

13924


No. _____

Supreme Court of Illinois

Bedell

vs.

Janny & Co.

71641  7

Edward A Redell } Suit at Dec Term 1847
vs

Nathaniel E Lanny & Robert W. Miller copartners trading and
doing business under the name and style of N E Lanny
=my & Co

Abstract

Suit originally brought before a Justice of the Peace
in Hancock Co for a demand on the 16th day of
March 1845 on this account filed in the cause
to wit

Mr E A Redell To N E Lanny & Co

For amount our claim & interest against Montague & Sepp. To 31 Jan'y 1838 collected by you	62.41
1841 Nov 22 Interest 2 years 9 $\frac{1}{2}$ months 6 $\frac{1}{4}$	10.57
Or by cash received \$7.00 (deduct)	65.95
1844 for interest 2 years 10 $\frac{1}{2}$ months	11.42
	<u>1.60</u>
	78.97

Appealed to the Hancock Circuit Court, change
of venue to McDonough County, Missouri, and an
other Jury empannelled and verdict for Pltff \$63.
Debt and \$28.03 $\frac{1}{2}$ damage, and motion for New
trial by Deft (overruled) And judgement entered
for \$63. Debt, and damage \$28.03 $\frac{1}{2}$ with costs &c

Bill of Exceptions contains the above amount and
also the amount of Lanny & Co against Montague
& Sepp. Pltff then offered in evidence the following
letter (handwriting of Redell admitted)

Messrs N E Lanny & Co Warsaw Decemb 30th 1838
Dr Sir

Yours enclosing a note on Montague & Sepp
was duly received and I immediately informed them that
I had the note and also that you was in want of the

The summons in this case delivered to Geny. Thatcher and returned by him served on the 5th in Montague, which was issued on the 6th No service & no judgment of appearance Judgment void

money, which they promised to pay soon. But they failed to make good their promises. Mr Depe left for Kentucky and then I put the note in suit and I presume it will be collected soon, when I will inform you -

I have collected fifty dollars on the note against Mac-
-ren and have the promise of balance by the first of March, the \$50 I can remit you by mail if you choose to risk it &c - To the reading of which objection was made at the time (obj: overruled) and exceptions taken at the time) and permitted to go to the Jury

The Pltff then offered to read the following (writing) a transcript of a trial of a case wherein Tanny Ho was Pltff and Montague & Depe Defendants, Demand on note \$62.26 and Judgment for that amount and costs against Montague & Depe. - Execution & returned without indorsement and another not returned which was delivered to E. A. Bedell certified (Objection also made to the reading of this document (Overruled read and Exceptions taken at the time, Date of execution Feb 16th 1839, Return 7th Sept 1839 Received same day) #

Pltff then offered the following paper signed by E. A. Bedell (signature admitted) Received of I Cole C. H. C \$63. The full amount of a judgment against John Montague before Saml Steel Decr 18th 1839
Signed E. A. Bedell

Objection also made to reading this paper (Overruled) read & Exceptions taken at the time

Pltff then called one Cole who testified that he in the year 1839 was a constable of Hancock County, that as such he received for collection an

execution issued by same steel in favor of the Plaintiff and against

that he collected the same and paid over to Defendant as the agent of Plaintiff in the year 1839 about \$63. This was all the evidence.

Defendant on going to trial notified the Plaintiff that he should rely on and insist upon the statute of limitations in this cause, and did set up and insist that Plaintiff's action and claim were barred by Law on the trial of the cause. And moved the Court to instruct the Jury 1st That if they believed from the evidence that the Plaintiff's demand and cause of action accrued more than five years next before the commencement of this suit that the Plaintiff could not recover unless the Defendant within five years next before the commencement of this suit had in some manner admitted the same to be unpaid.

Refused and gave modification over.

To give which the Court refused and gave the following, That if the Jury believed from the evidence that Plaintiff in the year 1838 sent to the defendant from St Louis a claim in their favor for collection & Plaintiff had not called on the Defendant or in some way made demand for the money before the commencement of this suit they can not in this action recover. The second instruction was also refused as asked and modified.

