

11949

No.

Supreme Court of Illinois

Goodell

vs.

Townsend

71641  7

La Salle
Roswell E. Goodell
vs.
Charles J. Townsend

113

1852

11949

Prepared

R. L. Childs
Wm. D. Sumner

The Plff in error who was Plff
below, is Shff of Seale and Deft is Shff of
Tindall County, a person was arrested
& indicted in Seale for Larceny took a
change of venue to Tindall, was there tried
convicted & sentenced to the penitentiary. Plff
applied to Deft & demanded the prisoner
for the purpose of taking him to the pen-
itentiary and receiving from the State
the legal fees therefor amounting to 78¢
Deft refused but took the prisoner to
the penitentiary and received the fees afore-
said Plff sues to recover the amt

The Court below gave judgment for
Deft & the Plff now assigns that, for
error & relies upon the construction
of Revised Stat. p. 529 Sec 14

Sadall

Wm W. Townsend

Receipt

Abstract

Filed July 30th 1852
J. L. Leland Clk.
By J. H. Leland Secy.

Wm W. Wallace
Clerk

State of Illinois }
Said County }

It is remembered, that on the 9th day of June A.D. 1852, was filed in the Clerk's office of the Circuit Court of LaSalle County a Narr which is in words and figures following to wit

LaSalle County Circuit Court June Special Term A.D. 1852

Charles D. Townsend defendant in this suit was summoned to answer unto Roswell Eaton Goodell the plaintiff in this suit on a plea of ^{by the case upon promise} ~~in~~ writ, and thereupon the said Roswell Eaton Goodell by W. H. Wallace his attorney complains. For that whereas heretofore to wit on the first day of June A.D. 1852 at the County aforesaid, the said defendant had received a large sum of money to wit the sum of One Hundred dollars to and for the use of the said plaintiff whereby and by means of the premises the said defendant then and there became liable to pay to the said plaintiff the said sum of One Hundred dollars on demand, and being so liable the said defendant in consideration thereof afterwards to wit on the day and year aforesaid ^{at the County aforesaid} undertook and then and there faithfully promised the plaintiff to pay him the said sum of money on request. But though often requested said defendant hath never hitherto paid said sum of money nor any part thereof to said plaintiff, but so to do hath wholly neglected & refused & still neglects and refuses to plaintiff's damage One Hundred dollars, wherefore he sues &c.

W. H. Wallace
Atty. for Plff

And afterwards to wit on the 14th day of June A.D. 1852 the defendant filed his plea herein in words and figures following to wit

To
LaSalle Circuit Court June Term A.D. 1852
Charles D. Townsend }

^{or} Roswell Eaton Goodell } Assumpsit
} defendant by Homer & Goodell his attorneys

comes and defends the wrong and injury which he and
says he did not undertake and promised as the said
plaintiff hath in his said declaration thereof above all
light against him and of this he puts himself upon the
country &c

None & Court for diff

and the plaintiff doth the like by

Champlin & Wallace

Plffs attys

And on the 15th day of said month of June
the following persons appeared in court
in said Circuit Court viz

Roswell Eaton Goodell

Charles D. Towns

Assumptet

The parties appear by
Attorneys Wallace for the plaintiff and Goodell
for the defendant and have to say and
submit this cause to the Court for trial and
the Court being fully advised in the premises
does find that the said defendant did not undertake
for the said Plaintiff hath in his said declaration
alleged. Therefore it is considered that the
said defendant in error of the said plaintiff his
costs on this behalf expended to be taken and
that he have execution therefor the plaintiff
except to said finding and judgment

R. Eaton Goodell 3

Charles D. Towns 3

But it remembers that on the trial of this
cause the Plaintiff to sustain the issue
on his part proves the following facts.

1st That the complainant is & has been for 18 months

Sheriff of LaSalle County Illinois and defendant during the same time was Sheriff of Kendall County.

- 2nd That at the Nov Term ¹⁸⁵² 1851 Mr. Frank Cummings was indicted for Larceny by the Grand Jury of said LaSalle County and afterwards said Cummings took a change of Venue upon said indictment to the County of Kendall and at the Spring Term A.D. 1852 of Kendall County Circuit Court upon the trial of said indictment said Cummings was convicted of said offence and sentenced to confinement in the penitentiary for the term of two years and six months said Cummings was conveyed to said penitentiary by said defendant as Sheriff of said Kendall County.
- 3rd That immediately after said sentence had been pronounced upon said Cummings the plaintiff applied to said defendant for the custody of said Cummings for the purpose of conveying him to the penitentiary in pursuance of his sentence said defendant refused to surrender the custody of said Cummings claiming the right to convey him to said penitentiary & to receive the compensation provided by law therefor.
- 4th That at that time it was agreed between plaintiff and defendant that said ^{said} defendant would convey said Cummings to the penitentiary and would pay over to said plaintiff all the compensation provided by law therefor if the said Goodell was by law entitled to perform the service & receive the compensation therefor.
- 5th That said defendant received for conveying said Cummings to the penitentiary from the State the sum of \$78.46 which was the legal fee therefor. This was all the evidence. The Court found the issue for defendant, to which finding of the Court the plaintiff then and there excepted. The Court rendered judgment for the defendant to which the plaintiff then & there excepted & prays this his bill of exceptions be signed sealed and made part of the record which is done.

Isaac G. Wilson *Seal*
Judge

State of Illinois }
LaSalle County } 3

I Philo Lindley, Clerk of the Circuit Court in and for said County, do hereby certify that the foregoing is a true copy of full and complete copy of the proceedings and Judgment in the foregoing cause as the same appear of record and on file in my office

In testimony whereof I have hereunto set my hand and affixed the Seal of said Court this 28th day of July A.D. 1852

Philo Lindley Clerk

R. Eaton Goodell
vs.
Charles D. Townsend

Transcript

Filed July 29. 1852
J. Deland Clerk.

State of Illinois - Supreme Court. June Term A.D. 1852 -

Roswell Eaton Goodell

Appellant

vs.

Charles D. Townsend

Appellee

Appeal from LaSalle

And now comes the said plff

who was plff in the court below, and says there is manifest error in the record and proceedings in this cause, and assigns for error the following:

1st The court below erred in find for deft & against plff on the case made.

2nd The Court erred in rendering judgment against plff & in favor of deft.

W. H. Wallace for applt