

No. 12982

Supreme Court of Illinois

County of Rock Island

vs.

County of Mercer

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STATE OF ILLINOIS,

SUPREME COURT.

Third Grand Division.

No. 150.

1881

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SUPREME COURT, APRIL TERM, A. D., 1860.

THE COUNTY OF ROCK ISLAND

PLAINTIFF IN ERROR,

VS.

THE COUNTY OF MERCER

DEFENDANT IN ERROR.

Filed Apr. 17, 1860

Agreed Case from Rock Island.

S. L. Leonard

Clerk

ARGUMENT OF

HAWLEY & WELLS,

COUNSEL FOR PLAINTIFF IN ERROR.

GRAHAM & BARNES, PRINTERS, MOLINE INDEPENDENT.

THE COUNTY OF ROCK ISLAND, }
vs. } Debt.
THE COUNTY OF MERCER.

May it please your Honors:

This was an action of debt in the Rock Island county Circuit Court, brought by the county of Mercer against the county of Rock Island to recover the sum of fifteen hundred dollars which the county of Mercer claimed to recover upon an agreed case in substance as follows, to-wit:

At the August term of the Circuit Court of Mercer county an indictment was presented by the Grand Jury of said county of Mercer against Wallace Hatch and others for the crime of burglary, committed in said county of Mercer, on which the defendants therein were at said term, arraigned and severally plead not guilty, and at the same time entered their motion and filed their affidavit for a change of venue on account of the prejudice of the minds of the inhabitants against them, which motion was allowed, and the venue changed to Rock Island county at the same term, and the Sheriff

of Mercer county was ordered to remove the bodies of the defendants to Rock Island county, and deliver them into the custody of the common Jailor of said Rock Island county, and also by the proper order and endorsement upon the indictment, the amount in which the defendants were required to find bail was fixed by the court at the sum of fifteen hundred dollars each.

In pursuance of such order, &c., the papers and transcript of proceedings in said cause, were on the 6th of November, 1856, filed in the Rock Island Circuit Court, and the bodies of the defendants were delivered into the custody of T. B. Gorton, Sheriff and keeper of the common jail of Rock Island county, who detained the defendant Hatch until he deposited with said Sheriff fifteen hundred dollars in lieu of giving bond and security, and to be held by said Sheriff as security for the appearance of said Hatch on the first day of the next term of the Rock Island county Circuit Court to be holden at Rock Island in said county on the 5th day of November, A. D. 1856, and to be forfeited upon his default therein.

On the 7th day of November term, A. D. 1856, of the Rock Island Circuit Court the said cause of the *People vs. Hatch and others* came on for trial, and defendant Hatch being called, came not but made default, thereupon the said court made and entered an order in said cause in these words "This day came the Peo-

“ple by Hawley their Attorney, and the defendant
“Hatch being called came not but made default, and
“the Sheriff represented that defendant Hatch had de-
“posited with him the sum of fifteen hundred dollars
“in lieu of giving bond and security for his appear-
“ance at this term of the court, it is therefore ordered
“by the court that the Sheriff pay to the Clerk of this
“court, the said sum of fifteen hundred dollars so
“deposited.”

And the said Sheriff afterwards, and during the same term of said court paid to the Clerk of said court the said sum of fifteen hundred dollars. And at the next term of the county court of said Rock Island county, held on &c., the said Clerk paid over the said fifteen hundred dollars, which sum was received by said county court and deposited in the treasury of said last named county. That the county of Rock Island has paid out of said monies as costs in said matters one hundred dollars for collection thereof.

Upon the above state of facts the county of Mercer claims to recover of the county of Rock Island the said sum of fifteen hundred dollars. It is agreed that all objections for matter of form or for any irregularities shall be considered as waived, that the same shall be decided upon the merits by the Circuit Court of Rock Island county (without a jury) upon the facts above stated, and in case the court should be of the

Here there is no recognizance growing out of a change of venue, or out of any other state of facts, and by virtue of what law the county of Mercer claims to recover, we are unable to see.

It certainly does not follow necessarily that because the county of Rock Island ultimately received the money collected from the defendant Hatch, that therefore the county of Mercer was entitled to recover the same or any part thereof, but to be entitled to such money the county of Mercer must bring itself within the letter of the statute and show it to have been collected on a recognizance.

Blackstone defines a recognizance to be "An obligation of record which a man enters into before some court of record or magistrate duly authorized, with condition to do some particular act; as to appear at the assizes, to keep the peace, to pay a debt or the like." 2d Blackstone's Commentaries, page 341.

We submit that the words "expenses of the prosecution" in the proviso of the 1st section of the act of 1847, applies to the prosecution on the forfeited recognizance, and to nothing else, and certainly the county of Mercer is not liable by law in this case for any expenses in the prosecution of a forfeited recognizance.

By the terms of the said first section of the act of 1847, the county from which the venue is changed in a criminal case, is not entitled to receive the amount;

that may be collected, as a fine, penalty, or forfeiture in such criminal case by the county to which the venue may be changed, but if any right is given to the county from which the venue is changed in any part of that act, it is limited to recognizances growing out of changes of venue, and not in such case unless costs have accrued which by law the county from which the venue is changed is bound to pay.