3rd. That they should not take into their consideration any evidence before them which did not apply to the demand sued on (This instruction was given but with this qualification) That the Court was not advised that any evidence inapplicable to the Plaintiff's claim sued on had been given but of this the Jury would judge

The Court then instructed the Jury that the action of assumpsit was barred by the Statute of Limitations in five years after the cause of action accrued, that this suit having been commenced before a Justice of the peace, that upon the claim either Debt or assumpsit lie, that to an action of Debt on such a claim our Statute had interposed no Limitation and that consequently in an action upon such claim the limitation in the opinion of this Court remained as at Common Law and the claim would ~~would~~ only be barred by the lapse of 20 years from the time such cause of action accrued, that the action of Debt being the most beneficial form of action for the ~~Pliffs~~ they had a right to treat this as such action (Objections to at the time given & exceptions taken)

The Court further instructed the Jury with reference to the (2nd) Instruction asked by the defendant "that if the ~~Pliff~~ had intrusted the defendant with the collection of money for their use, that ordinarily before this action could be maintained, a demand should be made for the money so collected. But that in this case if from the lapse of time or any other circumstances appearing in the cause, they were satisfied that the defendant had collected money belonging to the Plaintiff and had converted the same to his own use, no demand for the same would be necessary, And further, that if they believed from the evidence that money had been so collected and appropriated and there had been an unreasonable or vexatious delay of payment of the same, the ~~Pliffs~~ were entitled to recover interest on the same amount so collected deducting a reasonable compensation for defendant's services in collecting the same (Exceptions to this qualification of the 2nd Instruction taken at the time)

The Jury found as before stated

Second Bill of Exceptions sets forth the following

And the Jury having returned into Court with a verdict in favor of Pliff the Defendant entered his motion for a new trial on the ground that the verdict 1st was against the Evidence, (2nd) The verdict is against the Law (3rd) That the Court erred in not giving the instructions asked by Defendant (4) And in giving the instructions given by the Court (5) The Court admitted improper testimony to go to the Jury (6) That the Court erred in giving the instructions as qualified (7) That the verdict is excessive, which motion the Court overruled. In which decision in overruling said motion the Defendant at the time the same was done Excepted, Exceptions allowed

Assignment of Errors

And the said Edward A Bedell comes & says that in the Record & proceedings aforesaid there is Error in this (Court)

1st The Court Erred in overruling Defendants objections below to the evidence of the Pliff offered herein, and in permitting the same to go to the Jury

2nd Also in refusing to give the instructions to the Jury asked by the Defendant below

3rd And in the instructions given by the Court to the Jury the Court Erred

4th And the Court Erred in the qualifications given to said instructions and in giving the qualified instructions

5th The Court Erred in refusing to set aside the verdict rendered herein and not granting to the Defendant below a new trial,

6th The Court Erred in entering Judgment on the verdict rendered in the cause against the Defendant below -

7th The Court Erred in rendering judgment for the said Nathaniel C Lanny & Robert W. Meiler, when by the Law of the land judgment ought to have been given in favor of the said Edward A. Bedell

To maintain the Error alleged Plaintiff relies on the following authorities, on the Construction of the Statute of Limitations

See Revised Law 1845 p 348 349 See 1 and 4 Statute to be liberally Enforced see

3 Peters Rep 270 3 Cond Rep 51-52

~~See (2) Vol Peters U.S. Dig 3 Cond 39~~

See (2) Vol Peters U.S. Digest 714 § 4. 5. 6. 7. 8.

Statute of Repose same - § 11. 19. 28

Same Book p 717 §

Williams v Williams 5 Ohio Rep 280 5 How 448

Petition and summons well taken in Kentucky though not named Bank v Coyle (2) ¹¹ How 564.

1 McCles. 16. 17.

Roberts v Harry 5 Conn Rep cited in (2) Vol U.S. Digest p 800 § 155-

Heads Executors vs 5th J. G. Marshall
262 Clark vs Schwing (1) Danna 333 5th

In this case action will not lay till after
demand or some equivalent act. (24) Wood 203
204, 205. 4. Blkf. 80. 81. —

Interest not recoverable till after demand
see 15 Pickering 500
12 Pickering 449

9 P. N. 669.
6 Micham. 257

Blackwell for appellee. —
Intest. 3. Craig. 264

19 Feb. 72

Demand: 10. Mass. 244 15 Corn. 52
6. N. Ham. 571 2. Richd. 133
form of action. 4. Saxe 574
6. 9. 7. Ok. 158

6. Peabody. 362.

24 Wm

14 Robt. 477 479
15. Mann. 687
7 Ward. 277

Statute of limitation. Re. Ch. Ch. limitation

1. N. H. 55. 4 Pick. 411 1. B. & H. 532.
Statute 1819. P. 141. 9 & 2. Kamin J. 1455.

Statute. 1827. 184.

1. Pick. 45. 155. Bowd. Bowler. 46-71.
1. Ohio Cond. 615. 75
6. 9. 7. — 485.

Bedell

Jany 3 1827

Argued by

Mitchell

for plaintiff

Blackwell for

def. —

State of Illinois, sct.

