No. 14432

Supreme Court of Illinois

Billings

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vs.

Lafferty

71641 7

STATE OF ILLINOIS,

SUPREME COURT,

Third Grand Division

No. 130

Billings

vs

Lafferty

1863

14432

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM THEREOF, A. D. 1863.

WILLIAM BILLINGS
vs.
WILLIAM LAFFERTY. } *Error to Warren.*

POINTS AND AUTHORITIES.

I.

The error of the defendant, in taking bond in the penal sum of forty dollars instead of fifty dollars, was not such a violation of duty as gives the plaintiff in this case a right of action, for the plain reason that this penalty is required by statute in all appeals for the purpose of securing the judgment and costs. And the bond in this case did in fact furnish such security, since the judgment and costs amounted to but the sum of thirty-one dollars.

Rev. Stat., chap. 59, § 59.

II.

The statute of forcible detainer requires that the appeal bond shall contain a "clause conditioned for the payment of all rents becoming due, if any, from the commencement of the suit until the final determination thereof."

The defendant inserted this clause in the appeal bond.

The statute did not in terms authorize an increase of the penal sum. Nor has this been the practice. Such provision, without an increase of the penalty, is useless.

Is it the true construction that the bond should contain a clause covenanting to pay rents? Such omission is not charged as an error committed by defendant in the declaration, and therefore furnishes no ground for sustaining the declaration.

As to the increase of the penalty, if that be held his duty, it would be hard indeed to hold a clerk responsible for a mistake which most persons, however learned in the law, would have made.

III.

But if defendant's duty was to provide by an increase of the penalty for the rents, then a discretion was vested in him as to the taking of the bond, which makes the act of approval judicial.

So Purple, Judge, held the act of the Clerk of the County Commissioners' Court, in fixing the penalty of the bond of a Justice.

People *vs.* Percells, 3 Gil. 63.

If the act be judicial, then the defendant is protected *pro hac vice* by the well settled principle of law, that for a judicial act no action lies.

Tompkins *vs.* Sands, 8 Wend. 469.

IV.

The allegations of the declaration are insufficient to make the defendant liable for approving the bond, without providing for the rents.

1. The declaration does not show that Thorne was the tenant of Billings, nor the terms of the tenancy under which the rent accrued. The averment is that $240 became due as rent.

Now, this is a conclusion of law and not a statement of facts. If it could be regarded as a statement of facts, it is so general a statement as to admit of almost any proof to sustain it. This is an action *ex delicto*,

and strictness of pleading ought to be required in order to charge an individual with such a liability.

1 M. & S. 440.
1 Chit. Plead. 232.

The facts are peculiarly within the knowledge of the plaintiff and constitute his proof of losses sustained.

The cardinal principle of pleading is violated by such general averment. Here is not a clear and distinct statement of the facts which constitute his cause of action, so that they may be understood by the defendant who is to answer him. The certainty required in such case is that of a certain intent; in general, such a statement that we may know what is intended to be proved.

1 Chit. 233.

The exception to the rules of pleading that, where a matter tends to great prolixity, a concise manner of pleading may be admitted, finds no place save when the matter lies within the knowledge of the party against whom the pleading containing the general allegation is made.

Com. Dig. Pleader, (C) 26.
9 Co. 61.
Cro. Jac. 304.

V.

The declaration fails to show that the defendant knew, or had notice, that rent was becoming due plaintiff.

Without this knowledge or notice, to hold the defendant bound to provide for any amount of rent, by the terms of the bond, seems absurd, because requiring an impossibility. Before a public officer can be made responsible for an act done in the course and discharge of his duty, it must appear that his attention was called to all the facts necessary to enable him to form a judgment as to the course he ought to have pursued.

3 Bingham, 82.
(11 Eng. C. L. 86.)

Lafferty was bound to take notice of nothing that did not appear on the face of the transcript, if shown him, or of statements made to him when he approved the bond. He was bound to approve a proper bond

when presented. In fact, the bond approved by him did provide fully for the judgment and costs, as the result proved. He added a clause conditioned for the payment of the rents, if any, in terms as required by statute. Before the plaintiff can be heard to complain of the penalty of the bond, conceding defendant's right and duty to increase it to provide for the rents, he must show that the facts on which he now relies to charge the defendant were made known to the defendant, or that defendant had an opportunity of knowing them. *His duty was to notify* the officer of his claim for rent, and its amount. Failing this, he could not ask the officer to provide for it, in ignorance both of the claim and its amount.

