

No. 12876

Supreme Court of Illinois

Mefford

vs.

Lord

71641  7

201.

Thompson Mefford

vs

Joseph C. Ford

201

1859

12876

State of Illinois

Irroquois County ss

Pleas before the Hon Chas R Starr Presiding Judge
of the Twentieth Judicial Circuit in the State of Illinois at a Circuit
Court of Irroquois County begun and held at the Court House
in the town of Middleport in said County on Tuesday the
20th day of October AD 1857

Present Hon Chas R Starr Presiding Judge
Simon Dewitt States attorney

Thomas Bennett Circuit clerk
James H Karr Sheriff

Thompson McEfford

vs

Appeal

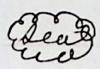
Joseph. E. Lord

Be it remembered that on the 28th day of
February AD 1857 there was filed in the office of the clerk of the
Circuit Court for the County aforesaid an appeal bond
which reads in words and figures following to wit:

"Know all men by these presents
that Joseph E Lord, D. S. Lord and S. G. Boie are held and firmly
bound unto Thompson McEfford in the penal sum of one hundred
and fifteen dollars lawful money of the United States for the
payment of which well and truly to be made we bind our-
selves our heirs & administrators, jointly, severally and
firmly by these presents. Witness our hands and seals this
23rd day of February AD 1857.

The condition of the above obligation is such that
whereas the said Thompson McEfford did on the 23rd day of
February AD 1857 before Charles Axtell a Justice of the peace for
the County of Irroquois receive a judgment against the above
bounden Joseph. E. Lord for the sum of fifty five Dollars from

which judgment the said Joseph & Lord has taken an appeal to the Circuit Court of the County of Ingham aforesaid, and State of Illinois. Now if the said Joseph & Lord shall prosecute his appeal with effect and shall pay whatever judgment may be rendered by this Court upon dismissal or trial of said appeal then the above obligation to be void otherwise to remain in full force and virtue.

Taken and approved by me	{	S. G. Bowie	
this 28 th day of February AD 1857	{	Joseph & Lord	
Thomas Vennum	{	D. S. Lord	
clerk	}		

And on the back of the said Appeal bond is the following endorsement. "Appeal bond" "Mifford vs Lord" "Filed February 28th AD 1857." "Thomas Vennum clerk"

And afterwards to wit on the said 28th day of February AD 1857 a supersedeas was issued by the clerk of said Court in said cause which reads in words and figures following:

State of Illinois

Ingham County ss

The People of the State of Illinois to Charles Axtell Esq a Justice of the Peace and Constable in and for said County Greeting: Whereas in a suit lately depending before you, wherein Thompson Mifford was plaintiff and Joseph & Lord was defendant, judgment has been obtained against the said Joseph & Lord in the sum of Fifty five dollars and

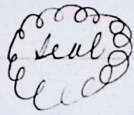
cents debt and dollars and cents costs. And whereas, the said Joseph & Lord has taken an appeal from said judgment, and has given bond and security to the said Plaintiff for the due prosecution thereof according to Law, which said bond is filed, as of Record in the clerks

Office of our Circuit Court,

We therefore Command and enjoin you the said Charles Axtell as being Justice and Constable as aforesaid, that you do entirely supersede and desist from, proceeding any further in the said suit and that you do forthwith supersede all proceedings in relation thereto, and that you cease to molest the said Joseph E Lord in anywise whatever on that account until the said Circuit Court shall make other order to the contrary, and this you shall in no wise omit at your peril.

Witness Thomas Beunum Clerk of our said Court
and the seal thereof hereto affixed at Mendota

this 28th day of February AD 1857



Thomas Beunum Clerk

And on the back of the said writ is the following endorsement
"Thompson vs Joseph E Lord". "Supersedeas". "Filed March
19th 1857" "Thomas Beunum". Served the 9th day of
March by reading the same to the within named Charles
Axtell. James H Karr Sheriff

Fees Serving 50"

1/2 Miles Travel 60"

Return 10.

