No. 13040

Supreme Court of Illinois

Hopkins

vs.

Moon

STATE OF ILLINOIS,

SUPREME COURT,

Third Grand Division.

No. 156.

Hopkins
vs
Moore

1204

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION.

APRIL TERM, 1860.

SAML. A. HOPKINS and JOHN W. HOPKINS,
vs.
JAMES R. MOON.
} *Error to Bureau.*

ARGUMENT ON BEHALF OF PLAINTIFFS IN ERROR.

THE only question to be decided by this Court is: Is it necessary that a *capias ad satisfaciendum* should issue and be returned not found, in order to make a special bail liable in cases commenced by capias before a Justice of the Peace, where an execution against the goods and chattels of the original defendant has been issued and returned no property, at or about the return day of the same?

The 22d section of the Act in relation to Justices and Constables, Purple's Stat., page 664, 1st Vol., provides for the issuing of the *capias ad respondendum*, and also prescribes the form of the special bail bond and says that the same shall have the force and effect of a recognizance of bail, conditioned that the defendant, if judgment be rendered against him, shall pay the same, or surrender his body in execution, and that in default of such payment or surrender, the goods and chattels of the bail shall be liable.

This section fixes the liability of the bail in connection with the 92d section of the same act; Purple's Stat., 1st Vol., page 675; which provides that when a "defendant gives special bail under the provisions of this chapter, (act in relation to Justices and Constables,) and shall not be surrendered on or before the return day of the *fieri facias*, nor a sufficiency of the defendants' property be found to pay the judgment and costs, then that a summons may issue against the special bail." These two Sections fix the liability of the bail in the event there is no surrender of the defendant, on or before the return day of the *fieri facias*.

The 94th Section of the same act, 1st Purple, page 676, provides the mode in which the bail can discharge himself from such liability. That is, 1st, if it shall appear that the bail was prevented from surrendering the body of the original defendant, by the act of the plaintiff; or, 2d, that the original defendant had departed this life previous to the time required for such surren-

der; or, 3d, that his health was such as to endanger his life by such surrender; or, 4th, that he had delivered the body of the defendant in execution, according to the condition of the recognizance.

The bail, on proving any one of the above conditions shall be discharged from all liability, and it is conceded in this case that the defendant has not complied with any one of such conditions, and I understand that it is also conceded in this case, that the defendant is liable if it shall be held that it was not necessary to issue a *capias ad satisfaciendum.*

I have referred to the above provisions of the Statute to show that the issuing of a *ca. sa.*, and a return of the same not found, are not conditions of the liability of the bail, and that those things need not occur in order to make the bail liable, for where a defendant is *not* surrendered on or before the return day of the *fieri facias* against him, then the special bail shall be liable, unless he can discharge himself under the 94th Section of the act above referred to.

And it is evident that it was not the intention of the Legislature to make the issuing of a *ca. sa.*, and return thereon not found, "as conditions of the liability of the bail in cases commenced by capias beforeJustices of the Peace,from the fact that in cases in the Circuit Court commenced by capias, the issuing of a *ca. sa.*, and return thereon "not found" are necessary things to be done in order to make the bail liable in such cases; 1st vol. Purple's Stat. page 125, Sec. 8; and the omission of such a provision in the act entitled "Justices and Constables," makes it evident that the Legislature intended to make the special bail liable in cases before Justices of the Peace without the issuing of *ca. sa.*, and a return thereof "not found" unless the bail could discharge himself nnder the 94th Section above mentioned.

In the Court below it was urged that the defendant in this case could not have surrendered his principal, Dakin, for the reason that no writ had been issued on which such surrender could be made, and therefore that the defendant was not liable.

In answer to that, I aver that it is not necessary that process against the body of Dakin, the original defendant, should have been out in order to have enabled the defendant to surrender his principal.

"The *power* of *taking* and *surrendering* the principal by the bail is not exercised under any process but *results from* the *nature* of the *undertaking.*"

Nicholls *vs.* Ingersoll, 7 Johnson, page 154.

The security given for the appearance of a party arrested, is

called bail, because the defendant is delivered to the surety and is supposed to continue in his custody, instead of going to gaol.

3 Blackstone, page 290.
7 Johnson, 154.

Bail are said to have their principal always upon a string which they *may pull whenever they please* and surrender him in their own discharge. They may take him up on Sunday and confine him till the next day, and the doing so is no service of process, but rather like the case where the Sheriff arrests a party who escapes, for it is only a continuance of the former imprisonment.