8 East, 113.

His remedy was effectual, viz: to notify the defendant before the bond was approved, and afford him an opportunity of judging of all the circumstances under which he was called to act.

11 Met. 345.

Nor upon the same principle can the defendant be made even technically liable for approving the appeal bond with a penalty less than double the judgment and costs, unless it be shown also that he was informed or knew the amount of the judgment and costs.

The declaration is defective in failing to aver the "*scienter*." It is surely as necessary to aver and prove the knowledge of the defendant of the facts which impose upon him the duty in this action, as in the case of actions for keeping a dog to bite mankind or sheep, or for enticing away a servant or apprentice.

Chit. Pl. 389.

Where the act is not in and of itself wrongful, and does not in and of itself show itself to be an injury, the particular acts must be shown with convenient certainty.

Chit. 235.

Here the very gist of the matter would seem to be in wilful violation of duty. This is sought to be the charge, but it is only made by the general averment of "wrongfully and unjustly intending" to injure. Now, these general words are like the words "suspiciously," "duly," "lawfully;" they seldom avail in pleading.

Chit. Pl. 285.

VI.

The words of the declaration, "wrongfully and unjustly intending to injure the plaintiff," are not sufficient to amount to an averment of malice.

In Saxon *vs.* Castles, 8 Ad. and E. 652, these words are held insufficient in an action for arrest without probable cause.

This case must be carefully distinguished from those where the declaration *charges knowledge or notice*, or where the facts on their face impart such knowledge or notice.

In the case of Drewe *vs.* Coulton, note b, 1 East, 554, the declaration charged the defendant with "knowing" &c., "and contriving and wrongfully intending," &c. The Court says: "This is, in the nature of it, an action for misbehavior by a public officer in his duty. Now, I think it cannot be called a misbehavior unless maliciously and wilfully done, and that the action will not lie for a mistake in law. * The misbehavior must be wilful, and by wilful I understand against a man's own conviction."

In Harman *vs.* Tappenden *et al.*, 1 East, 555, the Court say: "There is no instance of an action of this sort," (case to recover damages for disfranchisement,) "maintained for an act arising merely from error of judgment. Perhaps the action might have been maintained if it had been proved that the defendant's contriving and intending to injure and prejudice the plaintiff, and to deprive him of the benefit of his profits from the fishery which, as a member of this body, he was entitled to, according to the custom, had *wilfully* and *maliciously* procured him to be disfranchised, in consequence of which he was deprived of such profits. Here there was no evidence of any wilful and malicious intention, * * which is necessary to maintain this action."

The same principle is recognized in 11 Johns. 114, and 8 Cowen, 185.

In Tompkins *vs.* Sands, 8 Wend. 468, Ch. J. Savage said: "The question presented in this case is, whether a justice, who wilfully and maliciously refuses to approve the surety in an appeal bond, and thereby prevents a defendant from appealing his case, is liable to an action therefor. The plaintiff does not impugn the doctrine of judicial irresponsibility, but relies on the point that the act complained of was not a judicial, but a ministerial act," * the action can not be sustained unless it appears that the act complained of was done maliciously and wilfully. The *strongest* charge in the declaration in this case is, that the defendant, acting as Justice of the Peace, has *unjustly* and *oppressively* pre-

vented the plaintiff from appealing and thereby reversing a judgment rendered by him, &c. *I incline to think this equal to a charge of corruption.*" The declaration in that case, which was commenced before a Justice, set forth the fact that the surety appeared before the defendant and offered to prove his sufficiency, &c. This ruling was made on error to reverse a judgment of non-suit, no objection having been taken to the declaration.

VII.

The action of the Clerk in approval of the bond, if a discretion was vested in him to provide by increase of penalty for the rents, was a judicial act. He must inquire whether rent is due, and how much may become due, and receive and have evidence upon the subject.