In cases of recognizance growing out of changes of venue, we know of no law that will *compel* the county from which the venue is changed to pay the expenses of prosecution on such recognizance, and if there be none then certainly the county of Mercer would not be entitled to recover in this case even although the money collected from Hatch had been upon a forfeited recognizance.

If the words "expenses of the prosecution" refer to the original suit in which the recognizance was taken then we submit the law to be that in cases of change of venue from one county to another in criminal cases, the county from which the venue is changed, is liable for the fees of witnesses, on the part of the People when such witnesses have been recognized or subpoenaed, but not otherwise.—(Purple's statutes 1856, page 573) and we know of no law that will *compell* the county from which the venue is changed to pay any other costs than those mentioned: and in this

case it does not appear that any witnesses were entitled to fees under the law referred to, and consequently the county of Mercer is not liable for any costs in the matter.

Now in this case it appears that the county of Rock Island has expended the sum of one hundred dollars in collecting the fifteen hundred dollars; and it does not appear that the county of Mercer has expended one cent, or that it is or ever has been liable for any costs or expenses in any manner, either in the case of *The People vs. Hatch* and others, or otherwise in connection with the matters in controversy in this suit. And we submit that upon the merits of this case as set out in the agreed case the judgment ought to be reversed.

The action is in debt and the judgment purports to be in debt and is bad because it is in *damages* for the whole sum, and should be reversed for that reason.

The judgment also awards execution which has often been decided by this Court to be erroneous, as an execution cannot be awarded against a county.

Upon the two last points we deem it unnecessary to refer to authorities.

HAWLEY & WELLS,
Attorneys for Plaintiff in Error.

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION.

APRIL TERM, 1860.

COUNTY OF ROCK ISLAND }
 vs.
COUNTY OF MERCER. }

THE question is not simply whether the County of Mercer is entitled to the money in controversy, but is any officer or fund in Mercer county entitled to it? The agreed case shows that if Mercer county, or any officer or fund of said county is entitled to this money, judgment should be for the plaintiff. If Mercer county has a right to collect this money, it is no matter whether it is collected for the school fund or for the county treasury.

The act of Feb. 28, 1847, 2 Purple's Statute, 1265, provides that in cases of change of venue, the county that is by law compelled to bear the expenses of the prosecution, shall be entitled to all moneys, penalties, and forfeitures; if both counties had incurred expenses and costs, then those expenses and costs are to be paid *pro rata* out of such fines and forfeitures.

The appellants say, that the words "expenses of prosecution" applies to the expense of prosecuting the forfeited recognizance. This can not be so, for in such case there would be no difference between a case where there is a change of venue and where there is none. It seems to us clear that the expense of prosecuting the criminal is referred to in the proviso.

The law required that all the costs on this change of venue should be borne by Mercer county. The fees of witnesses from Mercer county. Purple's Stat. 573.

The keeping prisoner in jail. 1 Purple's Stat., p. 640, § 14. The Rock Island jail fees can~~not~~ be collected of Mercer county.

What costs could Rock Island county be compelled by law to pay? None. The officers collected no fees in criminal cases, unless from the defendant.

Then Mercer county was entitled to this money, to be paid to the school fund of that county, as provided in second section of same act.

The appellants say that this was not a recognizance. ~~They~~ *So* had received it as forfeited bail money; it had placed it in its treasury as such. It is estoppel from denying that this money is money forfeited by the non-appearance of defendant.

The law might be thoroughly evaded and the rights of the counties entirely set aside by such a course.

It is said this action is debt. This we deny. It is an agreed case, and nothing in the case indicates that the judgment may not properly be in damages.

If the award of execution be erroneous, this Court can correct that error here, leaving the judgment in other respects as it is.

GLOVER, COOK & CAMPBELL.

Rock Island vs Murren
Appellee's Brief

CHARLES COOK & CAMPBELL

If the award of execution be erroneous, this Court can correct
not properly be in danger.

It is said this action does not lie. This we deny. It is an action
conferred entirely upon the law by a statute.

The law might be interpreted as denying and the rights of the
money forfeited by the defendant of defendant.

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Filed May 22, 1860
Leland
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STATE OF ILLINOIS.

IN SUPREME COURT--April Term, A. D., 1860.

AGREED CASE FROM ROCK ISLAND.

THE COUNTY OF ROCK ISLAND, }
 vs. } *Debt.*
THE COUNTY OF MERCER. }

ABSTRACT OF THE RECORD.

- 1 January 25, 1859, at the January Special Term, A. D., 1859, of Rock Island Circuit Court, the parties in this cause appear in Court and stipulate to submit to the Court an agreed case.
- 2 On the same day the parties appear by their Attorneys and their agreed case is filed.

AGREED CASE.

THE COUNTY OF MERCER.
vs.
 THE COUNTY OF ROCK ISLAND, } *Debt.*

- 3 At August term of the Circuit Court of Mercer
 county - - - an indictment was presented by the
 Grand Jury and filed - - - against Wallace
 Hatch, and others for burglary; committed in said
 Mercer county - - - on which the defendants
 therein were at said term arraigned and severally plead-
 ed not guilty - - - and at the same term entered
 their motion for a change of venue on account, &c.,
 - - - which motion was allowed - - - and
 the venue changed to Rock Island county at the same
 4 term, and the Sheriff of Mercer county was ordered to
 remove the bodies of the defendants to Rock Island
 county and deliver them to the common jailor of said
 Rock Island county, and also by the proper order and
 endorsement upon the indictment - the amount
 in which the defendants were required to find bail was
 fixed by the court at \$1500 each.