6 Modern, 231.
7 Johnson, page 154.

Bail are their principals' gaolers, and it is upon this notion that they have an authority to take them; and that as the principal is at liberty *only* by the *permission* and *indulgence* of the bail; they can take him up *at any time.*

1 Atk., 237.
7 Johnson, 155.

And the same doctrine is substantially reaffirmed in

Rathbone *vs.* Warren, 10 Johns., 589.

These authorities clearly show that the defendant Moore needed no process in order to enable him to deliver his principal, Dakin, on or before the return day of the *fieri facias* against Dakin, and that if he had been disposed to discharge himself from liability, he could have done so by surrendering his principal, Dakin, during the life time of the *fieri facias*, and that it was not necessary that a *ca. sa.* should have issued in order that a surrender might be made.

The record shows that the 2d execution issued the 31st March, 1859, and was returned, no property, to the Justice on the 10th June, 1859. The Justice's docket shows the time of the return of the execution.

A return of an officer to an execution is not simply his endorsement upon the process, but is the actual placing of it in the office whence it issued.

Nelson *et. al. vs.* Cook, 19 Ills., 441, 455.

The record shows that the only question raised in and decided by thr Court below, was as to the necessity of the issuing of a *ca. sa.*, and return of the same, not found, in order to establish the liability of the defendant, and the defendant will not be permitted to raise other questions in this Court for the first time.

Shelby *vs.* Hutchinson, 4 Gil., 319.

ROB'T. FARWELL,
For Plaintiff's.

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S. A. Hopkins et al

vs

James B. Moore

Argument for
Pltffs. in Error

Filed Apr 20. 1860
L. D. Leland
Clerk

State of Illinois, ss: In the Supreme Court at Ottawa,

At the April Term, A. D., 1860.

SAMUEL A. HOPKINS, and
JOHN W. HOPKINS,
vs.
JAMES R. MOON.

} Error to Bureau.

BRIEF FOR DEFENDANT IN ERROR.

1st. The oath for the Capias (or warrant) in the original suit *vs.* Dakin being insufficient his arrest was unlawful, and the recognizance of bail void.

Constitution of Illinois, Art. 13, *Sec.* 15. *Ex parte Smith,* 16 *Ills.* 347. *Garton vs. Frizzell,* 20, *Ills.* 290. *Harrington vs. Dennie,* 13 *Mass.* 93.

2. The indorsement on the warrant, signed by the defendant in error, is materially variant from the form set out in the Statute.

Rev. Stat. 1845, *Chap.* 59, *Sec.* 22

3rd. Under our Statute it became the duty of the plaintiffs in the original suit to use due diligence in obtaining a satisfaction of their judgment out of the property of Dakin, the principal. No such diligence is shown in this case; and therefore the plaintiffs by their own negligence have exonerated the bail herein.

Rev. Stat. 1845, *Chap.* 59. *Hamlin vs. Reynolds, et al* 22 *Ills.* 211.

4th. At oommon law, before any proceedings could be had against the bail upon their recognizance, a *Ca. Sa.* must have issued against the principal, and been returned *non est inventus*, and so stands the law under the Statute of Illinois: Bail are not bound to render the principal; until they are notified, by the *Ca. Sa.*, that the plaintiff intends to proceed against the body.

3 *Bl. Com.* 416. *Tidd,* 1*st Am. Ed., Page* 993, *et seq., and cases cited. See also same writer,* 1044. *Com. Dig.; Bail, R* 1. *Rev. Stat.* 1845, *Chap.* 59, *Justices and Constables, Sec.* 22 *and* 91, 92, 93, 94. *Also Chap.* 14, *Bail, Sec.* 5 *and* 8. *Act concerning Justices of the Peace and Constables, app.* 3 *Feb.*, 1827. [*Rev. Code of* 1827, *Page* 269, *et seq.*] *Act amendatory of the preceding.* [*Rev. Laws of* 1833, *Page* 407, *et seq.*]

TAYLOR, PADDOCK & PHELPS,

April 16, 1860. *Attys. for Defendant.*

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION.

APRIL TERM, 1860.

SAML. A. HOPKINS and JOHN W. HOPKINS,
vs.
JAMES R. MOON.
} *Error to Bureau.*

ARGUMENT FOR DEFENDANT IN ERROR.