It is a delicate and important trust, and there is no good reason why the shield of judicial irresponsibility should not be thrown around one exercising this judicial function. "The doctrine which holds a judge exempt from a civil suit or indictment, for any act done, or omitted to be done by him sitting as judge, has a deep root in the common law."

Kent. Ch. J. 5 Johns 291.

In 8 Cowan 178, Ch. J. Savage comments upon and upholds the same doctrine.

Certain it is, that the defendant was vested with a special authority, and was compellable to act under it, and clear and distinct charges of malice and wilfulness in his wrongful act ought to be required in the declaration before his responsibility commences—and a cause of action is shown on the record.

GEO. F. HARDING,
Attorney for Defendant in Error.

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William Billings

vs

William Lafferty

Defts Points

Filed April 29th 1863

L. Leland
Clerk

~~Pittmans~~

~~Opinion of the Court by~~

~~Lafferty~~ Mr. Chief Justice Caton, delivered the opinion of the Court:

~~Caton C.J.~~ Admitting that it was necessary for the plaintiff, ~~and the act wilfully~~ to show in the declaration that the defendant did maliciously, in order to maintain the action, we think these averments sufficient to that. The language of the declaration is, "conniving, and wrongfully and unjustly intending, to injure the plaintiff, and to deprive him of the benefit of his said judgment." Now if this be true, it stated both maliciously and wilfully. If he accepted this bond for the purpose, wrongfully and unjustly, of depriving the plaintiff of his rights, this was the very essence of malice. And such is the substance of this averment. We think the declaration should have been sustained. The judgment is reversed, and the cause remanded, with leave to the defendant to plead.

~~On this opinion the whole Court concurred.~~

Judgment reversed, and cause remanded.

~~Pittmans~~

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~~Lafferty~~ Mr. Chief Justice Caton, delivered the opinion of the Court:

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~~On this opinion the whole Court concurred.~~

Judgment reversed, and cause remanded.

Billings
vs
Lafferty

Opinion
Carlton

Cook

Records Book 13
R 69

STATE OF ILLINOIS, THIRD GRAND DIVISION.

WILLIAM BILLINGS,

VS.

WILLIAM LAFERTY.

ERROR TO WARREN.

SUPREME COURT, APRIL TERM, 1863.

ABSTRACT.

On the 24th day of September, 1862, William Billings commenced an
1 action of Trespass on the case in the Warren Circuit Court against William Laferty, and filed the following declaration:

William Billings, Plaintiff, herein complains of William Laferty, Defendant, herein, who has been summoned to answer unto the said plaintiff of a plea of trespass on the case.

For that, whereas, heretofore, to-wit: On the 16th day of April A. D. 1860, at said county of Warren, said plaintiff, by the consideration and judgment of one Elisha Nye, a Justice of the Peace, then and there duly acting, and duly empowered to then and there act as such Justice of the Peace, obtained a judgment in his said plaintiff's favor, and against one Rufus B. Thorn, in a suit then and there pending and at issue before said Nye, a Justice as aforesaid, of Forcible Detainer, for the recovery of the possession of the following described premises, to-wit: The east half of south-west quarter of section thirteen, in township nine north of the base line of range three west of the fourth principal meridian, in Warren county and State of Illinois, of guilty; and that he have a Writ of Restitution therefor; and also in the further sum of $25,31, costs of said suit. From which said judgment the said Rufus B. Thorn, afterwards, to-wit: April 18th, 1860, took an appeal to the next term of said Warren County Circuit Court, it being the October Term A. D. 1860, according to the statute in such case made and provided, and then and there, under his hand and seal, together with James H. Sharp, George R. Gordon, and William Johnson, under their like hands and seals, in pursuance of the statute in such case made and provided, made their joint and several bond or writing obligatory, by which bond they bound themselves, their heirs and administrators, in a penalty therein mentioned, to-wit: the sum of forty dollars, and dated April 16th, A. D. 1860, with the condition, that if the said Rufus B. Thorn should prosecute the said appeal with effect, and should pay whatever judgment might be rendered by said court, upon dismissal or trial of said appeal, and should pay all rents becoming due, if any, from the commencement of said suit until the final determination thereof, then the said obligation to be void, otherwise to remain in full force and effect; and said Rufus B. Thorn, being then and there principal, and said Sharp and Gordon and Johnson being security in said obligation, the same obligation was then and there, to-wit: on said 18th day of April A. D. 1860, and in pursuance of the statute in such case made and provided, presented to the said defendant, who was then and there the acting clerk of the Circuit Court of said county of Warren, for his approval or rejection thereof; and said plaintiff avers that the said penalty, to-wit: forty dollars, mentioned and set forth in said bond, was not double the amount of judgment and costs in said cause