- In pursuance of the order &c., the papers and trans-
 cript of proceedings in said cause were on the 6th of
 November 1856, filed in Rock Island Circuit Court,
 and the bodies of the defendants - were deliv-
 ered to the custody of T. B. Gorton Sheriff and keep-
 er of the common jail of Rock Island county, who de-
 5 tained defendant Hatch - until he deposited
 with said Sheriff \$1500 in lieu of bond and security and
 to be held by the said Sheriff as security for the ap-
 pearance of said Hatch on the first day of the next
 term of said Rock Island Circuit Court - at the
 Court House in - Rock Island county Novem-
 ber 5th A. D. 1856 - and to be forfeited upon
 his default therein - .

On the 7th day of the November Term, 1856, of Rock Island Circuit Court the said cause of *The People vs. Hatch and others* came on for trial - and defendant Hatch being called came not but made default, thereupon the said Court made and entered an order in said cause in these words: "This day came the People by Hawley their attorney and the defendant Hatch being duly called came not but made default" - and the Sheriff represented that defendant Hatch had deposited with him \$1500 in lieu of giving bond and security for his appearance at this term of the court, and the Sheriff having signified his readiness to pay the same as should be directed by the Court, "it is therefore ordered by the Court, that the Sheriff pay to the clerk of this court the said sum of \$1500 so deposited."

And the Sheriff afterwards paid - to the Clerk of said Court the said sum of \$1500. And at the next term of the County Court of said Rock Island county, held on &c., - the said Clerk paid over the said \$1500, which sum was received by said Court and deposited in the treasury of said last named county - that Rock Island has paid out of said monies as costs in said matter \$100 for collection thereof.

Upon the above state of facts the county of Mercer claims to recover of the county of Rock Island the said sum of \$1500 - it is agreed that all objections for matter of form or for any irregularities shall be considered as waived - that the same shall be decided upon the merits by the Circuit Court of Rock Island county (without jury) upon the facts above stated - and in case the court should be of opinion that the county of Mercer or any officer or officers thereof is intitled to said moneys, judgement should be entered therefor in favor of plaintiff: but in case the court should be of opinion that Rock Island county or any officer or officers thereof is entitled to said moneys

judgement shall be entered in favor of defendants
that either party may have the case certified
to the Supreme Court, as an "Agreed Case."

Dated, January 18th 1859.

The County of Mercer,
By WILKINSON & PLEASANTS,
And BASSETT & BRO.,
Its Attorneys.

The County of Rock Island,
By R. M. MARSHALL and J. B. HAWLEY,
Its Attorneys.

May 23, 1859—at May term 1859 of Rock Island
9 Circuit Court, cause heard by the Court damages as-
sessed and judgement entered in favor of the plaintiff
and against the defendant for \$1400, and costs; ex-
ecution awarded.

IN SUPREME COURT—April Term A. D. 1860

AGREED CASE FROM ROCK ISLAND

THE COUNTY OF ROCK ISLAND
THE COUNTY OF ROCK ISLAND

ABSTRACT OF THE RECORD

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On the same day the parties appear by their Attor-
neys and their agreed case is filed.

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The County of
Rock Island

^{no}
County of Mercer
Abstract

Filed Apr. 12, 1860
L. L. Lander
Clerk

and against the defendant in the sum of \$1400 and costs; ex-
cess of any judgment entered in favor of the plaintiff
shall be paid by the defendant to the plaintiff.
Given under my hand and seal of the County of Rock Island
this 23d day of January 1860.
J. H. HARRIS, Clerk of the County of Rock Island.
The County of Rock Island, ss.
I, J. H. HARRIS, Clerk of the County of Rock Island, do hereby
certify that the foregoing is a true and correct copy of the
original as the same appears in the records of the County of
Rock Island, this 23d day of January 1860.
J. H. HARRIS, Clerk of the County of Rock Island.

AGREED CASE.

THE COUNTY OF MERCER.

THE COUNTY OF ROCK ISLAND.

At August term of the Circuit Court of Mercer county - an indictment was presented by the Mercer county - on which the defendants therein were at said term and were severally placed

STATE OF ILLINOIS.

IN SUPREME COURT--April Term, A. D., 1860.

which motion was allowed - and the venue changed to Rock Island county at the same term and the Sheriff of Mercer county was ordered to convey and deliver them to the common jailer of said Rock Island county - proper order and endorsement upon the indictment. The amount of said bail was

AGREED CASE FROM ROCK ISLAND.

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THE COUNTY OF ROCK ISLAND, }
vs. } *Debt.*
THE COUNTY OF MERCER. }

In pursuance of the order &c. the papers and transcript of proceedings in this case were on the 11th of November 1859, filed in Rock Island Circuit Court, and came to the custody of J. B. Conner, Clerk of the court, who delivered them to the defendant Hatch.