The defendant in error, who was defendant below, was sued before a Justice of the Peace, as special bail for one Elias Dakin. Dakin had been arrested for debt, as the record shows, October 16, 1858, under the
1 Purple St. 665 22d Section of Chapter 59, Revised Statutes. This section authorizes the Justice to issue a warrant for the body of the defendant, if the plaintiff shall make oath that otherwise there is danger that his debt will be lost; and shall also state *under oath* the cause of such danger, so as to satisfy the Justice that there is reason to apprehend such loss.

Ex parte Smith
16 Ills 347

A statute similar to the one in question has already received a construction from this Court; and the constitutional grounds of that decision are equally applicable to the case at bar.

FIRST POINT IN BRIEF q. v.

Therefore the first question to be raised on the part of defendant in error is upon the sufficiency of the oath made for the warrant (capias) in the original action against Dakin. The position being that if such warrant was void for not coming within the rule laid down by the Court in the case just cited, there could be no valid and binding undertaking as special bail upon it by Moon, or any one else.

It seems not necessary to set out the evidence upon this point, as it is embodied in the abstract filed by the plaintiffs in error. To this abstract the Court are respectfully referred by the defendant, who insists that it thereby appears that the oath of plaintiffs did not "by facts and circumstances stated," show a "strong presumption" that Dakin had been guilty of a fraud. If so, the arrest of Dakin was a trespass, and the recognisance of Moon a nullity.

SECOND POINT OF DEFENDANT'S BRIEF.

Secondly, as to the form, or rather entire lack of form, in the indorsement sued upon. Aside from the statute in this case provided, there must have been some formal instrument in the nature of a bond or recognisance, whereby to create the liability of special bail. Our act has, however, given a form of words which, if followed, *as nearly as the case will admit*, has the force of a recognisance of bail, with certain conditions. The technical and material word in this form is "*acknowledge.*" The language of Moon's undertaking is "Inter," or "I enter myself special bail for the within named defendant." [Signed.] "James R. Moon." Besides, the writing bears no date, and does not contain, on its face, the name of the defendant; a further departure from the form of the statute.

THIRD POINT OF BRIEF.

It is clear that plaintiffs in error have not used due diligence against the property of Dakin. By our statute, if a sufficiency of the property of the principal be found, "*the bail shall be exonerated.*" Hence, the plaintiffs in this case were bound in law to use such due and reasonable diligence against Dakin's property as would have tested his solvency, and averted the liability of the surety, Moon, if possible.

1 Purple St., p. 664, Sec. 22.

But what are the facts, as shown by the record? The Hopkinses obtained their judgment vs. Dakin, October 23, 1858. Consequently they were entitled to execution November 12, 1858. However, they wait until December 1, 1858, when they sue out their (first) *fieri facias;* which, after running only 55 days, is returned, "no property," January 25, 1859. After a second pause of more than two months, an *alias fi. fa.* is sued out March 31, 1859, which, after running 67 days, is returned, "no property," on the 6th of June, 1859, or *June* 10, 1859, if we may credit the interlined and altered docket entry of the Justice. There is no pretense that any transcript was filed in the Circuit Clerk's office of that county, whereby to charge the real estate of Dakin, if any he had. Ought not this to have been done?

It has been held in this Court, in *Hamlin* vs. *Reynolds* et al., that where an indorsee relied upon diligence to charge his indorser, he should show that he had *promptly* sued out his *fi. fa.*, and kept it in the hands of the officer during its *whole life.* If the latter fact appears in this case, the former does not. There is, certainly, no reason why the law of *Hamlin* vs. *Reynolds* should not reach any case of surety, where there is an obligation to use diligence against a principal.

22 Ills. 211.

FOURTH POINT OF BRIEF.

So far as the Common Law authorities are concerned, there is no question upon the fourth point of defendant in error's brief. There *must* be a *ca. sa.* returned *non est inventus*, before the bail are liable. Blackstone: "If a *capias ad satisfaciendum* is sued ont and a *non est inventus* is returned thereon, the plaintiff may sue out a process against the bail," &c. Tidd: "Before any proceedings can be had against the bail in the action upon their recognisance, a *capias ad satisfaciendum* must be sued out against the principal, and returned *non est inventus.*" "The bail are not bound to render the principal, till they know by the plaintiff's sueing out this writ that he means to proceed against the person of the defendant." To the same purport are the cases collected by Comyn, cited on the brief. Indeed, our own bail act is declaratory of the Common Law in this respect.