THE PEOPLE OF THE STATE OF ILLINOIS,

To the Clerk of the Circuit Court for the County of *McDonough* Greeting:

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of *McDonough* county, before the Judge thereof, between *Nathaniel E. Savary & Robert H. Miller* Copartners trading and doing business under the name and style of *N. E. Savary & Co*
plaintiff and: *Edward A. Bedell*

defendant it is said manifest error hath intervened to the injury of the aforesaid *defendants* as we are informed by *his* complaint, and we being willing that error, if any there be, should be corrected in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly without delay, send to our Justices of our Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Springfield in the county of Sangamon, on the *second Monday in December* next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

WITNESS, the Hon. William Wilson, Chief Justice of our said Court, and the seal thereof at Springfield, this *thirteenth* day of *December* in the year of our Lord one thousand eight hundred and forty- *seven*

R. B. Stocumb

Clerk of the Supreme Court.

By Noah Lovell

Dep. Clk

SUPREME COURT.

Edward A. Bedell

Plaintiff in error,

vs.

Nathl. E. Sawyer
et al

Defendant in error,

Writ of error,

Filed. Dec 13th 1847

R. B. Stewart C. J. C.
By A. D. Willis
D. P.

State of Illinois }
McDonough County } A S C H

Shannon H Purple one of the Justices
of the Supreme Court of the State
of Illinois and presiding Judge
of the fifth Judicial Circuit

A Court ~~was~~ began and
held at the Court House in Macon
in and for the County of McDonough
and State of Illinois on Monday
the seveneenth day of May in the
year of our Lord one thousand eight
hundred and forty seven
Present the Hon

Shannon H Purple Judge
James M Campbell Clerk
Thos Morrison Esq. atty
J Lawson Sheriff

Nathaniel E Sauer &
Robert H Miller copartners
trading and doing business
under the name & style of
N E Sauer & Co.

Edward A Pedell

Went on to wit on the 10th day of
March in the year of our Lord one thou-
sand eight hundred and forty five
The said Plaintiff sued out a Sum-
mons against said Defendant and
which said summons was on Chap
of Venue from Hancock County filed
in the Clerk's office of McDonough County

On appeal
& change of
venue from
Hancock County

County Court Ill. which said summons
is in the words following to wit,
State of Illinois &c.
Hancock County &c.

The people of the State of Illinois
To Any Constable in said County &c.
You are hereby Commaned
to summon Edward A. Deuell to appear
before me at my office in Warsaw
in said County on the 15th day of
March 1845. at the hour of 1. o'clock
P.M. to answer the Complaint of
Nathaniel E. Sanny & Robert H. Miller
Copartners trading and doing business
under the name & style of McSanny &c.
for a failure to pay them a certain
Demand not exceeding One Hundred
Dollars and hereof make due return
as the Law Directs

Given under my hand and Seal
this 10th day of March A.D. 1845.

J. M. Parkwell J. C. Seal

On the back of which said summons was
made the Return of J. M. Charles Constable
which said return is in the words &
figures following to wit,

"I have served the within process
"by reading the same ^{to the said} Defendant
"this 12th day of March A.D. 1845."
J. M. Charles Constable
and therefore to wit on the 7th day of July
1847. was filed with other Records on Change
of Venue as aforesaid in said Cause an
Account in said Hancock County Court and

(No. 5. on Chancery of Vermont) which
 said account is in the words and
 figures following to wit:

"Messrs Montague & Depp
 In case with N E Jarmy & Co
 1838 March 28. for Merchandise this date \$138.80
 Sept 7. By Cash 80.00
 1839 58.80
 Jan'y 31. for Interest 3.64
 1841 \$12.44
 Nov. 22 " Interest 2 years 7 months @ 6% 10.51
72.95
 " " By Cash Rec^d of E. A. Redell 4.00
 1844 15.95.
 Octo 15. For interest 2 years 10 2/3 mon @ 6% 11.42
77.37

Mr. E. A. Redell
 To N E Jarmy & Co D^r

For amt. our claim & interest against
 Montague & Depp to 31. Jan'y 1838

1841 Collected by you 12.44
 Nov 22 Interest 2 years 9 2/3 months @ 6% 10.51
 " " By cash received 72.95
 of you on same 4.00
 1844 65.95.

Oct. 15 For Interest 2 years 10 2/3 mon @ 6% 11.42
 Dr. to E. A. Redell \$77.37

Nathaniel E Jarmy &
 Robert H Miller } N E Jarmy & Co \$78.97

on the Bank of which was written viz No. 5.
 " Filed May 5th 1845 De Head clk
 " Filed July 7. 1847 Campbell clk
 and after more to wit on the 17th day
 of May an order of court was ^{had} in said
 cause which said order is in the words

and figures following following to wit
N^o 1000 y^o H^o

Edward A. Bedell } Appeals
This day came
the Plaintiff by his attorney and
asked leave to withdraw the letter herein
And it is further ordered by the Court that
leave to withdraw letter be granted
upon filing a certified copy of the
same in the Clerks office of said County