ABSTRACT OF THE RECORD.

of the county of Mercer, who delivered them to the defendant Hatch.

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 4 term, and the Sheriff of Mercer county was ordered to
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 Rock Island county, and also by the proper order and
 endorsement upon the indictment - the amount
 in which the defendants were required to find bail was
 fixed by the court at \$1500 each.

5 In pursuance of the order &c., the papers and trans-
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On the 7th day of the November Term, 1856, of Rock Island Circuit Court the said cause of *The People vs. Hatch and others* came on for trial - and defendant Hatch being called came not but made default, thereupon the said Court made and entered an order in said cause in these words: "This day came the People by Hawley their attorney and the defendant Hatch being duly called came not but made default" - and the Sheriff represented that defendant Hatch had deposited with him \$1500 in lieu of giving bond and security for his appearance at this term of the court, and the Sheriff having signified his readiness to pay the same as should be directed by the Court, "it is therefore ordered by the Court, that the Sheriff pay to the clerk of this court the said sum of \$1500 so deposited."

And the Sheriff afterwards paid - to the Clerk of said Court the said sum of \$1500. And at the next term of the County Court of said Rock Island county, held on &c., - the said Clerk paid over the said \$1500, which sum was received by said Court and deposited in the treasury of said last named county - that Rock Island has paid out of said monies as costs in said matter \$100 for collection thereof.

Upon the above state of facts the county of Mercer claims to recover of the county of Rock Island the said sum of \$1500 - it is agreed that all objections for matter of form or for any irregularities shall be considered as waived - that the same shall be decided upon the merits by the Circuit Court of Rock Island county (without jury) upon the facts above stated - and in case the court should be of opinion that the county of Mercer or any officer or officers thereof is intitled to said moneys, judgement should be entered therefor in favor of plaintiff: but in case the court should be of opinion that Rock Island county or any officer or officers thereof is entitled to said moneys

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County of Rock Island.

vs

County of Mercer

Filed Apr 12, 1860

L. Leland
Clerk

STATE OF ILLINOIS.

IN SUPREME COURT--April Term, A. D., 1860.

AGREED CASE FROM ROCK ISLAND.

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150
County of Rock Island
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Filed April 12, 1860
L. L. Loomis
Clerk

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION.

APRIL TERM, 1860.

COUNTY OF ROCK ISLAND }
 vs.
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THE question is not simply whether the County of Mercer is entitled to the money in controversy, but is any officer or fund in Mercer county entitled to it? The agreed case shows that if Mercer county, or any officer or fund of said county is entitled to this money, judgment should be for the plaintiff. If Mercer county has a right to collect this money, it is no matter whether it is collected for the school fund or for the county treasury.

The act of Feb. 28, 1847, 2 Purple's Statute, 1265, provides that in cases of change of venue, the county that is by law compelled to bear the expenses of the prosecution, shall be entitled to all moneys, penalties, and forfeitures; if both counties had incurred expenses and costs, then those expenses and costs are to be paid *pro rata* out of such fines and forfeitures.

The appellants say, that the words "expenses of prosecution" apply to the expense of prosecuting the forfeited recognizance. This can not be so, for in such case there would be no difference between a case where there is a change of venue and where there is none. It seems to us clear that the expense of prosecuting the criminal is referred to in the proviso.

The law required that all the costs on this change of venue should be borne by Mercer county. The fees of witnesses from Mercer county. Purple's Stat. 573.

The keeping prisoner in jail. 1 Purple's Stat., p. 640, § 14. The Rock Island jail fees cannot be collected of Mercer county.

What costs could Rock Island county be compelled by law to pay? None. The officers collected no fees in criminal cases, unless from the defendant.

Then Mercer county was entitled to this money, to be paid to the school fund of that county, as provided in second section of same act.

So The appellant ~~s~~ says that this was not a recognizance. ~~It~~ had received it as forfeited bail money; it had placed it in its treasury as such. It is estoppel from denying that this money is money forfeited by the non-appearance of defendant.

The law might be thoroughly evaded and the rights of the counties entirely set aside by such a course.

It is said this action is debt. This we deny. It is an agreed case, and nothing in the case indicates that the judgment may not properly be in damages.

If the award of execution be erroneous, this Court can correct that error here, leaving the judgment in other respects as it is.

GLOVER, COOK & CAMPBELL.

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 Rock Island vs Mercer
 Appellate Brief

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 and properly be in damages.

It is said this is a case of debt. This we deny. It is an error

and is subject to be corrected by the Court.

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money forfeited by the recognition of defendant.

There is no such. It is not a case of debt. This we deny. It is an error

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and is not.

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Filed May 22, 1880
 L. Leland
 Clerk

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STATE OF ILLINOIS.

IN SUPREME COURT--April Term, A. D., 1860.

AGREED CASE FROM ROCK ISLAND.

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1 January 25, 1859, at the January Special Term, A. D., 1859, of Rock Island Circuit Court, the parties in this cause appear in Court and stipulate to submit to the Court an agreed case.

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 their motion for a change of venue on account, &c.,
 - - - which motion was allowed - - - and
 the venue changed to Rock Island county at the same
 4 term, and the Sheriff of Mercer county was ordered to
 remove the bodies of the defendants to Rock Island
 county and deliver them to the common jailor of said
 Rock Island county, and also by the proper order and
 endorsement upon the indictment - the amount
 in which the defendants were required to find bail was
 fixed by the court at \$1500 each.