3 Com. 419.

Copy in Lab'ry Sup. Ct., 1097

But it is contended by counsel, that under our Justice Act the rule as above stated has been changed; and that if the defendant in a *capias* is not surrendered on a *fieri facias* on or before the return day, his principal [bail] is liable for the debt. The argument is based upon a nice construction of section 92 in the act last cited: "In all cases in which a defendant shall give special bail under the provisions of this chapter, and shall not be surrendered on or before the return day of the *fieri facias* upon the judgment, nor a sufficiency of property be found to pay the judgment and costs within the time aforesaid, it shall be the duty of the Justice of the Peace" [&c.] "to issue a summons against the special bail," &c.

1 Purp. St. 675

This section, and section 22, were taken by the revisers from different
Cited on Brief. acts, and a reference to the enrolled law will probably show *fieri facias* to be a misprint for *scire facias*. In the original act, app. Jan. 23, 1829, the word *scire facias* is found instead of *fieri facias* in the section above cited. But it will be perceived that the section, granting it to read as printed, does not purport to *fix a liability;* it merely prescribes a duty to be performed by the Justice in case a surrender is not made "on or before" a certain time. That time, we are told, is the return day of the "*fieri facias.*" But it does not follow, as argued, that such surrender is to be made "*upon*" a *fi. fa.* There is nothing to prevent a
Tidd 995. *ca. sa.* and a *fi. fa.* running at the same time; the statute allows a *capias* for the body at any time after judgment, upon the proper oath. This the plaintiffs could have procured immediately upon their judgment, if entitled thereto, and thereby could have made it the duty of Dakin and his bail to surrender "on or before the return day of the *fi. fa.*" But they did no such thing, and accordingly, when the summons had issued under section 92, the bail was able to present the statutory defence given by the 94th section, viz.: that the act of the plaintiff in not sueing out a *ca. sa.* had prevented a surrender.

If, then, the liabilities assumed by Moon are correctly set forth in section 22, the issuance of a summons by a Justice of the Peace under a subsequent section can in no wise lessen or increase them. The questions which are to govern this case are: "What was the undertaking set forth in the recognisance?" "What is a defence under the statute?" and not "What are the facts which will justify the Justice in issuing the summons under section 92?"

The defendant's case is submitted upon the abstracts, briefs, and arguments, in accordance with the rule taken herein.

GEO. L. PADDOCK,
For Defendant in Error.

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Hopkins etal

v.

Jas R Moore

Error to Bureau

Defts brief & argument

No. 156.

Filed April 20. 1860

L. Leland

Clerk

In Supreme Court, State of Illinois,
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The suit was brought against the Defendant as Special Bail of one Elias Dakin, entered into by the Defendant on a *Capias* issued in favor of the Plaintiffs and against the said Dakin. In the Circuit Court a jury was waived and the cause submitted to the Court for trial, and the Court found the issues for the Defendant.

The substance of the cause is set out in the Bill of Exceptions which is as follows in substance:

Be it Remembered, that in this cause a jury was waived, and by agreement of the parties the cause was submitted to the Court for trial. Plaintiffs sue Defendant as Special Bail for Elias Dakin, and the Transcript of Docket and the Summons are as follows, to wit (they

Pages 3, 4, and 5. are in the usual form).

Page 6. The Plaintiffs produced as a witness, Asahel Wood, a Justice of the Peace of said County and proved by him that he was such, and by him identified his Docket and the Papers in the case of the same Plaintiffs against Elias Dakin before said Justice in which said defendant was Special Bail.

The Plaintiffs then gave in evidence the following, to wit: The Docket of the Justice showing the said Judgment against Dakin, and the proceedings in the case of the Plaintiffs

Page 6. against Dakin—the Capias and Bail Bond—the Return of the officer upon the Capias and two several Executions issued against said Dakin, and the returns thereon, which papers are as follows—

(The Docket Entries and the Capias—Special Bail Bond on back of the same, and the

Pages 7, 8 and 9. Return thereon, and the Executions are in the usual form)—

Page 9. The second Execution was issued 31st March, 1859, and returned "no property found" 10th June, 1859.

