

No. 14419

# Supreme Court of Illinois

B'd. of Trustees,  
T. 16, R.3

---

vs.

Thompson

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STATE OF ILLINOIS,  
SUPREME COURT,  
Third Grand Division.

No. 77

14419

*Blair J.*

*Thompson*

1893

# THE PEOPLE OF THE STATE OF ILLINOIS:

BY THE GRACE OF GOD FREE AND INDEPENDENT.

To all to whom these Presents shall come, Greeting:

KNOW YE, That we having caused to be inspected the records and proceedings now remaining in the office of our Clerk of our Circuit Court in and for our County of Sangamon, do find certain records and proceedings in the words and figures following, to wit:

" UNITED STATES OF AMERICA, }  
STATE OF ILLINOIS, } ss:  
SANGAMON COUNTY, }

"Pleas before the Hon. Edward Y. Rice, Judge of the Eighteenth Judicial Circuit and presiding Judge of the Sangamon County Circuit Court in the State of Illinois, at a term of said court began and held at the Court House in the City of Springfield, in the County and State aforesaid, on the third Monday, (the same being the nineteenth day) of August, in the year of our Lord one thousand eight hundred and sixty-one, and of the Independence of the United States of America the eighty-sixth year.

" Present the Hon. Edward Y. Rice, Judge of the Eighteenth Judicial Circuit.  
" Hon. J. B. White, State's Attorney of the Eighteenth Judicial Circuit.  
" Hon. J. W. Smith, Sheriff of Sangamon County.

" ATTEST:

" STEPHEN S. WHITEHURST,  
Clerk Circuit Court Sangamon County.

And heretofore, to wit, on the twenty-second day of October, A. D. 1860, a certain agreement was filed in the office of the Clerk of said Court in the words and figures following, to wit:

" BOARD OF TRUSTEES OF TOWNSHIP SIXTEEN NORTH RANGE THREE, WEST OF THE THIRD PRINCIPAL MERIDIAN FOR THE USE OF SAID TOWNSHIP.

vs.

ANDREW T. THOMPSON, JOSHUA DUNNICK AND WESLEY HATHAWAY.

" Action of debt upon the bond of Andrew T. Thompson, Treasurer of said Township, and the other defendants as his sureties. The execution of the bond in the penalty of four thousand dollars by the defendants is admitted, a copy of which is herewith filed in the cause as part hereof. It is further admitted that on the seventh day of April A. D. 1860, school funds were in the possession of said A. T. Thompson, as Treasurer aforesaid as follows, to wit:

" State Fund.....	\$487 55
" District Fund No. 1.....	220 00
" District Fund No. 2.....	124 00—\$831 55
" From which is to be deducted credits for money properly paid.....	222 70

" Leaving balance of ..... \$608 85

Which is alleged by the defendants but not admitted without further proof to have been carefully placed by said A. T. Thompson in the iron safe in the store room occupied by Thompson Groves & Co., in the town of Mechanicsburgh in Sangamon County, where he deposited for safe keeping his own funds and papers; that said safe was carefully locked, and on or about the said seventh or eighth day of April aforesaid, the said money was stolen by some one unknown and without fault of said A. T. Thompson. It is further agreed by the parties that the said defendants enter their appearance at this October term of the Sangamon County Circuit Court, waive service of process and the filing of a declaration, that the foregoing statement shall be taken as a declaration and plea, and this cause submitted to the court for trial without the intervention of a jury, and the court upon the hearing of the evidence to be adduced by the parties, shall render such judgment as by law shall be proper in the premises, the same as if this suit had been regularly commenced, process served and declaration and pleadings filed by the parties.

" STUART, EDWARDS & BROWN,  
Attorneys for Plaintiffs.

" LINCOLN & HERNDON,  
Attorneys for the Defendants.

*By agreement originally made a copy of the Bond will be furnished in pamphlet form. See page 1100. See. 572*

"The question both of fact and law arising thereon are to be submitted to the Circuit Court of Sangamon County for decision.

"STUART, EDWARDS & BROWN,  
Attorneys for Plaintiffs.

"LINCLIN & HERNDON,  
Attorneys for Defendants."