(Whereupon this said copy was on
the eighteenth day of May 1847 duly
made out and filed as aforesaid &
which said copy & certificate is in
the words and figures following to wit

" Copy of letter filed upon withdrawal
" of the Original

" Warren Dec. 30th 1838
" Upon N^o 1000 y^o H^o

Dr Sirs

Yours enclosing
a note on Montague & Duff was duly
received and I immediately
informed them that I had the note
and also that you was in want of
the money which they promised to
pay soon but they failed to make good
this promise Mr Duff left for Kentucky
and then I put the note in suit and
I presume it will be collected soon
when I will inform you &c

I have collected fifty dollars
on the note (N^o 1000) Warren and has the proce

promise of the Pal By the first of
month the fifty dollars I can certify
you by mail if you chose to visit it
directed to Messrs with respect
Messrs McJannet & Co. and Estee
Saint Louis Mo. E A Pedell
Which original was filed on the 1st July 1847
"Campbell clk"

State of Illinois
McBorough County

I James Campbell
Clerk of the McBorough Circuit court do
herby certify that the above is a
true copy of the original letter of
E A Pedell to Messrs McJannet & Co.
which said letter by the leave of the
court is withdrawn from the papers
in the case of McJannet & Co. vs E A
Pedell brought into this court by change
of venue from Hancock which
said letter was introduced on the trial
of said cause as evidence therein

Cur: ex
Seal

Intestimony whereof I have
kept set my hand and
Seal of the said court at
Macomb this 18th day of
May 1847

James Campbell clk

Heretofore writ on the fifth day of May
1845 was filed in the Clerk's office of the Cir
cuit court of Hancock Co. and again filed
in the Clerk's office of the Circuit court of
McBorough County Illinois on change of
venue a transcript of the Judgment in

of the Jurisdiction of the peace in case of Mc
Anny He. vs Edward A. Beall was filed
on the 6th Febry 1847. which said transcript
is in the work and figures following
to wit

" Nathaniel E. Sarny and Action of Debt
Robert H. Miller plffs } a note of hand
vs } Demand \$12.26

Montague & Depp vs } Summons issued
Jan. 5th 1839. at Hannibal, Jan 13th 1839
at 12 o'clock M to G. W. Thatcher Consty
State of Illinois

Hancock County } At a court of Justice of
held this 13th day of Jan A.D. 1839.

at the office of and before Samuel Steele
a Justice of the peace in and for said
County This day the summons in
this case being returned (in done
serve the within by Reading to Deft
Montague Jan. 5th 1839. J. P. Wolford

Signed Geo. W. Thatcher C. H. C.

Which action is founded on a note
of hand dated March 28th 1838 four
months after date to Mc Sarny & Co.
or order for \$138.80 Ten per cent after
due Sept 4th 1838 \$80.00 indorsed

Neither the plaintiff or defendant
appearing upon due consideration
it is ordered by the Court that the
plaintiffs herein recover a Judgment
against the said Defendant Montague
for the amount of principal and
interest due on said note amounting
to the sum of Sixty Two dollars and
Twenty Six Cents, debt and also

This cert about this sent in this behalf
Expensed amounting to \$1.26 1/2

Sam Steele J.P. Seal
Execution Issued Feb'y 16th 1839 Returned
Sept 7th 1839 by E.A. Bedell without
any official return

Received same day deliv^d to E.A.
Bedell, Alias (or the last Execution) has
not been returned

I hereby certify that the
foregoing is a true transcript or state-
-ment of the proceedings had before me
in the case before stated Sept. 9th 1841
attest Saml. Steele J.P. Seal

And on the said 1th day of February
1847. on change of venue as aforesaid
in this cause was filed a Receipt
which said Receipt is in the words
and figures following To wit
"Received of J. Cole C. No. Sixty-
three dollars the full amount (of a
Judgment) of a ^{and judgment} Judgment against
John Montague before Saml. Steele
Dec. 18. 1839

(A) N^o. 1 E.A. Bedell.

And on the said 1th day of February
1847 a transcript of the Order and
proceedings has in the Hancock Cir-
cuit Court Illinois was filed and
which said transcript is in the words
and figures following To wit.

State of Illinois }
Hancock County } John Pleas before the Hon-
-orable Norman Mc Purple Judge of the

fifth Judicial Circuit of the State of
Illinois at a Circuit Court began
and hold at the Court House in
Carthage on the third Monday
in the month of October in the year
of our Lord one thousand eight
hundred and forty six
Present the Hon.