before said Justice, as is provided by the statute in such case, and was not sufficient to indemnify or satisfy the said plaintiff in any judgment which might be rendered by said circuit court, upon dismissal or trial of said appeal; provided that said Thorn did not, or should not, prosecute his said appeal with effect, and was not sufficient to indemnify or satisfy the said plaintiff for the rents becoming due him from the time of the commencement of said suit until its final determination upon said premises, as above described; provided, that said Thorn should not prosecute his said appeal with effect, as provided by the statute in such case; and although it was the duty of the said William Laferty, defendant herein, acting as clerk as aforesaid, to have rejected the bond for each and all the defects and considerations aforesaid. Nevertheless, the said defendant, so being clerk as aforesaid, not regarding his official duty in that behalf, but contriving, and wrongfully and unjustly intending to injure the said plaintiff, and deprive him of the benefit of his said judgment before said justice, and whatever judgment the said circuit court might render in his behalf, and of the means of obtaining satisfaction for whatever judgment might be rendered by said circuit court in his behalf, and the rents becoming due from the commencement of said suit until the final determination thereof, as aforesaid, did not, nor would not, reject the said bond, but on the contrary, wrongfully and injuriously approved, accepted and filed the same at that time, to-wit: April 18th A. D. 1860, in said clerk's office, to-wit: at Warren county aforesaid.

And said plaintiff avers that said appeal of said Thorn, having been perfected by the wrongful act of said defendant, as aforesaid, the same appeal was duly entered by said defendant, as clerk, in the October Term, A. D. 1860, of said circuit court, at which term of said court, to-wit: November 17th, A. D. 1860, by the consideration and judgment of said circuit court, the appeal was then and there dismissed, the said court, being then and there empowered to dismiss the same; and it was further adjudged by the court, that then and there the said Plaintiff recover judgment against said defendant Rufus B. Thorn in that suit for his costs in and about the prosecution of said suit as aforesaid.

And said plaintiff avers that said suit was commenced on the 9th day of April A. D. 1860, and that from the time of the commencement of said suit until the final determination thereof as aforesaid, at the county aforesaid, the sum of two hundred and forty dollars did become due, and was due, at the time of the commencement of this suit, from said Thorn to this plaintiff, as and for the rent of said premises above described, and for the recovery of the possession of which said plaintiff instituted the said suit against said Thorn; nevertheless the said Rufus B. Thorn hath not as yet, though often requested, nor either of said securities in said Bond, though often requested, nor any person for them, paid the said plaintiff the rent becoming due from the commencement of said suit, until the final determination thereof, to-wit: the sum of two hundred and forty dollars aforesaid; and hath not paid to the said plaintiff the amount of said judgment of said circuit court for costs aforesaid, or any part thereof, upon the dismissal of said appeal, as aforesaid, and did not prosecute his said appeal with effect; but the said judgment and costs of said court, as well as the costs of said suit made before the said Justice, and the judgment therefor rendered by said Justice, to-wit: twenty-five and 31-100 dollars still remain in full force, form and effect, and not in any respect annulled, discharged, paid off, or satisfied; all of which said defendant has been duly notified by said plaintiff; nor hath said defendant paid off or answered to the said plaintiff for the rent accruing on said premises as aforesaid, or said costs as aforesaid, or said judgment as aforesaid, or any or either of them, or any part thereof; and said plaintiff avers that said Rufus B. Thorn, before the time of the rendition of said judgment, to-wit: November 17, A. D. 1860, became, and was, totally insolvent, and absconded from the State of Illinois, and was at the same time