In pursuance of the order &c., the papers and trans-
 cript of proceedings in said cause were on the 6th of
 November 1856, filed in Rock Island Circuit Court,
 and the bodies of the defendants - were deliv-
 ered to the custody of T. B. Gorton Sheriff and keep-
 er of the common jail of Rock Island county, who de-
 5 tained defendant Hatch - until he deposited
 with said Sheriff \$1500 in lieu of bond and security and
 to be held by the said Sheriff as security for the ap-
 pearance of said Hatch on the first day of the next
 term of said Rock Island Circuit Court - at the
 Court House in - Rock Island county Novem-
 ber 5th A. D. 1856 - and to be forfeited upon
 his default therein - .

On the 7th day of the November Term, 1856, of Rock Island Circuit Court the said cause of *The People vs. Hatch and others* came on for trial - and defendant Hatch being called came not but made default, thereupon the said Court made and entered an order in said cause in these words: "This day came the People by Hawley their attorney and the defendant Hatch being duly called came not but made default" - and the Sheriff represented that defendant Hatch had deposited with him \$1500 in lieu of giving bond and security for his appearance at this term of the court, and the Sheriff having signified his readiness to pay the same as should be directed by the Court, "it is therefore ordered by the Court, that the Sheriff pay to the clerk of this court the said sum of \$1500 so deposited."

And the Sheriff afterwards paid - to the Clerk of said Court the said sum of \$1500. And at the next term of the County Court of said Rock Island county, held on &c., - the said Clerk paid over the said \$1500, which sum was received by said Court and deposited in the treasury of said last named county - that Rock Island has paid out of said monies as costs in said matter \$100 for collection thereof.

Upon the above state of facts the county of Mercer claims to recover of the county of Rock Island the said sum of \$1500 - it is agreed that all objections for matter of form or for any irregularities shall be considered as waived - that the same shall be decided upon the merits by the Circuit Court of Rock Island county (without jury) upon the facts above stated - and in case the court should be of opinion that the county of Mercer or any officer or officers thereof is intitled to said moneys, judgement should be entered therefor in favor of plaintiff: but in case the court should be of opinion that Rock Island county or any officer or officers thereof is entitled to said moneys

judgement shall be entered in favor of defendants
 - that either party may have the case certified
 to the Supreme Court, as an "Agreed Case."

Dated, January 18th 1859.

The County of Mercer,
 By WILKINSON & PLEASANTS,
 And BASSETT & BRO.,
Its Attorneys.

The County of Rock Island,
 By R. M. MARSHALL and J. B. HAWLEY,
Its Attorneys.

May 23, 1859—at May term 1859 of Rock Island
 9 Circuit Court, cause heard by the Court damages as-
 sessed and judgement entered in favor of the plaintiff
 and against the defendant for \$1400, and costs; ex-
 ecution awarded.

150-136

County of Rock Island

vs

County of Mercer

Filed Apr. 12, 1840

Leland
Clark

STATE OF ILLINOIS.

IN SUPREME COURT--April Term, A. D., 1860.

AGREED CASE FROM ROCK ISLAND.

THE COUNTY OF ROCK ISLAND, }
 vs. } *Debt.*
THE COUNTY OF MERCER. }

ABSTRACT OF THE RECORD.

1 \ January 25, 1859, at the January Special Term, A.
D., 1859, of Rock Island Circuit Court, the parties in
this cause appear in Court and stipulate to submit to
the Court an agreed case.

2 On the same day the parties appear by their Attor-
neys and their agreed case is filed.

AGREED CASE.

THE COUNTY OF MERCER.
vs.
 THE COUNTY OF ROCK ISLAND, } *Debt.*

3 At August term of the Circuit Court of Mercer
 county - - - an indictment was presented by the
 Grand Jury and filed - - - against Wallace
 Hatch, and others for burglary; committed in said
 Mercer county - - - on which the defendants
 therein were at said term arraigned and severally plead-
 ed not guilty - - - and at the same term entered
 their motion for a change of venue on account, &c.,
 - - - which motion was allowed - - - and
 the venue changed to Rock Island county at the same
 4 term, and the Sheriff of Mercer county was ordered to
 remove the bodies of the defendants to Rock Island
 county and deliver them to the common jailor of said
 Rock Island county, and also by the proper order and
 endorsement upon the indictment - the amount
 in which the defendants were required to find bail was
 fixed by the court at \$1500 each.

In pursuance of the order &c., the papers and trans-
 cript of proceedings in said cause were on the 6th of
 November 1856, filed in Rock Island Circuit Court,
 and the bodies of the defendants - were deliv-
 ered to the custody of T. B. Gorton Sheriff and keep-
 er of the common jail of Rock Island county, who de-
 5 tained defendant Hatch - until he deposited
 with said Sheriff \$1500 in lieu of bond and security and
 to be held by the said Sheriff as security for the ap-
 pearance of said Hatch on the first day of the next
 term of said Rock Island Circuit Court - at the
 Court House in - Rock Island county Novem-
 ber 5th A. D. 1856 - and to be forfeited upon
 his default therein - .