And afterwards, to-wit, on the same day and year aforesaid, certain written evidence was filed in said cause, to wit:

"BOARD OF TRUSTEES OF TOWNSHIP SIXTEEN, NORTH RANGE THREE, WEST THIRD PRINCIPAL MERIDIAN FOR THE USE OF SAID TOWNSHIP EVIDENCE,

vs.

ANDREW T. THOMPSON, JOSHUA DUNNICK AND WESLEY HATHAWAY, DEFENCE.

"R. T. Short being first duly sworn deposed and said: 'Live in the neighborhood of Mechanicsburg; am not certain of the day of the month; am certain early in April; I went to store of Thompson Grove & Co.; late in evening met A. T. Thompson; he was in company with Harvey Thompson; he had a bag of something; approached Harvey and asked for key of safe; while he was getting key of safe asked him what he carried in his bag, putting my hand upon it at the time; he answered school money and was going to deposit it in the safe; about that time his brother handed him key of safe; he took it and passed into the store with the sack and key of safe; was gone a few minutes and returned and gave the key of the safe to his brother from whom he had got it. We remained in conversation a few minutes and separated; the safe was in the far end of the store from where we were; we were in front of the store under awning of the store; the safe was in the rear of the store; Thompson went in that direction; coin of some kind was in the bag Thompson had; I judge from feeling from the outside of the bag; the safe in Thompson's store was of medium size; in height 2½ feet; in width 16 inches; in depth 16 inches about. Know of persons depositing money in the safe; no banking house in Mechanicsburg; only two safes in town I know of; both safes near same size; the nearest banking house is in Springfield, about fifteen miles from Mechanicsburg; know the Thompsons in the neighborhood of Mechanicsburg; known them for more than six years; they are careful, prudent and diligent men in their business and in taking care of their property.

"*Cross examined*—When I asked Thompson where he got the money, he said it had been across the street over grocery store; this was in the town of Mechanicsburgh; the railroad is three miles or more from Mechanicsburg; I remained outside of and in front of the store while Thompson went into the store.

"*Re examined*—When Thompson came out of the store he had not the sack in his possession; he was gone only a few minutes; I noticed the window of the bedroom of Thompson, Grove & Co.'s store during the forenoon of Sunday after I met Thompson; the sash of window was down; I was in the room same Sunday afternoon and window sash down then.'

"Josiah M. Thompson being first duly sworn deposed and said: 'Live in Mechanicsburg; lived near town twenty-four years; am brother of A. T. Thompson; on the 7th of last April my brother A. T. Thompson came into store and asked for safe key; he got it and went into back room; said that he had some money; school money he wished to put in safe until Monday morning; he lighted a candle before he went into back room; it was about dark; he remained in the back room a short time and came out and gave the key of safe to Harvey Thompson; I was inside the store when my brother came in; Dr. Short and some other persons were outside; when my brother, A. T. Thompson, came into store he had a bag in his hand; when he came out of back room he had no bag; I saw him give key to Harvey Thompson; after my brother had went to safe and counted out cash sales of that day, and seeing nothing wrong in our cash account put back cash sales; came out and gave key to Harvey Thompson; have been acquainted with business habits of A. T. Thompson twelve or fifteen years; he is a careful and prudent man; a close dealer and careful with his money matters; was about the store all the day, 7th of April 1860; I was one of the firm of Thompson, Grove & Co.; had been for over one year—fifteen or eighteen months; we kept our money in the safe; before I was a partner I deposited my money in the same store; A. T. Thompson was in the habit of depositing his money in the safe part of the time and part of the time in Springfield; cash of three accounts were kept in safe; the firm of H. & C. Thompson, and Thompson, Grove & Co.; and Thompson & Brother, and at different times money of depositors; other money was taken at same time school money was taken from safe; money of the three firms above mentioned; the three firms lost at same time about five hundred dollars; have never recovered the money or got any clue to it; A. T. Thompson and the firms spoken of have made exertions to recover the money; began Monday 9th April after; have spent money to recover money and detect the thief, and used all reasonable means in their power to recover money and detect thief.'