Page 10. The Plaintiffs then admitted that no *Ca. Sa.* had been issued on said Judgment against said Dakin, and that if there had been he could have been arrested, but claimed that no *Ca. Sa.* was necessary to make Defendant, Moon, liable, but that he should have surrendered up the body of Dakin upon the Executions against the goods and chattels of Dakin, which surrender Defendant conceded had never been made, and insisted that there never had been any demand made for such surrender.

The Defendant then asked Esq. Wood what kind of an oath had been made when the original Capias issued, and he stated that his recollection was not distinct, but he thought the Plaintiffs made oath in the form required by the Statute, and in addition thereto stated his reasons for believing that the debt would be lost unless the said Dakin was held to bail, that the said Dakin was secreting his property from his creditors to avoid the payment of his debts; that a portion of the said Dakin's property had been recently found by the officer hid under a straw pile, and the Justice further stated that at the time he so issued such Capias, he thought

Page 10. a case of fraud was made out, that his memory was very indistinct, and that he might have got what occurred afterwards mixed up with the oath upon which the Capias issued, that he had

frequently issued such writs without any allegation of fraud, but that it was different in this
Page 11. case, but did not know certainly, because he could not recollect. This was all the evidence in the case.

The Court decided that a *Ca. Sa.* should have issued, and found for the Defendant, and rendered Judgment against the Plaintiffs for costs, to which said decision of the Court the Plaintiffs then and there excepted, and prayed the Court to sign and seal this, his bill of Exceptions, which is done accordingly.

M. E. HOLLISTER, [SEAL.]
Judge 9th Judicial Circuit of Illinois.

POINTS AND AUTHORITIES RELIED UPON BY PLAINTIFFS.

1st. If the Defendant in the Capias and Execution is not surrendered on a *Fieri Facias* on or before the return day, his principal is liable for the debt.

Rev. Stat., Page 328, *Sec.* 92.

2nd. In cases in the Circuit Court the Statute declares that the Bail shall not be liable until a *Ca. Sa.* has been issued against the Defendant, and returned, but the Statute does not require it before Justices of the Peace.

Rev. Stat., Page 83, *Sec.* 8. 2 *Gil. Page* 360.

3d. The Bail can seize and surrender his principal at any time. It therefore cannot be said that the security cannot surrender his principal on a *Fieri Facias.*

7 *Johns.*, 153. 10 *Johns.*, 590.

4th. The return of an execution is not complete until it is returned into the court whence it issued.

19*th Ills.* 455, 446, *and* 447.

PETERS & FARWELL, for Plaintiffs.

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Saml. A Hopkins
et al
vs
James R Moan

Abstract of the
Record & Papers
& Instructions

Filed Apr 18. 1860
L. Leland
Clerk

In Supreme Court, State of Illinois,
THIRD GRAND DIVISION.

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1st. If the Defendant in the Capias and Execution is not surrendered on a *Fieri Facias* on or before the return day, his principal is liable for the debt.

Rev. Stat., Page 328, *Sec.* 92.

2nd. In cases in the Circuit Court the Statute declares that the Bail shall not be liable until a *Ca. Sa.* has been issued against the Defendant, and returned; but the Statute does not require it before Justices of the Peace.

Rev. Stat., Page 83, *Sec.* 8. 2 *Gil. Page* 360.

3d. The Bail can seize and surrender his principal at any time. It therefore cannot be said that the security cannot surrender his principal on a *Fieri Facias.*

7 *Johns.*, 153. 10 *Johns.*, 590.

4th. The return of an execution is not complete until it is returned into the court whence it issued.

19*th Ills.* 455, 446, *and* 447.

PETERS & FARWELL, for Plaintiffs.

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Saml A Hopkins
et al
vs
James B Nixon
—
Abstract of
Authorities
—

Filed April 18. 1860
L. Leland
Clerk

Page 1

Trial before the Hon. M. E. Hollister Judge of the
ninth Judicial Circuit of the State of Illinois
at a Term of said Circuit Court begun and held
at the Court House in Princeton within and for
the County of Bureau on the second monday in
the month of December in the Year of our Lord
One thousand Eight hundred and fifty nine

Present Hon. M. E. Hollister Judge
E. M. Fisher Clerk.
D. E. Norton Sheriff
Washington Bushnell States atty

