No. 114

Supreme Court of Illinois

P. Kimmell

vs.

Hark and Elliot for the use

(379) 7

of Conrad Schutz and Frederick Konig

Pleas in the Jackson Circuit Court at their August term in the year of our Lord one thousand eight hundred and twenty four

Huntsfort to wit on the third day of August in the year aforesaid John Logan agent for the Plaintiffs herein after named came before the Clerk of the aforesaid Court and made the following affidavit to wit.

Frederick W. Hawks
Joseph B. Eliot trading under the firm of Hawks and Eliot for the use of Conrad ~~Sch~~ Shultz
vs.
Peter Kimmel Henry G. Pius & Henry A. Kurtz

John Logan agent for the Plaintiffs in this case being duly sworn says that according to the Best of his knowledge and belief the said defendants are justly indebted to the said Plaintiffs in the just sum of five hundred dollars for that they are in danger of losing their demand against the said defendants on the benefit of whatever Judgment they may obtain against them unless they be held to bail in the sum of five hundred dollars

Subscribed and Sworn to before me this 3d day of August 1824
J. Allanning Clerk

(Signed)
John Logan

on which affidavit the said Plaintiffs by Samuel D. Burton their attorney sued out from the office of the Jackson Circuit Court a writ of capias against the said Plaintiffs therein specially for costs agreeably to the Statutes of this State in such case made and provided which said writ of capias is in the following words to wit.

State of Illinois } ss. The People of the State of Illinois to
Jackson County } the Sheriff of Jackson County Greeting
We command you to take Peter Kimmel Henry G. Pius and Henry A. Kurtz if found in your Bailiwick and them safely keep so that you have them be

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the Circuit Court of Jackson County on the first day of their term to be held at the Court house in said for Jackson County ~~of the~~ on the third Monday of August Instant to answer Frederick W. Henk and Joseph B. Eliot trading under the firm of Henk and Eliot for the use of Conrad Schultz in a plea of debt one thousand Seven hundred and twenty two dollars and forty six cents damages Six hundred dollars and have you then there this writ. Witness Jacob Manning Clerk of our Said Court and his private Seal no official seal being provided at Brownsville this third day of August one thousand eight hundred and twenty four

L. S.

(Signed) J. Manning

On which the said Clerk made the following memorandum to wit

Memorandum According to the affidavit of the Plaintiffs agent the affiant will take Bail in the sum of five hundred dollars J. Manning Clerk

Which said Capias being sent into the hands of the Sheriff aforesaid he returned with the following indorsement to wit " Executed on the day of August 1824.

(Signed) J. Griggs Shff.

And the said Plaintiffs by their said Attorney afterwards to wit on the 5th day of August 1824 filed their bill of Complaint or declaration against the said defendants in the following words

State of Illinois } Pleas in the Jackson Circuit Court of the
Jackson County } term of August in the year one thousand eight hundred and twenty four

Frederick W. Henk and Joseph B. Eliot trading and doing business under the firm of Henk and Eliot

ley their Attorney complain for the use of Conrad Shultz
of Peter Rinemee Henry G. Rees and Henry A. Kurtz (lately
trading under the firm of Rinemee Rees and Kurtz in
Custody &c. of a Plea that they render unto them the
said Keck and Elliot for the use of Shultz as aforesaid the
debt and full sum of one thousand seven hundred
and twenty two dollars and forty six cents
to them they owe and from them unjustly detain
for that the said Keck and Elliot for the use of Shultz
aforesaid heretofore to wit on the seventh day of
August in the year of our Lord one thousand eight
hundred and nineteen sued out of and from the of-
fice of the prothonotary of the Court of Common
Pleas for the County of Allegheny and State of Pennsyl-
vania their certain writ or Summons against the
said Rinemee Rees and Kurtz testable on the day and
year last aforesaid and returnable on the first
Monday of November then next following before the
Judges of said Court whereupon such proceedings were
thereon had in the said Court of Common
Pleas of and for the County of Allegheny and State
of Pennsylvania before the Judges of said Court that after-
wards to wit on the nineteenth day of May in the
year of our Lord one thousand eight hundred and
twenty one by the consideration and Judgment of said
Court the said Keck and Elliot for the use of Shultz
aforesaid recovered against said Rinemee Rees and
Kurtz the sum of three hundred and forty two dol-
lars and forty six cents besides the sum of twelve
dollars and twenty four cents for their costs and
charges by them about their suit in this behalf ex-
pended which said sums make in the whole the
sum of three hundred and fifty six dollars and ~~ten~~
twenty cents part of the said sum of one thousand
seven hundred and twenty two dollars and forty six
cents above demanded whereof the said Rinemee Rees
and Kurtz were convicted as by the record and proce-
dings thereof remaining in the said Court of Comm