Norman H. Purple Judge
Henry Stephens, State Attorney pro Tera
David E. Keena Clerk
Melgar Leuchman Sheriff

Nathaniel E. Jarmy & Robert
H. Miller Copartners having and
doing business under the name and
style of McJarmy & Co

^{vs}
Edward A. Pedell

} Appeal

Wherefore to wit on
the 21st day of May A.D. 1845. at a Cir-
cuit Court in and for said County
then held an order was ~~made~~
of Record in the above ^{entitled} ~~case~~ which
said order is in the words and figures
following to wit

"Nathaniel E. Jarmy & Robert H. &
Miller Copartners having and
doing business under the name
and style of McJarmy & Co

^{vs}
Edward A. Pedell

} Appeal

This day came
Henry Stevens plaintiffs attorney
and entered the appearance of
the said Jarmy & Miller plaintiffs herein

And afterwards to wit on the 23rd day of October AD 1845. An order awarding an attachment herein was entered which said order is in the word and figures following to wit

St E Tammey He;
 ^{vs}
 E A Redell
 Appeal
 3

Ordered that an attachment issue herein against Joshua Cole requiring him to appear at the next Term of this Court and answer for his Contempt in failing to attend as a witness in this Cause he having been lawfully summoned for that purpose And that said be required in the sum of Two Hundred Dollars

And after wards to wit on the said 23rd day of October AD 1845. An order of Continuance was entered herein, which said order is in the word and figures following to wit,

St E Tammey He;
 ^{vs}
 E A Redell
 Appeal
 3

On motion It is ordered that Cause stand continued untill the next Term of this Court at the plaintiffs Costs and It is further ordered that the defendant have and recover of the Plaintiff his Costs by him in this

circuits wharf at this Term of this
Court expended and that he have
Execution thereof

And afterwards went on the 19.
th day of May A.D. 1846. an order
superceding a Jury to be entered
herein which said order is in the
word and figures following to wit

N & Johnny H:
E A Bidell

Appel.

This day came
the parties by their attorneys and Messrs
being joined for trial put themselves
upon the Country thereupon came
the Jurors of a Jury to wit; Samuel R
Findley Joshua Keobart Isaac French
William Heydall Es. Freeman James M.
Renshaw John Slater Albert Thompson
Keram Woodworth R Ostrander Clarke
Wenon and Windsor P. Lyon who being
elected had and sworn well and they
to try the Issue joined herein after
hearing the evidence and argument
of Counsel

And afterwards reported to the Court
that they could not agree, Whereupon
it is ordered that they be discharged
from rendering a verdict herein
(and that they be discharged from
rendering a verdict herein) and
that this Cause stand continued
until the next Term of this Court
And afterwards to wit on

And afterwards to wit on the said
19th day of May AD 1846. An order
awarding an attachment to
herein was entered which said order
is in the words and figures following
to wit

" A & Janny H^o

^{vs}
Edward A Bidell

Appeal

On motion of

is ordered that an attachment
issue herein against Joshua Cole re-
quiring him to appear instantly
and show cause why he should
not be fined for a contempt of Court
for failing to attend ~~as~~ a witness
in the above entitled cause he
having been lawfully summoned
for that purpose.

And after wards to wit on the
20th day of October AD 1846 an
order ~~of~~ (~~Court~~) changing the
venue of the foregoing cause
which said order is in the words
and figures following to wit

A & Janny H^o

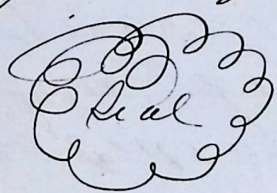
^{vs}
Edward A Bidell

Appeal

This day came
defendant by his attorney and
entered his motion on affidavit
filed for a change of venue
herein, whereupon after hearing

The arguments of Counsel it is ordered
that the said motion be sustained
and that the venue of this cause be
changed to McDonough County and
that the clerk of this Court do certify

State of Illinois }
Wheanock County } I, David E Head
clerk of the circuit court in and
for said County do hereby certify
that the above and foregoing Trans-
cript containing a true and perfect
copy of all the orders entered of
record in my office in the above
entitled Cause and that the original
papers herunto sent were bound from
One to thirty five and all the papers
pertaining to said Cause as the
same appear from the Record and
files of my office



In testimony whereof I have
herunto set my hand and
affixed the seal of said Court
at my office in Carthage
this 25th day of January
A.D. 1847

David E Head Clerk

And afterwards went on the 17th day
of May in the year of our Lord One
Thousand Eight hundred and forty seven
an order of Court herein was entered
which said order is in the words and
figures following to wit:

N & Sarnay Ho:

E A Beadell

Appeal

This day came the parties by their attorneys and issue being found for trial they put themselves upon the Country whereupon came the Jurors of a Jury to wit Sarnay Hoings, Will^l Style George W Smith Robert McCampsey William Drain Logan McClure William McCandless B. T. Naylor Jacob Stickle Charles Keenworthy Nathaniel Keam & Hiram Patman who being Elected tried and sworn well and truly to try the Issue joined herein upon their Oaths do say we the Jury find for the plaintiff the amount Sixty Three dollars and twenty eight Cents their Damages; whereupon the said Defendant by his attorney entered his motion for a new trial;

And afterwards to wit on the 18th day of May A.D. 1857. an order of Court herein was had which said Order of said Court is in the words and figures following to wit

Nathaniel E Sarnay and Robert Ke Miller Copartners trading and doing Business under the name and style of

N & Sarnay Ho:

Edwards A Beadell

Appeal

And now again came
the parties and their attorneys and on
the motion entered herein for a new
trial after hearing the argument
of Counsel It is considered by the
Court that the said motion be
Overruled.

And it is further ordered
that the said plaintiffs have and
recover of the said Defendants the sum
of sixty three dollars and
thirty cents of twenty eight dollars
and three and a half cents assessed by
the Jury empowered herein on yester-
day together with their costs in this
cause by them laid out and expen-
ded and may have execution there-
for &c

And after record to wit on the 18th
day of May AD 1847. The said
Defendant filed as of Record his
ple of Exceptions, which said
ple of exceptions herein is in the
word and figures following to wit

"McDonough Circuit Court
Nathaniel E. Searcy (May Term 1847)
& Robert Miller Copartners trading
and doing business under
the name & style of
N. E. Searcy & Co;

Edwards & Peckel } Appeal
Be it remembered
that on the trial of this cause the plain-

= Tuffs in support of and to prove the following account (here insert account of plaintiff)

Filed March 5.
 Messrs Montague & Depp
 1838 In account with N E Sarny & Co.
 March 28. For merchandise this date 138 80
 Sept 7. By Cash 80 00
 1839 58 80
 Jan 31. For interest 3. 14
 1841. 62. 44
 Nov. 22 Interest 2 years 9 ²/₃ Ann @ 6% 10 57
 72. 95.
 " " By cash Rec^d of E A Redell 7 00
 1844. 65 95
 Oct 15. For Interest 2 years 10 ²/₃ Ann @ 6% 11 42
 77 37

M^r: E A Redell
 To N E Sarny & Co.
 D^r.

For amount claim & int account

Montague & Depp (to 31. Jan 1838) Collectible by you 62,44
 1841. Nov. 22. Interest 2 years 9 ²/₃ Ann @ 6% 1057.
 7295.
 " " By Cash rec^d of you on Sarny 7 00
 1844 65.95
 Oct 15 For Interest 2 years 10 ²/₃ Ann @ 6% 11. 42
 due N E S. & Co; \$ 77 37

Nathaniel Sarny
 Robert Mc Miller
 N E Sarny & Co. \$ 78 97
 offend to read in evidence the following letter (here insert letter of Redell filed number N. 30.) " Copy of letter filed upon withdrawal of the original.

Mess N E Sarny & Co. Warsaw Dec. 30 1838

De Sirs. Your inclosing

a note on Montague & Depp was duly received and Memorably informed them that I had the note and also that you was in want of the money which they promised to pay soon But they failed to make good their promise Mr Depp left for Kentucky and then I put the note in suit and I presume it will be collected soon when I will inform you &c

I have collected fifty dollars on the note (or) Warren and have the promise of the Pal by the first of March The fifty dollars I can remit you by mail if you choose to risk it

Yours with respect and Esteem
"Deceased to Messrs E Sarnum & Co: E A Redell
St Louis Mo"

"Filed July 6. 1847 Campbell etc"
State of Illinois }
McDonough County } J. S. J. James M. Campbell
Clerk of the ^{McDonough} Circuit Court do hereby
certify that the above is a true
copy of the Original Letter of E A
Redell to Messrs E Sarnum & Co; which
said letter by the leave of the Court
is withdrawn from the papers in
the case of Messrs Sarnum & Co; and since
brought into this Court by Change of
Venue from ~~Warren~~ the County of Stan-
cork which said letter was introduced
on the trial of said cause as evidence therein
In testimony whereof

5th

Real

have herunto set my hand and seal of ^{office} of the Court at Macomb this 18th day of May 1847.

James M. Campbell (the defendant) with the moving of which, at the time objected and the Court overruled said objection and permitted the same to be read to the Jury to which the defendant at the time the same was done excepted the defendants attorney admitted that the letter offered was in the hand writing of said Pedell.

The plaintiff then offered to read in evidence the following writing (here insert transcript certified by Samuel Steel J.P. filed in this case and marked No. 2 h.)