"*Cross examined*—'Two keys to the safe; one remained inside the safe and Harvey Thompson carried the other; I have noticed one key inside safe for more than two years in one of pigeon holes of the safe; I did not notice the key inside the safe when I went to count cash that evening, nor did I see the school money; that was Saturday evening; a short time after A. T. Thompson had got key and went into back room; Thompson, Grove & Co., and Thompson & Bro., deposited their money in Springfield Marine and Fire Insurance; Thompson kept an account with Bunn, Banker, Springfield; a deposit account and drew by check as occasion required.'

"*Re-examined*—'The safe was locked when I went to safe to count cash sales; after I counted cash I locked the safe and tried door to see if safe was locked; found the safe locked and saw nothing that looked suspicious; know of no money ever being missed from the safe before; do not know that A. T. Thompson had at that time an account with Mr. Bunn, but it was the habit if the firm of which A. T. Thompson was a member to keep an account with some bank in Springfield.'

"Harvey Thompson being duly sworn deposed and said: 'I live in and near Mechanicsburg; have lived there twenty-four years; on the 7th April, 1860, about dark, my brother, A. T. Thompson, came across the street from Mr. Jack's store; he came to me in front of store and asked me for safe key; gave it to him; he said he wanted to put some school money in safe; he had a sack in his hands; a sack about the size of a shot bag; he went in towards the safe after I had given him the key; was gone a few minutes; came out and handed me the key; had no sack in his hands when he came out; I was a member of the three firms mentioned in the testimony of J. M. Thompson; the other firms together lost something over five hundred dollars; the money was taken between Saturday evening April 7th, 1860, and Monday morning April 9th, 1860; I first discovered loss of money on Monday morning April 9th, 1860, about eight o'clock. It was custom of one clerk in store to sleep in store, but he did not sleep in the store Saturday night, we have made every reasonable exertion to recover money and detect thief, in which we have expended between 50 and 80 dollars. We have deposited our money in the safe which was robbed for years, we never need but one key of safe at a time—A. T. T. met school directors and trustees at Jack's store generally.'

"*Cross-examined*—'When I went to safe on Monday morning the safe was unlocked, had no appearance of violent opening. I put in the key and found it unlocked, the papers in safe were all there, everything in its place, except money, which was gone. When I found the safe had been opened I searched for sack that had change in but it was not there, then pulled drawer open and discovered that money had been taken out.'

"*Re-examined*—'I then called Mr. Thomas Pickrell and asked him what had become of all the money, Pickrell said he knew nothing about it. I carried the key in my pocket from Saturday night until Monday morning. There was no persons present when A. T. Thompson asked me for safe key but Dr. R. T. Short, and Josiah M. Thompson, J. M. Thompson was inside of the store.'

"T. Pickrell, being duly sworn deposes as follow: 'I live in Mechanicsburg, I was clerking for John G. Elkin in April, 1860, and slept in store of Thompson, Grove & Co., with my brother who was clerking for them, sleeping in bed-room of store, east of and adjoining the counting room, I did not sleep there on night of 7th April, was at Zanesville at house of W. O. Pickrell, went away at the invitation of George Pickrell, returned to Mechanicsburg in company with George Pickrell on Sunday, April 8th, 1860, about noon; was in store of Thompson, Grove & Co. about 3 o'clock, P. M., of 8th, to get a change of clothes; Harvey Thompson and Dr. Short and A. T. Thompson were in the store when I went there; I changed my clothes and left the store, and came back to said store between 9 and 10 o'clock P. M.; found back door locked; had not seen my brother since Saturday evening previous; got no answer and went around to the window of bedroom to see if brother was in; found bedroom window raised up; supposed my brother had done it; got in at window; felt on bed; did not find my brother; went into the office; lighted a candle, and about that time my brother came to the back door and asked me to let him in, telling me that he had no key; told him I had none; that I got in at the window; he then got in at the window; I told him the window was up when I came and asked him the reason; he told me he supposed it was the carelessness of his employers; that they sometimes raised the windows to air the room. We conversed a short time and went to bed; neither of us went into the office after he came. I know the Thompsons; have known them since I knew anybody; they are correct and straight business men; are careful about their business, property and money, so far as I know; their standing for truth, veracity and integrity is good, they stand high in the community.'