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pleas of Allegheny County in the State of Pensylvania
more fully and at large appears which said Judgment
remains in full force and effect not satisfied reversed
or otherwise vacated whereby an action hath accrued
to the said Hunt and ~~Elliot~~ Eliot to demand and
have of and from the said Kimmel Pius and Kurtz
for the use of Shutts aforesaid the said sum
of three hundred and fifty six dollars and twen-
ty cents parcel of the said sum of one Thousand
Seven hundred twenty two dollars and forty six
cents first above demanded. (in which said declaration
mention thereof and by ~~order~~ bounds which by order
of the Court and agreement of the parties are stricken
out and the said declaration closes as follows) Yet
the said Kimmel Pius and Kurtz nor either of them
although often requested so ~~so~~ to so have not as yet paid
the said sum of one thousand seven hundred and
twenty two dollars and forty six cents above de-
manded or any part thereof to the said Hunt and
Eliot or either of them for the use of Shutts or other-
wise but to do the same have hitherto wholly refu-
sed and still do refuse to the damage of the said Hunt
and Eliot as aforesaid the sum of six hundred dollars
and therefore they sue &c (signed) Benton P.L.

Friday August 20. 1824

Frederick M. Hunt Joseph B. Eliot for the use of Conrad Shutts vs. Peter Kimmel Henry Pius & Henry A. Kurtz

In debt

This day came the parties by their attorneys and motion of the defendants attorney leave is given on the affidavit of the defendant Peter Kimmel ordered by the court that this case be continued to the next term of this court and that the said Plaintiffs recover of the said defendants their costs and charges about their suit in this behalf expended at the

5 present term of this Court.

Sunday May 10. 1825

Henk & Eliot
vs.
Peter Rimmie &c.
G. Pius & H. & Henk

In Debt
Parties come the Parties by their attorneys and the defendants Rimmie & attorney pet. leave to plead their several pleas to wit

1st Nil Debet 2d Nulla Recordatum and 3d there was no such partnership to the first and third of the said pleas the Plaintiffs attorney puts in his demurrer and to the second takes Issue and after argument heard the Court took the case under consideration and the case is continued to tomorrow morning which said several pleas are in the words following viz.

Rimmie & Henk et al. vs. Debt

And the deft. comes & defends the wrong and injury when &c. and says that he does not owe the said sum of money above demanded or any part thereof in manner and form as the said Pltffs have ~~thereof~~ above thereof complained against him and of this he puts himself upon the Country &c.

(Signed) Eddy for Deft.

Demurrer

(Signed) Baker for Pltff.

And for further plea in this behalf the said defendant says action non because he says that there is no such record of the said supposed Judgment in the said declaration mentioned and this he is ready to verify wherefore &c. (signed) Eddy for deft

Plaintiff says there is such record and this he prays &c.

(Signed) Baker for Pltff.

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6 and for plea in this behalf the said defendant says that no such partnership ever existed as between this deft and the said Kurtz and Pim and that he never entered into any contract with them so as to become liable to a Judgment as such at the suit of the said Plffs. or any other ~~persons~~ person or persons and that he has always disclaimed any such partnership and this he is ready to verify wherefore &c

Casey for Deft

Demurrer

Baker for Plff.