utterly worthless, and has ever since that time been insolvent and a non-resident of the State of Illinois; and by reason of the premises, the said plaintiff hath been and is wholly deprived of the said judgment and costs, and the said rent so accrueing and becoming due on said premises as aforesaid, and of the benefit of such bond as said defendant was authorized by law to accept and approve as clerk as aforesaid, upon the appeal of said Thorn as aforesaid, and of the means of satisfying said judgment and costs and rents as aforesaid, except the said sum of forty dollars, the penalty of said bond aforesaid, which amount was utterly and entirely insufficient to pay or satisfy the same, to-wit: at Warren county, aforesaid, to the damage of said Plaintiff of five hundred dollars, and therefore he brings suit, &c.

To which declaration the defendant filed a general demurrer, which was sustained by the court, and the Plaintiff asked leave to amend his declaration; but subsequently, by agreement of parties in open court, the Plaintiff withdrew his amendments and abided by his original declaration and the demurrer thereto, and the court rendered final judgment upon said demurrer and against said Plaintiff for costs.

The plaintiff brings said cause to this court by writ of error, and assigns the following, to-wit:

1 The court erred in sustaining the demurrer of defendant in error to said declaration.

2 The court erred in rendering final judgment on said demurrer, against said plaintiff in error, for costs.

A. G. KIRKPATRICK,
For Plaintiff in Error.

BRIEF AND POINTS OF PLAINTIFF IN ERROR.

The defendant was a ministerial officer, and the act complained of was purely ministerial. The statute gave him no discretion as to the amount of the penalty of the appeal bond. The penalty in the bond was required by the statute to be twice the amount of the judgment and costs; and here the costs alone were $25,31, while the penalty was but $40.

This case is distinguishable from the case of an official act of a public officer, or an act of a ministerial officer, where the statute has invested such officer with a discretion in regard to such act; and the authorities referred to by the defendant will, upon examination, be found to relate to this latter class of cases.

The ground upon which the learned judge sustained the demurrer, was, that the declaration did not charge that defendant did the act maliciously and wilfully. With the latter class of cases this might be necessary, but in a case like the present, the question of good faith or bad faith has nothing to do with the case, and is entirely immaterial. The statute required the penalty in the bond to be twice the amount of the judgment and costs. If it were not twice that amount, it was the duty of the clerk to have rejected it. This was imperative. Maliciousness and wilfulness can have nothing to do with the case.

The Supreme Court of the United States, in the case of Tracy, et al, vs. Swartwort, 10 Peters 95, decided that "It would be a most dangerous prin-"ciple to establish, that the acts of a ministerial officer, when done in good "faith, however injurious to private rights, and unsupported by law, should "afford no ground for legal redress. * * * * * *
"Where a ministerial officer acts in good faith, for an injury done, he is "not liable for exemplary damages; but he can claim no further exemption "when his acts are clearly against law."

In the case of Briggs vs. Wardwell, 10 Mass. 356, the Justice of the Peace, in ignorance of the law, issued a warrant within 24 hours of the judgment, when he was only authorized by law so to do, after the expiration of 24 hours; and the defendant, upon being arrested, paid the judgment, and then brought trespass against the Justice.

The court say "That the conduct of the defendant which is complained "of, arose from ignorance of the law, and not from any corrupt or malicious "intentions. It is also difficult to imagine any considerable injury which "the Plaintiff could sustain by being arrested a few hours earlier than by "law he should have been.

"A judicial officer acting honestly in a case when he has jurisdiction of "the matter and of the persons, is not liable to the suit of the party pre- "judiced by his mistake of law. But the question returns whether this is "a judicial act: after a Justice of the Peace has entered judgment and "adjourned the court, he is no longer acting as a judge in that case; when "the judgment is duly entered the law awards an execution. There is no "judicial discretion to be exercised upon the subject; the party may de- "mand it of right within the limitations as to the time prescribed by "statute; and there can be no doubt, that he might maintain an action "against the clerk of any court, who would refuse in such case to issue the "execution. We are therefore of opinion that the issuing of the execution "in this case, was the ministerial act of the defendant, for which he is liable "in like manner as the clerk of any court would be, who should, without "any order of court, issue an execution contrary to the provisions of the "statute."