Nathaniel E. Jammy and Robert W. Miller Plaintiffs } Action of Debt on Note of Hand demand \$12.26. Summons

Montague D. Depp (defendant) versus Jan 11th 1839 returnable Jan 15th 1839 at 12 o'clock M. State of Illinois } at a court of Justice Hancock County held this 13th day of Jan. AD 1839. at the office of and before Saml. Steel a Justice of the peace in and for said County.

This day the summons in this case being returned (and does send the writ in by making to Deft. Montague, Jan. 5th 1839 Deft. not found.

Signed Geo. W. Thatcher C. C. which action is founded on a note of hand dated March 28th 1838 four

months after date to McCarney & Co.
or order for \$138 80 ten per cent after
due Sept 4th 1838 \$80,00 in or out
Neither ^{the} plaintiff or defendant app-
earing upon due consideration it is
ordered by the Court that the plaintiffs
be and recover a judgment against
the said defendant Montague for the
amount of principal and interest
due on said note amounting to the
sum of Sixty two dollars and Twenty-
six cents debt and also their costs
about their suit in this behalf ex-
pended amounting to \$126⁰⁰

Saml. Steele J.P. (Seal)
Execution issued Feb 16th 1839 Returned
Sept. 4th 1839 by E. A. Bidell without
any official return, Renewed
same day del. to E. A. Bidell, alias
(or the last execution) has not been
returned

I hereby certify that the
 foregoing is a true transcript or
statement of the proceedings had
before me in the case before stated
Sept 9th 1844

Attest Saml. Steele J.P. (Seal)
To the passing of which to the Jury
the defendant at the time objected
and the Court overruled the objection
and permitted the same to be read to the
Jury to which the defendant at the
time excepted. The only ground of
objection to the transcript was that
it contained statements of certain

facts which the culpable of the Justice could not be evidence of. The Court informed the Counsel that if such was the case that portion of the same would upon instructions if asked be excluded from the Jury.

The plaintiffs then offered in evidence the following paper ^{hence} annexed marked (A) and numbered "3" signed by E. A. Bidell (here insert a copy) Received of J. Cole C. H. C. sixty three Dollars the full amount of a ^{and judgment} judgment against John Montague before Samuel Steele Dec. 18. 1839.

E. A. Bidell

(A) N.º "3": To the reading of which paper to the Jury the Defendant at the time objected but the Court overruled said objection and permitted the same to be read to the Jury to which the assent of the Defendant at the time the same was done excepted. The signature of Bidell to this paper was also admitted - The plaintiffs then called one Cole who testified that he in the year A. D. 1839 was a constable of Hancock County that as such constable he received for collection on Execution issued by Samuel Steele in favor of the Plaintiffs and against John Montague that he collected the same and paid the same over to the Defendant as the agent of the plaintiffs in the

Collection of the same in the year
AD 1839 and that the same was about
\$10.

This was all the evidence
The defendant on going into trial
notified the plaintiffs attorney that
he should set up and insist upon the
Statute of Limitations in this cause,
and did set up and insist that the
plaintiffs action and claim were
barred in Law on the trial of
said cause.

The defendant then moved the
Court to instruct the Jury ^{1st} that
if they believed from the Evidence
that the plaintiffs demand existed
and cause of action said on in
this cause accrued to the plaintiffs
more than five years next before the
Commencement of this Suit that then
the plaintiffs could not recover unless
the Defendant within five years next
before the Commencement of this
Suit had in some manner ad-
mitted the same to be repaid or
made some, the Court refused to give
but did ~~insist~~ instruct the Jury that
if they believed from the Evidence
that the plaintiffs in the year 1838
sent to the defendant from St Louis
a claim in this favor for collection
for them and that the plaintiff
had not called on the defendant or
in some manner made demand for
the money collected on the same before

6th

before the commencement of this Suit they cannot in this action cover the amount of the same

3^o That they should not take into their consideration any evidence before them which did not apply to the demand sued on

The first and second instructions as asked were refused The third was given with the qualification "that the Court was not advised that any evidence inapplicable to the plaintiffs claim sued on had been given but of this the Jury would judge"

The Court then instructed the Jury "that the action of assumpsit was barred by the Statute of Limitations in five years after the cause of action accrued that this suit having been commenced before the Statute of the peace that upon the claim either debt or assumpsit would lie that to an action of Debt upon such a claim our Statute had interposed no limitation and that consequently upon such action the limitation in the opinion of the Court remains as at common Law and the claim would only be barred by the lapse of twenty years from the time such action accrued that the action of Debt became the most beneficial form of action for the plaintiffs he had

a right to treat this as such action
The Court further instructed the
Jury with reference to the 2^d
instructions asked by the Defendant

"That if the plaintiff had entrusted
the defendant with the collection
of money for their use (~~the collection~~)
that ordinarily before this action
could be maintained a demand
should be made for the money so
collected but that in this case if
from the lapse of time or other
circumstances appearing in the
case they were satisfied that the
defendant had collected money belong-
ing to the plaintiff and had converted
the same to his own use then no demand
for the same would be necessary.