On the 7th day of the November Term, 1856, of Rock Island Circuit Court the said cause of *The People vs. Hatch and others* came on for trial - and defendant Hatch being called came not but made default, thereupon the said Court made and entered an order in said cause in these words: "This day came the People by Hawley their attorney and the defendant Hatch being duly called came not but made default - and the Sheriff represented that defendant Hatch had deposited with him \$1500 in lieu of giving bond and security for his appearance at this term of the court, and the Sheriff having signified his readiness to pay the same as should be directed by the Court, it is therefore ordered by the Court, that the Sheriff pay to the clerk of this court the said sum of \$1500 so deposited."

And the Sheriff afterwards paid - to the Clerk of said Court the said sum of \$1500. And at the next term of the County Court of said Rock Island county, held on &c., - the said Clerk paid over the said \$1500, which sum was received by said Court and deposited in the treasury of said last named county - that Rock Island has paid out of said monies as costs in said matter \$100 for collection thereof.

Upon the above state of facts the county of Mercer claims to recover of the county of Rock Island the said sum of \$1500 - it is agreed that all objections for matter of form or for any irregularities shall be considered as waived - that the same shall be decided upon the merits by the Circuit Court of Rock Island county (without jury) upon the facts above stated - and in case the court should be of opinion that the county of Mercer or any officer or officers thereof is intitled to said moneys, judgement should be entered therefor in favor of plaintiff: but in case the court should be of opinion that Rock Island county or any officer or officers thereof is entitled to said moneys

judgement shall be entered in favor of defendants
 - that either party may have the case certified
 to the Supreme Court, as an "Agreed Case."

Dated, January 18th 1859.

The County of Mercer,
 By WILKINSON & PLEASANTS,
 And BASSETT & BRO.,
Its Attorneys.

The County of Rock Island,
 By R. M. MARSHALL and J. B. HAWLEY,
Its Attorneys.

May 23, 1859—at May term 1859 of Rock Island
 9 Circuit Court, cause heard by the Court damages as-
 sessed and judgement entered in favor of the plaintiff
 and against the defendant for \$1400, and costs; ex-
 ecution awarded.

130-138

The County of Rock Island

vs

The County of Mercer

Abstracts

Filed April 12, 1860
L. Leland
Clerk

County of Rock Island

County of Mercer

The error in this case was by mistake so written up that an execution was awarded against the County. The affidavits of Mr. Milburn & of the clerk clearly show that the error was one of the clerk after the Court adjourned and we have clearly a right to have this Judgment corrected and ~~then~~ for this purpose notice of a motion to the Circuit Court has been duly given, we ask for a continuance that this may be corrected, a continuance can work no harm to Rock Island for the Judgment is against her for \$1400 and this Judgment should not be reversed for a mere error of the clerk which we can have corrected by next term of Circuit Court.

B. C. Cook

for motion

150
County of Rock Island

County of Mureau

Suggestions in support
of motion & continue

Filed May 5, 1860
L. Island. Otho

~~Summit~~

In the Supreme Court of the State of Illinois for the 3^d
Grand Division At April Term AD 1860.

The County of Rock Island Plaintiff in Error

vs $\sum$ - Aged case from Rock Island.

The County of Mercer. Def^t in Error.

Isa O'Wilkinson of said County
being duly sworn states that he this partner Geo
W Pleasants were the attorneys for the said County
of Mercer in the above case in the Circuit Court
of Rock Island County. That in the said Circuit
Court the intervention of a jury was waived by
the parties through their respective counsel, and
the said cause submitted to the Court for its
decision. That affiant was present in Court
at the time the Judge thereof pronounced his
opinion and decision in said case, and was
in such a position that he could distinctly hear
all that was said by said Judge in ~~pronouncing~~
said opinion, ~~and that~~ that he has no doubt but
that he heard all that was said Judge on
~~that~~ occasion. - That the said cause had
been submitted to said Judge at a term of
said Court previous to the May Term AD 1859,
and that at said May Term 1859, on the
calling of said cause by said Judge, he
remarked that he had examined the case
as submitted to him, and was of opinion that
the ~~plaintiff~~ (the county of Mercer) was entitled to

the amount of money received by the County of
Rock Island, less the sum of 100\$ which it
was agreed the said County of Rock Island
had expended for the collection of said
monies, "—or words to that effect— and
that nothing further was said by said Juror as
to the said judgment or the form thereof, or
whether execution should be awarded therefor
or not. That affiant has this day examined
the docket kept by the said Court at said
May Term AD 1859. and that the ^{only} entry appear-
ing on said docket in said case is in the
words following. — "23. Jury waived trial by the
Court. Juror for plaintiff for \$1400. Execution to the
Judgment." That said entry is in the hand writing
of Hon J W Drury the presiding Juror of said
Court at said term. and that no other or further
entry appears upon the docket of said term
in said case.

Geo W Williamson

Subscribed before
this 3^d day of May 1860 }
Witness my hand that of the }
County Clerk of said County }
J. P. Corbett

Chas B Court R. I. Co.