"Thomas Pickrell: 'Live in Mechanicsburg; have lived there 18 years; was clerk for Thompson, Grove & Co., in April 1860. I did not sleep in store Saturday night, April 7th, 1860; stayed at Mrs. Rice's, on Wolf Creek; went of my own accord, came back to Mechanicsburg Sunday night between 9 and 10 o'clock; found my brother in the store; I had no key; he said I would have to get in at the window; it was up when he came; I supposed the window had been raised to air the room and was not surprised at its being up for that reason; had been sleeping in the store over a year; slept there Sunday night, April 8th, 1860; there is two doors between bedroom window and safe; they were never locked, generally left open; on Monday morning, April 9th, 1860, about 8

o'clock, Harvey Thompson called my attention to the back room or office and wanted to know what had gone with the money; I told him I did not know, I had not been in the safe since I left on Saturday evening; we made diligent search and found about 15 cents in the safe; it had been the custom to keep all money belonging to the different firms in the safe; the safe was considered secure; burglar proof and a good fire proof safe; I had been in the habit of depositing money there myself; had none at the time of the robbery; only one safe key used, the other kept in the safe; I found it in the safe on Monday morning after the robbery where it had been for a long time; I agree and concur with L. M. Pickrell in relation to the character and carefulness of the Thompson Brothers.'

"Harvey Thompson, recalled by defence on Cross-examination: 'I kept the key in my possession and did not unlock the safe from the time the key was given back to me by A. T. Thompson on Saturday evening until Monday morning when I found the safe unlocked; the key was not out of my possession except when I gave it to J. M. Thompson as stated in his testimony.'

"J. M. Thompson, recalled by defence for re-examination: 'After I counted cash sales as before stated, and returned the key of safe to Harvey Thompson I did not have or see either key any more until Monday morning after the safe had been unlocked as stated by Harvey Thompson, nor did I unlock the safe after I handed the key back to Harvey Thompson on Saturday evening until Monday morning after the robbery.'

"*Cross examined by Plaintiff*"—'When I counted cash sales I did not think of looking or did I see the safe key or the bag of money; my attention was not directed to them or either of them; the safe was constructed like other safes, with pigeon-hole partitions for books, and a small drawer.'

E. B. Pease—'He resides in the city of Springfield; deals in hardware, and sometimes in safes; his experience is that each safe has two keys; that besides these two safe keys it is usual to make no other key that would open the same safe. Witness says that from his experience he would think it improbable if the two keys made for any one safe in any city were lost, that another safe key could be found in such city to open such safe; that the only way to open such safe without violence would be to send to the maker and by some fac simile to have another key made; that it would not be impossible to make a false key to open a common safe; but to enable them to do so, access must be had to the key or safe. "E. B. PEASE.'

"It is agreed in this case that the money to recover which this suit is brought, came into the hands of A. T. Thompson, on April the 6th, 1860; part of the money was not ready to pay over to A. T. Thompson before that day; the time of the meeting of the Trustees is on the 1st Monday of April and October of each year; they did not meet on that day. It was agreed that the meeting which should have come off on the first Monday of April should take place on Saturday, the 7th of April; the Trustees met on that day, but entered no order except to adjourn, which adjournment was to the 14th of April; they entered no order to pay out the money on the 7th day of April; the adjournment which took place on the 7th of April took place because the census of scholars of district one and two of T. 16, N. R. 3d M., was not ready, made or handed in in pursuance of law.

"STUART, EDWARDS & BROWN, For Plaintiffs.

"LINCOLN & HERNDON, For Defendants."

"It is further admitted that neither of the Messrs. Pickrell's whose testimony has been taken had from the time the safe key was delivered by A. T. Thompson to Harvey Thompson, either of the safe keys in their or his possession, and further that since the time of the alleged robbery, A. T. Thompson has deposited school money since come into his hands with J. Bunn, Banker, Springfield, Illinois, and has paid the same out by check.

"LINCOLN & HERNDON, For Defendants.

"STUART, EDWARDS & BROWN, For Plaintiffs."

And afterwards, to-wit: on the 29th day of August, A. D. 1861, it being one of the regular days of the August Term of said Court for said year, A. D. 1861, the said Court being then duly organized and sitting in open court for the transaction of business, certain proceedings were had and entered of Record by the said court in the words and figures following, to-wit:

“TRUSTEES T. 16 N, R. 3 WEST 3d P. M., Use, &c., Plaintiffs,  
 vs.  
 “A. T. THOMPSON, JOSHUA DUNNICK & WESLEY HATHAWAY, Def’<sup>s</sup>. } Debt.