Samuel A. Hopkins
& John W. Hopkins
vs
James R. Moon

appeal
To wit on the 6th day

Now comes the said defendant by
Taylor Paddock & Phelps his attorneys and moves the
Court for the dismissal of the appeal herein for
want of sufficient Bond and the Plaintiffs come
by Peters & Farwell their attorneys and upon
their said motion leave is given said Plaintiffs
to file an amended Bond herein

Samuel A. Hopkins
& John W. Hopkins
vs
James R. Moon

appeal
To wit on the 8th day

Now come the said Plaintiffs

2 by Peters & Farwell their attorneys and filed an amended appeal Bond, herein in the words and figures following to wit

Samuel A. Hopkins
& John W. Hopkins

vs appeal

Samuel E. Moon To wit on the 14th day

Now come the said Plaintiffs by Peters & Farwell their attorneys and the said defendant comes by Taylor Paddock & Phelps his attorneys and by agreement a Jury is waived and the issues herein are submitted to the Court for trial and after hearing and being fully advised in the premises doth find the said issues in favor of the said defendant. It is therefore considered by the Court that the said defendant have and recover of the said Plaintiffs all his costs and charges by him in this Court and in the Court below in this behalf Expended and that he have Execution therefor

And on the 31st day of December A.D 1859 being the 18th day of said Term the said defendants by their attorneys aforesaid filed their Bill of Exceptions herein in the words and figures following to wit

3 Samuel A. Hopkins
& John W. Hopkins
vs appeal from J.P.
Jas. R. Moon

Circuit Court
Bureau County
Ills Dec T. 1859

Be it remembered that in this cause a Jury was waived and by agreement of the parties the cause was submitted to the Court for trial, plaintiff sued defendant as Special Bail for Elias Dakin the transcript & the Summons are as follows

Transcript

Samuel A. Hopkins &
John W. Hopkins Plaintiffs
vs
Demand $85.52
James R. Moon Defendant

Special bail on Capias for Elias Dakin
Justice Cost
Summons 18 3/4
Subpoena 18 3/4
Docketing suit 12 1/2
Oath for Change of Venue 6 1/4
Transcript 25
Returning papers of appeal on docket 25
Certificate 25
Caleb Pierce
Constables fees
On Summons 55
Subpoena Defendant 93
277

Suit brought against defendant as Special Bail on Capias for Elias Dakin Summons issued August 30th 1859 returnable September 9th 1859 at 10 Oclock A. M. and put in the hands of Caleb Pierce constable Returned by him personally served by reading to defendant by Caleb Pierce Constable August 30th 1859 Constable fees 55 cents Subpoena issued for defendant Sept. 9th 1859 Defendant appeared and on his oath says that it's his belief that he cannot have an impartial trial before me and asks for a change of venue which is granted and papers carried to George Tackly Esq the next nearest Justice

Asahel Wood J. P.

4

State of Illinois }
Bureau County }

I Asahel Wood a Justice of the Peace in and for said County hereby certify that the forgoing is a true copy of the proceedings in the cause therein Entitled had before me and that herewith Enclosed are all the papers and documents belonging to said Suit. Witness my hand this 9th day of September A. D 1859

Asahel Wood J. P.

State of Illinois } In Justices Court before George
Bureau County } Rackley Justice

Plaintiff Cost 1859
Justice fees
Docketing suit 12½
One Subpoena 18¾
Swearing 1 witness 6¼
Entering Judgment 25
Allen B. Isaac
Constable fees
on Subpoena 37
1 Witness fee 50
Defendant Cost
Justices fees
Swearing 3 Witnesses 18¾
3 Witnesses fees 150
Entering appeal 25
Transcript 25

September 9th 12. M. Oclock M parties appear one Subpoena issued on the part of the plaintiff Plaintiff claims of defendant $8,82 as special bail of said Elias Datkin, defendant refused to pay special Bail. Asahel Wood with his docket was Summoned and attended and was sworn as a witness on the part of the plaintiff Henry J. Miller. David Wiley. & Elias Datkin were Summoned and attended and were sworn as witnesses on the part of the defendant all of whom claim fees

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After hearing the testimony in the case the Court taking six days to render Judgment it is considered by the Court, that there was no cause of action that the said Suit be dismissed and the plaintiff pay the costs herein taxed at six dollars and Eighty eight cents.

George Rackley J. P.