State of Illinois }
Rock Island County }
Jury M^c Neil being duly
sworn states that his clerk of the Circuit Court of

Said County and has been Bench clerk for two years and more last past. That according to the practice of said Court, the records of its proceedings and judgments are written up by the Clerk of said Court after the adjournment of the term of said Court ^{or in vacation} and that the records are not read in open Court. That said practice was followed in this case, and the record of proceedings at said term, and of the judgment in said case was written up after the adjournment of said term by V M Blanding Esq. then an assistant in the office of this affiant as Clerk as aforesaid. That if the form of said judgment, or the manner of entering up the same on said records, is ~~informal~~ irregular or improper, the same was by and through the mistake of said Blanding, assistant Clerk as aforesaid, alone, and that no order or minute was made by said Judge as to the manner ^{or form} of entering up said judgment, and no award of execution was made by said Court in said case. That the only entries appearing on the Court docket in said case at said term is as set forth in that behalf in the affidavit of J W Wilkinson Esq. also attached.

Linnay Merrill

Subscribed before me
this 3^d day of May A D 1860
witness my hand that of the
County Clerk of said County

Jo C. Corbett Clerk County Court R. C.

150
County of R. Island
County of Mercer
2 affdts.

Filed May 5, 1860
d. Island Clerk.

Overlaid



PLEAS before the Honorable J. WILSON DRURY, Judge of the ^{Circuit} ~~SIXTH~~ ^{Judicial}
of the State of Illinois, at a Term of the CIRCUIT COURT begun and held at the
Court House within and for the county of Rock Island and State aforesaid, on the
Third Monday, the *Seventeenth* day of *January*
in the year of our Lord one thousand eight hundred and *fifty nine*

Present, Honorable

J. Wilson Drury Judge.
Mrs. D. McNeil Sheriff.
Drury McNeil Clerk.

*And afterwards came on the twenty fifth
day of January aforesaid and at the term of
the court aforesaid the following proceeding
was had to wit*

The County of Macou } *Debt*
or
The County of Rock Island }

*This day came the parties
by their attorney, and enter their agreement
in open court to submit this cause to the
court for its judgment and decision, upon
an agreed ^{case} ~~statement~~ of facts to be drawn up
and signed by the parties hereto*

And afterwards went on the 25th day of
January 1860 at the time of the court
affirmed the said parties by their attorneys
filed their said agreed ^{case} state of facts which
is in the words and figures following
to wit

In the Circuit Court of Rock Island
County in the State of Illinois as Jan
uary Special Term A.D. 1859

The County of Mercer }
vs } Debt

The County of Rock Island }

At the August
Term of the Circuit Court of Mercer
County in the State of Illinois
an Indictment was duly presented
by the Grand Jury and filed in
said Court against Wallace Hatch
and others for Burglary alledged
to have been committed in said
Mercer County by the defendants. on
which indictment the defendants
therein were at said August Term
of Mercer Circuit Court duly arrai-
ned and severally entered their
pleas of not Guilty. And did
thereupon at the same term enter
their motion on affidavit filed
for a change of venue. on ac-
count that the people of said
Mercer County were as they alledged
prejudiced against them. which
motion was allowed by the Court
and the venue changed to the County
of Rock Island at the same August

(4)
Term aforesaid. and the Sheriff
of said Mercer County was by said
Court ordered to remove the bodies
of said defendants Hatch and others
to the County of Rock Island, and
deliver them into the custody of the
Common jailor of said Rock
Island County, and also by the
proper order and indorsement upon
the indictment in said case the
amount in which the defendants were
allowed & required to find bail, was
fixed by the Court at the sum of
fifty hundred dollars each.

In pursuance of the orders of
said Mercer County Circuit Court,
the papers and transcript of proceed-
ings in the aforesaid case ~~was~~ ^{were} on
the sixth day of November 1856, filed
in the Clerk's office of the Rock
Island County Circuit Court, and the
bodies of said Wallace Hatch and
others, defendants in said indictment
were by the Sheriff of Mercer County
delivered into the custody of Truman
B. Gorton then Sheriff and keeper of
the common jail of said County
of Rock Island who detained the
said Hatch in custody until a few

days thereafter the said defendants
Wallace Hatch being desirous of being
released from custody deposited
with ~~the~~ said Sheriff the sum of
fifteen hundred Dollars in lieu of
giving ~~him~~ bond with security and
to be held by said Sheriff as security
for the appearance of said defendant
Wallace Hatch on the first day of
the then next term of said Rock
Island County Circuit Court to be
begun and holden at the Court house
in the City & County of Rock Island
on the fifth day of November A.D. 1856. to
answer the said indictment and abide
the order of said Court in said
premises, and to be forfeited upon his
default or failure therein - and after-
wards at ~~said~~ next term of the Rock
Island County Circuit Court begun
and held at the Court house in
said County on the day of Novem-
ber 1856. And to wit on the seventh
day of said term, the said cause
of the People of the State of Illinois
against Wallace Hatch and others
upon the indictment aforesaid came
on for trial, and the said defend-
ant Wallace Hatch being regularly called

to appear therein came not but
made default. and thereupon the
said Court made and entered of
record an order in said cause
as follows viz "This day came the
" people by Hawley their attorney, and the
" defendant Hatch being duly called, came
" not but made default- and thereupon
" the Sheriff represented that the def
" endant Hatch had deposited with
" the said Sheriff the sum of fifteen
" hundred Dollars in lieu of giving bond
" and as security for his appearance
" at this term of Court, and the
" Sheriff having signified his readi
" ness to pay the said sum as should
" be directed the Court. It is therefore
" ordered by the Court that the Sher
" iff pay to the clerk of this Court
" the said sum of fifteen hundred
" Dollars so deposited."