“Now at this day come the parties by their respective attorneys, and the issue herein having been made up by mutual agreement of said parties the interventions of a Jury is waived and the matters of Law and fact arising herein are submitted to the court, and the court having heard the arguments of counsel and evidence adduced, and not being fully satisfied in the premises takes time to consider.

And afterwards to-wit: on the fifteenth day of May, A. D. 1862, it being one of the regular days of the April Term of said court for said year, A. D. 1862, the said court being then duly organized and sitting in open court for the transaction of business, certain proceedings were had and entered of Record by the said court in the words and figures following, to-wit:

“BOARD OF TRUSTEES OF TOWNSHIP SIXTEEN, NORTH RANGE THREE, WEST THIRD PRINCIPAL MERIDIAN FOR THE USE OF SAID TOWNSHIP, Plaintiffs,  
 vs.  
 “ANDREW T. THOMPSON, JOSHUA DUNNICK AND WESLEY HATHAWAY, Defendants. } Debt.

“This day came the parties hereto by their respective attorneys, and this cause having been submitted to the court for trial at the August Term hereof, A. D. 1861, and the same taken under advisement, and the court being now sufficiently advised in the premises, finds the issue herein for the Plaintiffs, and that said Plaintiffs do have judgment against said Defendants the sum of four thousand dollars debt, and also the sum of six hundred and eighty-five dollars and eighty-six cents damages for the detention of said debt.

“Therefore, it is considered by the court that the plaintiffs do recover of and from said defendants said sum of four thousand dollars debt aforesaid, and also the sum of six hundred and eighty-five dollars and eighty-six cents damages aforesaid assessed and found by the court, together with their costs and charges by them herein about this suit expended, and that they have execution therefor. Thereupon, the defendants by their attorneys, enter their motion for a new trial of this cause, and the court having heard the arguments of counsel thereon, and being sufficiently advised over rules the same.”

STATE OF ILLINOIS, }  
 COUNTY OF SANGAMON. } ss.

I Stephen S. Whitehurst, Clerk of the Circuit Court in and for said county in the State aforesaid, do hereby certify the above and foregoing to be a full, true and perfect transcript of the record of the Circuit Court of said county, in a certain cause lately pending in said Court, wherein the Board of Trustees of Township sixteen north, range three, west of the third principal meridian, for the use of said Township, were Plaintiffs, and Andrew T. Thompson, Joshua Dunnick and Wesley Hathaway, were Defendants, as appears from the records and files of said Court now remaining in my office.

Attest my hand and the seal of said Court hereto affixed at office in the city of  
 [L. S.] Springfield, in the said county, this 20th day of Dec. A. D. 1862.

S. S. WHITEHURST, Clerk.

SUPREME COURT--SECOND GRAND DIVISION.

JANUARY TERM, A. D. 1863.

ANDREW THOMPSON, ET AL, Plaintiffs in error,  
vs.  
TRUSTEES T. 16 N, R. 3 W. Defendants in error. } Error to Sangamon.

This is an agreed case. Messrs. Stuart, Edwards & Brown, attorneys for the Defendants in error, waved, at the time of the trial and the decision of the court, the necessity or formality of a bill of exceptions, stating and agreeing that in the Supreme Court the case should, in all respects be argued, tried and decided as is a regular Bill of Exceptions had been filed according to law and the rules of court, at the time when, where &c.

The record and all the evidence in the case are as follows: The plaintiffs in error come and say that there are errors in the proceeding above, made manifestly to the injury of the said plaintiffs and of this, &c.

- 1st. The court erred in not giving judgment for the defendants below—plaintiffs here.
- 2d. The court erred in giving judgment for the plaintiffs below—defendants here.
- 3d. The court erred in deciding that the defendants below were responsible on the facts of the case as above stated and set forth.
- 4th. The court erred on the law in the facts and on the application of the law to the facts; &c.

W. H. HERNDON,

Attorney for Plaintiffs in error.

Joinder in Short.

STUART, EDWARDS & BROWN,

For Defendants in error.