5

State of Illinois } ss.
Bureau County }

I George Ruckley a Justice of the Peace in and for said County do certify that the forifoing transcript is truly copied from the files and books of my Office In witness thereof I have hereunto set my hand this 7th day of October A.D 1859

George Ruckley J. P.

Copy of Summons

State of Illinois } ss.
Bureau County }

The People of the State of Illinois to any constable of said County greeting

You are hereby commanded to Summon James K. Moon to appear before me at my Office in Dover on the 9th day of September 1859 at 10 Oclock A. M. to Show cause if any he have why judgment should not be rendered against him as the special Bail of Elias Dakin upon a capias Issued by me against him in favor of Samuel A. Hopkins & John W. Hopkins for the Sum of $85 dollars 46 cents debt & cost of Suit amounting to $3.01 & the amount of Judgment rendered against the said Elias Dakin in favor of the said S. A. & J. W. Hopkins & thereof make due return as the law directs. Given under my hand & Seal this 30th day of August A. D 1859

Ashel Wood J. P. (Seal)

6 The Plaintiff produced as a witness Asahel Woods a Justice of the Peace of said County and proved by him that he was such and by him identified his docket and the papers in the case of same plaintiffs vs Elias Datkin before the said Justice in which said defendant was special bail. the Pltff then gave in Evidence the following to wit the docket of the Justice showing said Judgment and the proceedings in the case of the Pltffs vs Elias Datkin the capias and Bail bond the return of the officer upon the Capias and two several Executions issued against said Datkin upon said Judgment & the returns thereof which papers are as follows to wit

1858 Suit on account

Samuel A. Hopkins &
John W. Hopkins

121 vs

Elias Datkin Capeas on oath demand $3.46

Capeas Issued October 16th & if special bail be given returnable October ~~October~~ 23 at 1 Oclock P. M. & put in the hands of John Capeo & returned by him Served with the name of James R. Moore as Special Bail on the back of Capeas

Constables fees 75

Justice Cost

Capias on Oath 25
Docket Suit 12½
Subpoena 18¾
Continuance paid 12½
Judgment 25
6 Es 25
3 Es 25

October 23 parties appear & agree on a continuance until Nov 1st at 1 Oclock P. M.

Nov 1 parties appear & and defendant confesses judgment on the above demand judgment is rendered

Constables fees
Subpens paid 75
Capias Carico 75
Ex returned Wiley 50

in favor of Plantiff & against the defendant for

Debt	85.46		85.46
Cost	1.56		
Execution issued Dec 1. 1859 Carico	25		
Cr of ten dollars on this			
Jan 25/59 Ex returned No property found fee	50		
2 Ex issued March 31st/59 Wiley	25		
No property found June 10/59			21/59
2 Ex returned ~~by order of plantiff~~ Wiley fee	50	Ca Sa June	
3 Ex issued March 15/60 C Pierce	25		

Copy of Capias

State of Illinois } ss. The People of the State of Illinois
Bureau County } To any constable of said County greeting

You are hereby commanded to take the body of Elias Datkin and bring him forthwith before me unless Special bail be Entered and if such bail be Entered you will then command him to appear before me at my Office in Dover on the 25 day of October 1858 at 1 oClock P.M to answer to a complaint of Samuel A. Hopkins & John W. Hopkins partners in the practice of medicine for a failure to pay them a certain demand not exceeding one hundred dollars and hereof make due returns as the law directs. Given under my hand and seal this 16 day of October A. D 1858

Asahel Wood J. P. (Ls)

Endorsement

Capias on oath
S.A. & J. W. Hopkins
vs
Elias Datkin
Demand $85.46
Justice Cost - 62½
Constables fees 75

8. Inter My Self Special Bail for the within Named defendant James R. Moon

October 11th 1858 I executed this writ by arresting the within named Elias Datkin and Released him by take James R. Moon Special Bail for the within named Elias Datkin

John Earick Constable

Copy of 1st Execution

State of Illinois } ss. The People of the State of Illinois
Bureau County }

To any constable of said County greeting

We command you that of the goods and Chattels of Elias Datkin in your County you make the Sum of 85 dollars and 46 cents debt and one dollar and 81 cents costs (with interest at the rate of Six per cent per annum from the 23 day of October 1858 when judgment was rendered) which Samuel A. Hopkins & John M. Hopkins lately recovered before me in a certain plea against the said Elias Datkin and thereof make return ~~as the~~ to me within Seventy days from this date