And the said Sheriff
afterwards and during the said term
of said Court. paid to the clerk
of said Court in pursuance of said
order the said sum of fifteen hund
red dollars. And afterwards and at
the next term of the County Court
of said Rock Island County held on

the day of December A D 1856
the said Clerk of the Circuit Court
paid over the said sum of fifteen
hundred dollars, which was received
by said Court and deposited in the
treasury of said ^{last named} County, and that said
Rock Island County has paid out of said
monies as costs ~~in~~ said matter, the sum
of One hundred dollars for collection thereof

Upon the above
state of facts the County of Mercer
claims to recover of the County of
Rock Island the said sum of fif-
teen hundred dollars received by
said last named County as aforesaid
and for the purpose of determining
the right to said monies, it is hereby
agreed by and between the parties that
all objections for matters of form,
and for any irregularities in the
said suit shall be ^{and heard and} considered and
^{that the same shall be considered and decided on the merits} decided on the merits, by the Circuit
Court of Rock Island County (without
the intervention of a jury) upon the facts
as above stated and set forth, and in
case the Court should be of opinion
that the County of Mercer or any officer
or officers of or in said County

(7)

8)

is entitled to the said monies. Judgment shall be entered therefor in favor of said plaintiffs, but in case said Court shall be of opinion that the County of Rock Island or any officer or officers of or in said last named County is entitled to the said monies. Judgment shall be entered in favor of the defendants. And that either party may have the said case certified to the Supreme Court as an "agreed case" for its decisions and judgment thereon.

Dated at Rock Island
this 18th day of January A 1859

The County of Mercer
By Wilkinson & Pleasants
& Bapett & Brather. (its attys)

The County of Rock Island
By R M Marshall & J B Hawley
its attys

And afterwards to wit: on the
23^d day of May 1859 at a term of
the Circuit Court then sitting for the
County of Rock Island the following
proceedings was had to wit:

County of Mercer }
vs } Debt
County of Rock Island }

This day came the parties
by their attorneys and by their mutual
agreement this cause is submitted
to trial by the court without the
intervention of a jury and the court
having heard the evidence adduced
and being sufficiently advised in
the premises find the issues for the
Plaintiff and assess the damages in
the sum of Fourteen hundred Dollars

It is therefore ordered by the court
that Plaintiff have and recover of Defen-
dant the said sum of Fourteen hundred
Dollars and the costs of suit herein
and have execution therefor - Thereupon
Defendant excepts

State of Illinois }
Rock Island County } I Quincy McNeil clerk of the
Circuit Court in and for said County do
hereby certify that the foregoing is a true and
complete ^{transcript} record of the above entitled cause
and of all proceedings therein

In Testimony whereof I
have hereunto set my hand and
and the seal of said Court -
this 26th day of October 1859
Quincy McNeil clk

County of Mecon
County of Rock Hills
Reno

State of Missouri
In the Supreme Court
for the third grand division
April Term AD 1860

The County of Rock Island Plaintiff in Error

= v =

The County of Mercer. Defendants in Error

- And now comes the said County of Rock Island
plaintiff in error by Hauley and Wells its attorneys
and says that in the record and proceedings aforesaid
and also in giving the judgment aforesaid. there is
- 1 manifest error in this. to-wit. that the "agreed case" a-
foresaid, and the matters and things therein contained and
set forth. are not sufficient in law for the said
County of Mercer. to have a maintain'g its aforesaid action
thereof against the said County of Rock Island;
 - 2 there is also manifest error in this. to-wit. that
by the record aforesaid. it appears that the judgment afo-
said. in form aforesaid. was given for the ^{said} County of
Mercer and against the ^{said} County of Rock Island, whereas
by the law of the land. the said judgment ought to have
been given for the said County of Rock Island and a-
gainst the said County of Mercer.
 - 3 There is also error in this that by the record aforesaid
it appears. that the judgment aforesaid. in form aforesaid.
was rendered in damages. when by the law of

the said the said judgment should have been rendered in
debt.

It This is also manifest error in this that by the judg-
ment record aforesaid, it appears that upon the judg-
ment aforesaid, execution was awarded to the said
County of Merue and against the County of Rock Island
aforesaid. whereby the law of the land and so should have been
given contrary to the law of the land

And the said County of Rock Island prays that the judgment a-
foresaid for the errors aforesaid, and the manifold other errors
in the record and proceedings aforesaid may be reversed
annulled and altogether held for nothing, and that the said
County of Rock Island may be restored to all things which
it hath lost by occasion of the said judgment.

Harvey A. Wells

Attor. for Plaintiff in Error

And said County of Merue now comes and says
that in the aforesaid record is no error

Sam. McMinson

B. C. Brown

150-138

The County of Rock Island

— u —

The County of Mercer

Record and assignment of bonds

Filed April 12. 1860
L. Leland
Clerk