\$ 1,20"

And afterward to wit on the 14th day of March
AD 1857 there was filed in the office of the Clerk of said Court a
duly certified transcript of the judgment and proceedings in the
above entitled cause had before Charles Axtell Esqr as also
the warrant issued by said Justice and the motion by
defendant to dismiss the suit in said ^{justice} Court, which
said transcript reads in words and figures following to wit:

"Action of Trespass and Damages"

State of Illinois

Snoguois County ss

Thompson Macfford

vs

vs Edwin Lord amended
Joseph & Lord

Damages claimed 80

Cost Docketing

Warrant

Come on oath

Subpoena by Ref

" " "

Subpoena by Deft

Swearing jury

" & witness

Cost per jury

Cost Cost on Writ

Per Subpoena

~~Witnesses~~ Mileage

Mileage

for attending on jury 25
210

Witness claimed

Stansbury Osborn, 50

Lebevenum 50

Hugh Hannon 50

Amos White 50

Wm Parks 50

Transcript 25

This suit brought February 18th 1857 on

Account on file for damages, done to the personal property of the

Thompson Macfford to the amount of \$80.00 said Plaintiff

made the necessary oath in such case made and provided.

18th a warrant was issued to Mr. A. Thompson Constable, Subpoena

18th issued by order of Plaintiff for Hugh Hannon, A. C. Parks,

18th William Parks, & Abram Macfford on the 23rd met subpoena

25 used by order of Plff for Amos White & Stansbury Osborn,

50 Subpoena ordered by defendant for John Metz, Richard Scott,

25 C. C. Bevenum, Wm Feaster, Subpoenas returned served, Plaintiff

45 makes a motion to amend the summons by inserting the real name

50 of the defendant. Defendant objects as is there is nothing to

55 amend by Motion sustained a jury was demanded by the

55 Plaintiff the right of venue was waived by the Defendant,

thereupon a jury was selected by returning the names of. C. W. Dawson,

John Axtell, Charles Axtell Jr. & Darius Hartwell, which jurors

being agreed on and after being duly sworn went on to hear

the evidence, the jury retired with Mr. A. Thompson Const, the

jury returns a verdict of \$55.00 against said defendant and

costs of suit. Jurors fees paid by plaintiff. It is therefore consid-

-ered that judgment be rendered against said defendant for the

sum of fifty five dollars Debt on damages and seven dollars

and thirty cents costs.

I do hereby certify the above to be a correct transcript of the

proceeding in the above case as entered on my docket, given

under my hand this 12th day of March 1857.

Charles Axtell J.P.

And on the back of the said transcript is the following endorsement
 "Transcript" "Filed March 14th 1857 Thomas Beunum clerk"

And the warrant issued by the said Justice reads as follows:

State of Illinois

Champaign County ss

The People of the State of Illinois to my Const-
 able of said County Greeting: You are hereby commanded to take
 the body of Joseph E Lord 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 Belvidere Township on Monday the 23rd inst at 1 P.M. to
 Answer the complaint of Thompson McEefford in a plea of damages
 for a failure to pay him a certain demand not exceeding one
 hundred dollars and herof make due return as the law
 directs. Given under my hand and seal this 16th day of
 February 1857

Charles Axtell J.P.

And on the back of the said warrant are the following endorsement
 "Warrant. Thompson McEefford vs Joseph E Lord Debt on damages
 claimed \$80.00 Docketing & Warrant 31/4. Served by bringing
 the within named before Charles Axtell. Nilage 20
 Serving & returning, 25 Ab. A Thompson Const.

"Filed March 14th 1857, Thomas Beunum clerk

J. E. Lord

I enter myself special bail in this case for E Lord, February
 19th, 57

And the motion to dismiss reads as follows.

Joseph E Lord

vs

Thompson McEefford } ss

Now comes the defendant by his attorney S.H. Bowie

and pleads in abatement to the said suit and says that his name is not Edwin Lord nor never was but that he has been called by the name of Joseph E Lord and that the latter is his true name, he therefore prays that said writ be quashed and that the said suit abate.

Joseph E. Lord

Subscribed and sworn to before me this 23^d day of February AD 1857.

Charles Axtell J. P.

And the endorsement reads as follows, "Filed this 23^d day of February AD 1857." "Filed March 14th 1857." "Thomas Beunum clerk" "The Deft pleads also the General issue"

And afterward to wit on the 27th day of October AD 1857 it being one of the regular days of the October Term of the Circuit Court for the year 1857 in the County aforesaid the following proceedings were had and entered of Record in said Court to wit:

69 Thompson McEfford }
vs } Appeal
Joseph E. Lord }

Comes now the plaintiff in this cause by Padonck his attorney and enters his motion herein to dismiss the appeal in this case for want of sufficient appeal bond.