Given under my hand and Seal this 1 day of December A. D 1858

Asahel Wood J. P. Seal

Endorsement

Execution

S. A. & J. M. Hopkins vs Elias Datkin

Debt $ 85.46
Cost 1.81
Constables fees 50

9 Came to hand December 1838 at 2. Oclock P.M.
No property found whare to Levey upon this 25th.
of January 1839

John Carico Constabel

Copy of 2d Execution

State of Illinois } ss The People of the State of Illinois
Bureau County } To any constable of said County Greeting

We command you that of the goods and chattels of Elias Datkin in your County you make the Sum of 85 dollars and 46 cents debt and 2 dollars and 86 cents cost, (with the interest at the rate of Six per cent per annum from the Nov. day of 1st 1838 when judgment was tendered)) which Samuel A. Hopkins & John W. Hopkins lately recovered before me in a certain plea against the said Elias Datkin and thereof make return to me within Seventy days from this date
Given under my hand and Seal this 31 day of March A.D 1839

Asahel Wood J. P. (Seal)

Endorsement
2 Execution
S. A. & J. W. Hopkins vs Elias Datkin
Debt $85.46
Cost 2.86
Recvd the within writ Apl 1st at 3. O. & P.M.
D. Wiley const

16 No property found whereon to levy Sumn 6th
1839 fees 50

D. Wiley Const.

The plaintiffs then admitted that no ca sa had Ever been issued against Dakin on said judgment & that if there had been he could have been arrested thereon, but claimed that no ca sa was necessary to make said deft more liable, but that he Should have surrendered up the body of Dakin upon the Executions against the goods and chattels of Dakin = which surrender defendant conceded had never been made & insisted also that there never had been any demand made for such surrender. The deft then asked Esq. Wood what kind of an oath had been made when the Original Capias was issued, the witness Stated that his recollection was not distinct but he thought that the plaintiffs made oath in the form required by the Statute & in addition thereto Stated his reason for believing that the debt would be lost unless the said Dakin was held to bail, that the said Dakin was secreting his property from his creditors to avoid the payment of his debts that a portion of the said Dakins property had been recently found by the Officer had under a Sheriffs and the Justice further Stated that at the time he so issued such capias he thought that a case of fraud was made out that his memory was very

11 indistinct and that he might have got what accrued afterwards mixed up with the oath upon which the Capias issued that he had frequently issued such writs without any allegation of fraud — but thought it was different in this case but did not know certain because he could not recollect this was all the Evidence in the case the Court decided that a capias should have issued and found for the defendant and rendered Judgment against the Plaintiffs for costs to which said decision of the Court the Plaintiffs then and there excepted and prayed the Court to sign and seal this his bill of Exceptions which is done accordingly

M. E. Hollister Seal
Judge of 9th Judicial
Circuit of Illinois

State of Illinois }
Bureau County } ss.

I Edward M. Fisher Clerk of the Circuit Court within and for said County & State aforesaid do hereby certify that the foregoing is a true copy of xxxx the proceedings in the above entitled cause as the same appears on file and of Record in my Office

In testimony whereof I hereunto set my hand and the Seal of said Court this 11th day of April in the

Year of our Lord one thousand Eight
hundred and Sixty

E. M. Fisher Clerk
per Wm Hall Jenkins dep Clerk

Clerks Fees Copy of Record 3.00.

Certificate & seal .35

$3.35 Paid by Plaintiffs Attorney

Supreme Court. State of Illinois
Third Grand Division
April Term AD 1860

Samuel A Hopkins &
John M Hopkins
vs Error to Bureau
James R Mann

And now comes the said appellants and say that there is manifest Error in the Record & proceedings of the Court below in this to wit-

1st That the Court below Erred in giving Judgment for the appellee &

2nd That the Court below should have rendered judgment for the appellants

The appellants therefore pray that the judgment of the Court below may be reversed

Peters & Harwell
for appellants

and now comes James R Moon the said defendant in Error by Paddock his atty. and says that in the record and proceedings is no error

Paddock
atty for Moon

Filed April 17, 1860
T. Letcher
Clk

1856

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Samuel A Hopkins &
John W Hopkins
vs
James R Moore

Transcript of Record
from
Bureau County Illinois

Filed April 14. 1860
L. Leland
Clerk