T Ross impl &c
pltff in error
vs
Garrett Clausen
Deft in error

Recipe for Errors

Filed 20th May 1868
W. H. Miranks
Clk

Know all men by these presents that we Edward J. Ross and Samuel Walters of the County of Alexander and State of Illinois, are held and firmly bound unto Garrett Clawson in the penal sum of five hundred dollars lawful money of the United States, for the payment of which well and 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 12th day of May AD 1868.

The Condition of the above obligation is such that whereas the said Garrett Clawson plaintiff did on the 21st day of February AD 1868 in the Court of Common Pleas of the City of Cairo in said State of Illinois at the February Term AD 1868 thereof, recover a judgment against the above bounden Edward J. Ross, impleaded with George M. Dickey, defendant in an action of assumpsit for the sum of two hundred and thirty six dollars damages and costs of suit, from which said judgment the above bounden Edward J. Ross has prosecuted a writ of error to the Supreme Court of the State of Illinois, and which writ of error has been made a supersedeas. Now if the above bounden Edward J. Ross shall duly prosecute his said writ of error and his said suit, and shall pay

said judgment, costs, interest and damages in case the said judgment shall be affirmed, then the above obligation to be void, otherwise to remain in full force and effect.

Edward J Ross {Seal}
Samuel Watters {Seal}

27

In the Supreme Court
State of Illinois

Edward J. Ross impl'd
&c
Deff in error

vs

Garrett Clawson
Defd in error

Supersedeas Bond.

Filed 20th May 1858
R. D. Mitchell
Clk

Supreme Court of the State of Illinois.

First
~~THIRD~~ GRAND DIVISION.

June Term, A. D. 1868.

EDWARD T. ROSS, impleaded with GEORGE M. HINCKLEY, *Plaintiff in Error.*
vs
GARRETT CLAWSON, *Defendant in Error.*
} Error to the Court of Commom Pleas of the City of Cairo.

ABSTRACT OF RECORD.

Page of Record 1 Declaration. Garrett Clawson, plaintiff, complains of Edward T. Ross and George M. Hinckley, partners, doing business under the name and style of Ross and Hinckley, defendants, of a plea of tresspass on the case on promises.

"For that, whereas, the defendants, on the second day of September, 1867, at (venue) made their promissory note in writing, and delivered the same to the plaintiff, and thereby
2 promised to pay to the plaintiff, or order, the sum of two hundred and thirty dollars and twenty-five cents, for value received, thirty days after the date thereof, which period has elapsed."

Usual conclusion to this count.

Common counts for goods, wares and merchandise, and for money laid out and expended.

Copy of the note sued on attached.

3 Summons against Edward T. Ross and George M. Hinckley.

4 Plea of General issue filed by Ross, he being only defendant served, as appears by return of officer.

5 Issue joined. Submitted to court for trial by agreement. Hon. John Olney presiding.

Issue found for plaintiff. Damage assessed at $236 00. Motion by defendant for new trial overruled. Motion in arrest of judgment overruled. Judgment, &c.

Defendant filed bill of exceptions, which shows that plaintiff offered in evidence a note, of which the following is a true copy, to-wit:

"Thirty days after date, for value received, we promise to pay G. Clawson, or order, the sum of two hundred and thirty dollars and twenty-five cents.

"Cairo, September 2, 1867.

[10 cts Rev Stamp] "ROSS & HINCKLEY."

6 To the introduction of this note in evidence, defendant at the time objected. Objection overruled, and defendant, by his counsel, then and there, at the time, excepted.

The note was then read in evidence, and was all the evidence introduced or offered in this cause.

Bill of exceptions also shows motion for new trial and overruling of same, and defendant's exceptions at the time. Also, motion in arrest of judgment, the overruling of same, and exceptions at the time. Also that bill of exceptions was signed and filed in term time.

S. P. WHEELER, Att'y for Plff. in Error.

ERRORS ASSIGNED ON RECORD.

1st. The court erred in admitting the note in evidence.

2d. The court erred in overruling the motion for a new trial.

3d. The court erred in overruling motion in arrest of judgment.

4th. The court erred in rendering judgment for plaintiff.

S. P. WHEELER, Att'y for Plff. in Error.

[9576-26]

27

Ross impl't &c
vs
Clawson

Abstract

Filed 2nd June 1858
W. H. Williams
Clk

State of Illinois } ss. In Supreme Court
First Grand Division } In June Term A.D. 1868

Garrett Clawson - Dft in Error
vs.
Edward T. Ross
Impleaded with
George M. Huckley Plff in Error } Joinder in Error

And the said Garrett Clawson defendant in Error, now comes and says, that there is no Error either in the record and proceedings aforesaid, in manner and form as above assigned and therefore he prays that the said Judgment may be affirmed and that his costs may be adjudged to him &c

By Manning & Lopez
Attys for Dft in Error.

[8576-27]

27

Garrett Clemson
Deft in Error
vs
Edward T Ross
Impleaded with
George M Hinckley
Plff in Error

Joinder in Error

Filed 2nd June 1859
A L D McCauley

Minnis & Pope
Attys for Deft in Error

Supreme Court of the State of Illinois.

First ~~THIRD~~ GRAND DIVISION.

June Term, A. D. 1868.

EDWARD T. ROSS, impleaded with GEORGE M. HINCKLEY, *Plaintiff in Error.* *vs* GARRETT CLAWSON, *Defendant in Error.*	Error to the Court of Commom Pleas of the City of Cairo.

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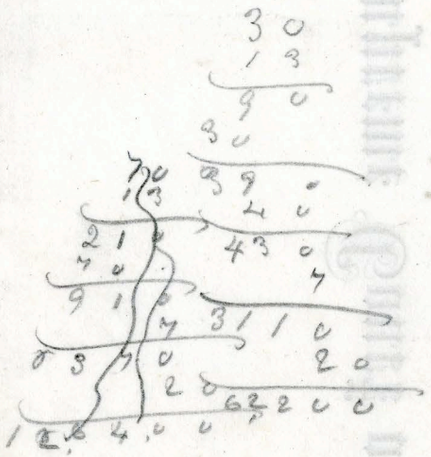
S. P. WHEELER, Att'y for Plff. in Error.

27

Ross impl'd
vs
Clawson

Abstract



Filed 2 June 1868
W. D. Williams Clk