And afterward to wit on the 30th day of October it being ^{also} one of the regular days of the October Term of the Circuit Court of said County for the year 1857 certain other proceedings were had and entered of Record in said Court to wit:

69 Thompson McEfford }
vs }
Joseph E. Lord } ss Comes now the defendant by Boor's attorney and

enters his cross motion for leave to file an amended appeal bond in this cause. Ordered that defendant have leave to file an amended appeal bond.

And afterward to wit on the 31st day of October AD 1857 it being one of the regular days of the October Term of the Circuit Court of said County for the year 1857 the following order was made and entered of Record in said Court in the above entitled cause to wit:

69 Thompson Macfford }
" " } Appeal
Joseph E. Lord }

And now comes the defendant in this cause by Bonie his attorney, and enters his motion for a continuance in this cause till next term. Ordered by the Court that the motion for continuance be and the same is overruled.

And afterward to wit on the 6th day of November it being also one of the days of the October Term of the Circuit Court of Iroquois County for the year aforesaid the following order was made and entered of Record in said cause to wit:

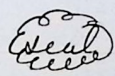
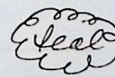
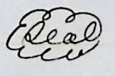
69 Thompson Macfford }
" " } Appeal
Joseph E. Lord }

Ordered that the defendant file an amended appeal bond in this cause by Monday morning the eight day of November inst;

And afterward to wit on the 9th day of November AD 1857 an amended appeal bond was filed in said Court in words and figures following to wit:

Know all men by these presents, that we Joseph E Lord, J. S. Lord and S. G. Bowie are held and firmly bound unto Thompson Mcfford in the penal sum of One Hundred and twenty four dollars and sixty cents ~~in the penal sum of~~ lawful money of the United States for the payment of which well and truly to be made, we bind ourselves our heirs and administrators, jointly, severally and firmly by these presents. Witness our hands and seals this 6th day of November AD 1857.

The condition of the above obligation is such, whereas, the said Thompson Mcfford did on the 23rd day of February AD 1857 before Charles Axtell Esq a Justice of the Peace for the County of Ingham recover a judgment against the above bounden Joseph E. Lord for the sum of fifty dollars five dollars and cents and costs of suit taxed at seven dollars and thirty cents from which said judgment the said Joseph E Lord has taken an appeal to the Circuit Court of the County of Ingham aforesaid, and State of Illinois. Now if the said Joseph E. Lord shall prosecute his appeal with effect, and shall pay whatever judgment may be rendered by the Court, upon dismissal or trial of said appeal, then the above obligation to be void, otherwise to remain in full force and effect.

In presence of { Joseph. E. Lord 
Lewis Lord 
S. G. Bowie 

And on the back of the said bond is the following endorsement.

"Appeal Bond, Circuit Court.
Thompson Mcfford vs Joseph E Lord, Appeal from the decision of Charles Axtell Esq" Filed and approved by me this
"9th day of November AD 1857, Thos Bennett clerk"

And afterward to wit on the 13th day of November 1857 it also being one of the days of the October term of the Circuit Court of said County for the year 1857 certain other proceedings were had and entered of Record in said Cause to wit;

69 Thompson McEford }
vs } Appeal
Joseph E Lord }

The motion to dismiss for want of sufficient bond coming up to be argued the Court ordered that the same be overruled, And now comes the plaintiff and enters his motion to rule the defendant to file additional security. Ordered that the Cause be continued till next term,

And afterward to wit on the 20th day of April AD 1858 it being one of the regular days of the April Term of the Circuit Court of said County for the year last aforesaid,

Present Hon. C. R. Starr Presiding Judge as aforesaid
James. H. Karr Sheriff
Thomas Bennett clerk
Hamison Loring States attorney Pro tem

the following order was made and entered of Record in said cause to wit:

34 Thompson McEford }
vs } Appeal
Joseph. E. Lord }

And now comes the Plaintiff in this Cause in person and by Paddock & Whiteman his attorneys, comes also the defendant by Bowie & Pearson his attorneys and by agreement of parties a jury came to wit, R. R. Roberts, J. M. Beedle, John Bailey, A. C. Lemell, John. B. Miller Isaac Anderson, Luther. T. Clack, Jonathan Watkins,

David Mc Gill, John Welch, Aaron Moore and John Pierce twelve good and lawful men who were empaneled and sworn to well and truly try the issue joined between the parties.