Wednesday May 11. 1826

29 Sidney W. Stenk & Joseph B. Eliot trading under the firm Stenk and Eliot for the use of Lemuel Stultz

vs.

Peter Kimmel Henry G. Pim and Henry J. Kurtz

In Debt

The Court now being sufficiently advised of and concerning the plaintiffs demurrer to the defendants plea herein

and finding good reason are of opinion that the same be sustained and that the issue joined between the parties upon the plea of Nul tiel Record be found for the Plaintiffs. it is therefore considered by the Court that the Plaintiffs recover of said defendant Kimmel the sum of three hundred and fifty six dollars and twenty one cents the debt in the declaration mentioned with legal interest thereon from the eighteenth day of April one thousand eight hundred and twenty one and also their costs and that the suit as to the other defendant in mercy &c

30 State of Illinois

Jackson County } I Jos. Hemmingway Clerk of the Circuit Court for Jackson County Illinois do hereby certify the above and

Jackson's a true record of the proceedings had in
the above entitled suit before the said Court as appears
from the papers of said suit and the record of said
Court in my Office and that the Paper hereto attached
and marked A. purporting to be a record
the State of Georgia is the same record
trial of the said suit before the said Jackson Circuit
Court. In testimony of which I have set my hand
and affixed seal no appeal seal being for
record at Brownsville this 18th day of May
1825

Seal

J. Manning Clerk

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Cost of the Rules
$3.00
J. Manning Clerk

In the Court of Common Pleas of Allegheny County
of November Term AD 1819 No. 72 it is contained as follows

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Toward & Craft	Frederick W. Henk & Joseph B. Elliott, trading under the firm of Henk & Elliott for the use of Conrad Schultz v Peter Kimmele, Henry G. Pius & Henry A. Kurtz, trading under the firm of Kimmele Pius & Kurtz	ifs 23 Aug 1819 Summons Case Served to answer L. Stewart & Craft Walker & Butler appeared P. Kimmele & bro. February 2. 1820 Rule on part of Pltff to have Arbitrators chosen at the Prothonotary's Office
Walker & bro.		

Costs
Attorney 4:00
Arbitrators 3:00
Prothonotary 4:12
" Butler 37
Suff Stewart 2.25
$13.75

on the 18th Inst, at 11 O'clock AM copy served - February 18. 1820 The Attornies for the parties appeared and chose Robert Spencer, Benjamin Darlington & William Woods a arbitrators to meet at J. B. Rhoads on the 18th March next at 3 O'clock P.M. copy [illegible] filed finding for the Plaintiffs the sum of [illegible] hundred [illegible] two dollars and forty six cents with costs of suit. May 19th 1821 Judgment.

Frederick W. Henk & Joseph B. Elliott trading under the firm of Henk & Elliott for use of Conrad Schultz v Peter Kimmele & al trading under the firm	Issue Summons Case post capias case See No 312 Aug 1819 "insert names of parties in full"

Witness our hands & seals the day and year above mentioned

N. Toward
Robt Woods
Thomas Rhoads
Robt Spence

Pennsylvania
Allegheny County } ss

I James M Butler Prothonotary of the
of Kimmel Pius & Kurtz
19 Aug 1819

Pro

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(Writ)

Pennsylvania

Allegheny County } ss. The Commonwealth of Pennsylvania to the Sheriff of the County of Allegheny Greeting: We command you that you summon Peter Kimmell, Henry G. Pius and Henry A Kurtz late of your County Yeomen, so that they be and appear before our Judges at Pittsburgh at our County Court of Common Pleas there to be held for the County aforesaid, on the first Monday of November next to answer Henry [illegible] Plea to the [illegible] Conrad Schultz [illegible] Plea of Trespass on the Case &c [illegible]

Witness the Honorable Samuel Roberts, Esquire President of our said Court, at Pittsburgh the seventh day of August in the year of our Lord one thousand eight hundred & nineteen

Attest [illegible] Pro

To which the Sheriff made return of "Served on Peter Kimmell "by shewing this Writ to his wife and leaving a copy with her & on "H. G. Pius by reading the writ & leaving with him a copy thereof "So answers L. Stewart Shff"