And further that if they believe from
the evidence that money had been so
collected and appropriated and
there had been an unreasonable or
dilatatory delay of payment of the same
the Plaintiff were entitled to recover inter-
est on the amount so collected
deducting a reasonable compensation
for Defendants services in collecting
the same.

The Jury returned into court and
~~rendered~~ a verdict that they found for
the plaintiff the amount collected
by him and interest; the Court then
declined the Jury again to retire and
instructed them that if they found
for the plaintiff they would find

the plaintiffs debt which would be
the amount of money collected
by defendant and not paid over
to the plaintiffs that whatever interest they
found the plaintiffs entitled to
recover they would return as the
plaintiffs demands in this verdict
The Jury afterwards returned into
Court their verdict for the plaintiffs
for \$ debt and \$ ^{damages}
Which several opinions and
decisions of the Court in overruling
defendants objections to evidence
offered and in refusing ~~to~~ to give
the instructions asked for by Defendant
and in giving the said instruc-
tions and qualifications by the
Court given the defendant at
the time the same were ~~made~~
excepted, and prays that this his
Bill of Exceptions may be made
a part of the record signed and
sealed which is ~~done~~ accordingly
done

M. H. Purple

And the Jury having returned
into Court with a verdict in favor
of the plaintiffs the Defendant
returned his motion for a new
trial on the grounds that the verdict
was against the evidence that the
verdict was against the Law, that
the Court erred in not giving the
instructions asked for by Defendant

and in giving the instructions given
by the Court that the Court admitted
improper testimony to go to the
jury that the Court erred in giving
instructions as qualified that the
Verdict is ~~in~~ ⁱⁿ error which motion
the Court overruled to which
decision of the Court in overruling
said motion the defendant
at the time the same was done
excepted and prays ^{that} this his bill
be signed sealed & made a
part of the Record which is ~~done~~
accordingly done
A. H. Purple Clerk

State of Illinois }
McDonough County }
I James M Campbell Clerk
of the Circuit Court in and for said
County & State do hereby certify that
the above and here going is a true and
correct copy of the original Record &
papers now on file in of Record in
the said Clerk's office and that the
Order and proceedings therein are
fully and truly copied from the
original Recorded Order; therein
in testimony whereof I have
hereunto set my hand and
affixed the seal of said
Court at my office in
Macomb this 28th day
of October AD 1847
James M Campbell Clerk

Yes for Transcript \$ 12.62 1/2
" " Certificate Seal 50.
\$ 13.12 1/2

Edward A. Bedell plff in Error
Against } Decade Term A.D. 1847 S. P. C. Ia
Nathaniel E. Janney &
Robert H. Miller Copartners trading and doing business under
the name and style of N. E. Janney & Co.

And the said Edward A. Bedell now comes and
says that in the Record and proceedings aforesaid there is
Error both intervened to his prejudice in this (work)

- 1 The Court Erred in overruling the objections of the Defendant below to the evidence of the Plaintiff offered herein and objected to by defendant and permitting the same to go to the Jury
- 2 The Court also Erred in refusing to give the instructions asked by the Defendant -
- 3 The Court Erred in ~~giving~~ giving the instructions given to the Jury by the Court
- 4 The Court Erred in the Qualifications given to the instructions ~~asked~~ by the Court and in giving the Qualification instructions - to the Jury
- 5 The Court Erred refusing to set aside the verdict reached herein and not granting to the Defendant below a new trial in the case

6 The Court in Entering Judgment here on the
Verdict rendered against the defendant below

7 The Court Erred in rendering Judgment for
the said Nathaniel E Gonyea and Robert Miller
when by the Law of the Land Judgment ought
to have been given in favour of the said Edward
A Bidell

Therefore the said Edward A Bidell prays
that a citation may issue and that the said Judg-
ment may be reversed and that he may be restored
to all things which he has lost by reason thereof.
Attorney for Plaintiff

At & I annex et al
vs
E A Bidell

And the said defendants come by
R S Blackwell their attorney come and say
that in the record and proceedings aforesaid
and in the rendition of the judgments aforesaid
there is not any error, and thus they are
ready to verify by the record &c wherefore they
pray judge &c.

R S Blackwell p. d.

E A Pedell

NY {
 { Manuscript
 { of Record
 { McDougall Co
 { Secy
Mc Janny Ho^o

Transcript

Filed Dec 18th 1847
R.B. Slocumb C.S. Co
By Noah Divilbiss
D.C.

13924
Rec #5. R.B.S.
By A.D.