David S. Lord + Stephen G. Bowie discharged from all liability as securities on the appeal bond.

And afterward to wit on the 21st day of April AD 1858 it being one of the regular days of the April Term of the Circuit Court for said County for the year last aforesaid the following order was made and entered of Record in said cause to wit:

34 Thompson Mcfford {
" { Appeal
Joseph. E. Lord {

After hearing the evidence adduced, the arguments of counsel and the instructions of the Court, the jury heretofore empaneled in this cause retire in charge of an officer to consider of a verdict, and afterward return into Court and say "we the jury find for the Plaintiff seventy dollars"

Now comes the defendant by Pearson his attorney and enters his motion for a new trial in this cause.

And afterward to wit on the 23rd day of April AD 1857 the Defts attys filed with the clerk of said Court a motion for a new trial in said Cause in words and figures following.

Joseph. E. Lord {
ads { In the Circuit Court Ingham County
Thompson Mcfford { Illinois April Term 1858
Motion for new trial.

After verdict and before judgment the defendant by Bowie + Pearson his attorney moves the Court for a new trial

for the following reasons to wit:

- 1st The verdict is contrary to the evidence
- 2nd The damages are excessive
- 3rd The instructions of the Court for Plff were erroneous.

Bowie + Pearson

Atty for Deft

Which motion was endorsed as follows, "Lord ads Mefford"
"Motion for a new trial" "Filed April 23^d/58.
"Hos verum clerk"

And afterward to wit on the 26th day of April A^d 1858 the following order was made in said Court, it being also one of the regular days of the April Term of said Court for the year 1858.

34

Thompson Mefford }
" " } Appeal
Joseph. E. Lord }

After hearing the arguments of Counsel the Court ordered that the motion for a new trial in this cause be overruled, to which decision defendant excepts and enters his motion for an appeal in this cause to the Supreme Court of this State, Ordered by the Court that the appeal be granted on condition that the defendant file an appeal bond with the clerk of this Court within sixty days from this date with security to be approved by the clerk in the sum of Five Hundred dollars.

It is therefore considered and ordered by the Court that the Plaintiff recover of the said defendant the said sum of seventy dollars together with all costs and charges by him expended in the Prosecution hereof and that he have Execution therefor.

And afterward to wit on the 30th day of April A^d 1858 a bill of exceptions was filed by Defts attys in words and figures following

The State of Illinois }
Iroquois County } ss In the Circuit Court of Iroquois County
Illinois April Term 1858 appeal in Assumpsit
Joseph. E. Lord }
 and }
Thomson Mcfford }

Be it remembered that at the April Term of the Circuit Court of Iroquois County Illinois this cause came on to be tried by a jury on the following bill of particulars as amended from the one filed before the justice in these words:

(The bill of particulars intended to be inserted here is lost from the files of this Court. Nos vennum etc)

The Peff proceeded to call Peffs son A Mcfford a boy about 18 years of age as the witness testified, and witness testified that he saw Defts ox wound the Peffs mare that he was about 20 rods off that he went to see the wounded mare at the instance of witness who told him that his ox had hurt the mare & directed about how to bandage her - but did not admit that the ox gored the mare. He went twice or three times after the mare died, and once with his father, and Deft said he would come down in a few days and make satisfaction - but never came - that the mare died of the wound in about ten days and Deft never gave satisfaction - that mare was worth \$80 - On cross examination witness denied he had made different statements about the mare & the ox or the distance he was off when the ox did the mischief, said his testimony now was as far as he could recollect the same that it was before the Magistrate - He said he heard a distinct noise when the ox horns struck the