Reference

In the Court of Common Pleas of Allegheny County of November Term 1819. No 72

Conrad Haaft	Henry Elliott for the use of Conrad Shultz	Summons Case served so answers L. Stewart Shff
	v.	
Walker d.b.c.	Kimmell, Pius & Kurtz	

February 2. 1820 Rule on part of the Plaintiffs to have Arbitrators chosen as the

Prothonotarys Office on the 18th inst at 11 Oclock AM copy served
February 18. 1820 The Attornies for the parties appeared and chose
Robert Spencer, Benjamin Darlington and William Woods
Arbitrators to meet at J. W. Olivers on the 18th March next at 3 Oclock P.M.
Copy from the Record Attest J. S.
Arbitrators to meet by consent on the 27th day of April next at Beales
at 3 Oclock P.M. J. S. Craft

adjourned meeting of

April 27. 1821 J. S. Craft.
D. V. Wacker

April 28. 1821 William Woods & Robert Spencer two of the
within Arbitrators met and chose Thomas Enoch in the room of Benjamin
Darlington unavoidably absent and all having been duly sworn and
examining the evidence for plaintiff find for the Plaintiff the sum
Three Hundred and forty two dollars forty six cents with Cos

Court of Common Pleas of Allegheny County
aforesaid do certify the foregoing to be
full and complete Copy of the Record in the
Case as it remains in my Office
In testimony whereof I have hereunto set my hand and affixed the seal
of said Court at Pittsburgh May 24 1823 James R. Butler Pro.

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such, and that the same certificate is in due form of law
witness the Hand Seal of the said Wm Wilkins this 10th day
of June 1823.

Wm Wilkins

Peter Kimmel
vs
Henk and Elliot } Sup. Court, June Term 1825.

And now at this day, came the pltff. in error, and says that in the record and proceedings aforesaid, as also in giving the Judgment aforesaid, there is manifest error in this to wit:

1 That the court erred in sustaining the demurrer of the pltffs below to the pleas of nul debet and disclaimer of partnership, filed by the said Kimmel the deft. below.

2. There is error also in this, that the court below did not sustain said demurrer to the pltff's declaration, the same being defective and the demurrer reaching back thereto.

3. That the court below erred in giving Judgment for the pltffs. below against the deft. below, on the plea of nul tiel record.

4. That the court below erred in adjudging interest to the pltffs. below on the ~~sum~~

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record from the State of Penna., from the day upon which the said judgment in the declaration, was supposed to have been rendered in the State of Penna.

5. There is error also in this, that interest is given on said record from the 18th day of April 1821, more than a month before the day, ~~day~~ ~~before~~ ~~that~~, upon which the said judgment is supposed to have been rendered in the State of Penna.

For which errors and others apparent on the said record and in the proceedings aforesaid, the plff. in error, now here, prays that said judgment may be reversed and set aside &c.

Eddy for Plff. in error.

1. Error assigned this that the declaration is against Thos. Peas & Wm. Ty, & the record from Pa. is only against the two first.

Jos. Simmel
vs
Henr. Elliott
Assignment of Errors
Filed June 20
1835
J. McDuncan

(114)

Judgment

State of Illinois Sct.

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 Frederick W. Hentz Joseph B. Elliott for the use of Conrod Shutts plaintiffs and Peter Kimmel 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 prties 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, withall things touching the same, under your seal, so that we may have the same before our Justices afresaid at Vandalia in the county of Fayette, on the second Monday of December next, that the record and proceedings, being inspected, we may cuse to be done therein, to correct the error, what of right ought to be done according to law.

Witne[illegible]nes M. Duncan, Clerk of our said court, and the seal thereof at V[illegible]a, this Eighth day of June in the year of our Lord one thousand eight hundred and Twenty five

J. M. Duncan Clk

6-14-87

Supreme Court

Peter Kimmel
vs
J. W. Hart
Writ of Error

Joseph Elliott for
the use of Conrad
Shultz

Filed. June 14, 1825
P. M. Duncan

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