Mare - The Plff also called one H Hannon as a witness who said he did not see any wound given but saw the mare & ox in the range with other stock and said the outer hide of the mare was not broken, but it appeared that the inner ruin of the belly was broken and a bunch was on the mare as big as his hat, - but dont know that the ox did it - objected to by Deft and sustained by the Court, mare was worth \$80 or \$85 - witness then voluntarily said he believed the ox did it for he had no doubt his mare was wounded by the same ox - which statement of witness Deft objected and Court told the jury was no evidence. witness said mare died shortly after - W Wood testified that he called at Defendants house some time after this transaction is said to have taken place and Deft sent word by him that he would be down in a few days and settle the matter or words that effect he could not say that the word settle was used, but he understood it to mean that - when he went down he forgot the errand - and the next day he was going down again & the Deft sent the same word - it is so long since he could not swear positively that the word settle was used but thinks that Deft conveyed that meaning - Ab. A. Thompson testified that he had offered \$75 for the mare the Spring before - The Plff closed his case and the Deft called Geo Bennum who said he saw the mare a few hours after the boy said she was hurt and the boy Abraham McEfford the first witness for Plff told him that he found the mare hurt but did not see the ox do it but thought he did it - that he witness was acquainted with horses & thought it was not hurt by the ox but a complaint called pieces that boy testified before Justice that he was 20 yards off and saw it and his statement here was not the same as there - mare was not worth over \$25 - David Lord said he heard the boys testimony before justice & here & it differed in this he said he was only 20 yards off when the ox hooked the mare

I saw it and that he & his father went to Deft several times and the Deft would agree to give no satisfaction - Mare was only worth \$25. - S. G. Boie attended before the Magistrate as atty and took down the testimony & has since examined his minutes & the boys statements is not the same in this - the boy stated ~~he~~ there he was 20 yards off when he saw it and he & his father went several times to Deft to get him to settle it and Deft would give them no satisfaction. The Jury received the instructions of the parties prayed ^{and} gave a verdict of \$70 for Peff. In the giving said verdict & the refusal of said Court to grant the Deft a new trial the Deft excepts and prays the Court to sign and this bill of exceptions, which is done in open Court this 29th day of April 1858.

C. R. Starr 

Judge of the twentieth Judicial Circuit.

endorsed as follows: "Joseph E Lord ads Thompson McEifford"
"Bill of Exceptions Filed April 30th 1858 Thomas Bennum clerk"

And afterward to wit on the 18th day of June 1858 the Deft filed an appeal bond in the office of the clerk of the circuit Court of said County which reads as follows:

Know all men by these presents that we Joseph E Lord Lewis Lord & of the County of Ingham and State of Illinois are held and firmly bound unto Thompson McEifford in the penal sum of Seventy dollars for the payment of which well and truly to be made we bind ourselves our heirs executors & administrators, jointly severally & firmly by these presents signed with our hands and sealed with our seals this 17th day of June AD 1858. The condition of the above

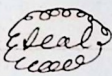
obligation is such that whereas the said Joseph E Lord has appealed from a judgment of the Ingham's Circuit Court at the April Term AD 1858 to the Supreme Court of the State of Illinois which is in favor of said Thompson Mcfford for the sum of Seventy Dollars judgment besides costs of suit.

Now if the said Joseph E Lord shall without delay prosecute his said appeal to effect and pay whatever judgment may be rendered against him in said Supreme Court then the above obligation to be void, otherwise to remain in full force and effect

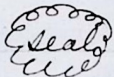
Taken and approved
by me this June 18th

AD 1858

Thomas Beunum Clerk

Joseph E. Lord 

by Lewis Lord his atty in fact

Lewis Lord 

Endorsement on the back. "Thompson Mcfford vs Joseph E Lord" "Appeal Bond" "Filed June 18th 1858" "Thomas Beunum Clerk"

State of Illinois

Ingham's County ss

I Thomas Beunum clerk of the Circuit Court in and for said County do hereby certify that the foregoing is a true complete and perfect transcript of the Record and of the papers now remaining on file in my office as clerk aforesaid in the case of Thompson Mcfford vs Joseph E Lord, that the copies are ^{as they purport to be} ~~genuine~~ and true copies of the Originals.

In attestation whereof I hereunto set my name and the seal of the Circuit Court of said County this 18th day of April AD 1859 Thomas Beunum clerk



Thompson Mefford
Joseph. E. Lord

Transcript

Filed Sept. 19. 1859
L. Nelson Clk.