The same rule is laid down in New York, in the case of

Tompkins vs. Sands. 8 Wendall, 462. 1 Chitty Pl 389
Vermont, 2 Tyler 177.
North Carolina, Hardison vs. Jordan, Cam. and Nor. 454.
California, Miller vs. Sanderson, 10 Cal. 489.
Connecticut Smith v Frank 1 Root 165

The case of Lusk vs. Carlin, 4 Scam. 395, was an action on the Recorder's bond, and the strongest charges in the declaration are that the defendant was "unfaithful, careless, inattentive, and incorrect," and the Supreme Court decide that it showed sufficient grounds for maintaining an action against the Recorder.

In Napper, et al. vs. Short, 17 Ill., 120, the court say that "If clerks will "undertake to dischare the duties of an office for which they are not qual- "ified, they must be held to the same accountability as if they were quali- "fied, but knowingly neglected their duties."

The averments in the declaration are such as are used in Chitty P. against ministerial officers: and if it had been necessary to show willfulness or cor-

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William Billings

v

William Lafurty

abstract & Brief

Filed April 20th 1863

S. Leland

Clerk

Be it Remembered that on the 24th Day of September AD 1862 a Declaration & Praecipe was filed in the office of the Clerk of the circuit Court of Ware County Illinois which is in the words and figures following to Wit;

State of Illinois } Ware Circuit Court
Ware County } October Term AD 1862

William Billings Plaintiff herein Complains of William Lafuty defendant herein who has been Summoned to answer unto the said Plaintiff of a plea of Trespass on the Case,

For that whereas heretofore to Wit on the 16th day of April AD 1860 at said County of Ware said Plaintiff by the Consideration & Judgment of One Elisha Skye a Justice of the peace then and there duly acting and duly empowered to then and there act as such Justice of the peace obtained a Judgment in his said Plaintiffs favour & against one Rufus B Thorn in a suit then & there pending & at issue before said Skye a Justice as aforesaid of Forcible detainer for the recovery of the possession of the following described premises to Wit; the East half of the South West quarter of Section thirteen in Township nine South of the base line of range three West of the fourth principal meridian in Ware County & State of Illinois of guilty and that he have a Writ of restitution therefor

And also in the further Sum of Twenty five
& 31/100 dollars Costs of said Suit from which
said Judgment the said Rufus B Thom
aforesaids to Pet. April 18th 1860 took an appeal
to the next Term of the said Wayne County
Circuit Court it being the October Term AD 1860
according to the Statute in such Case made and
provided and then & there under his hand & Seal
together with James N Sharp & George R Gordon
& William Johnson under their like hands & Seals
in pursuance of the Statute in such Case made &
provided, made their Joint & Several bond or
writing obligatory by which bond the bound
themselves their heirs & Administrators in a
penalty therein ~~named~~ mentioned to Pet. the Sum
of forty dollars and dated April 16th AD 1860 with
the Condition that if said Rufus B Thom should
prosecute his said appeal with effect and should
pay whatever Judgment might be rendered by the
said Court upon dismissal or trial of said appeal
and should pay all rents becoming due if any
from the Commencement of said Suit until the
final determination thereof then the said obligation
to be void otherwise to remain in full force & effect
and said Rufus B Thom being then & there
principal and said Sharp, Gordon & Johnson
being Security in said obligation, the same obligation
was then & there to Pet. on said April 18th AD 1860
& in pursuance of the Statute in such Case made

& provided, presented to the said defendant who was then & there the acting Clerk of the Circuit Court of said County of Wayne for his approval or rejection thereof. And said Plaintiff avers that the said penalty to Wit, forty dollars mentioned & set forth in said bond was not double the amount of the Judgment & costs in said cause before said Justice as is provided by the Statute in such case and was not sufficient to indemnify or satisfy the said Plaintiff in any Judgment which might be rendered by the said Circuit Court upon dismissal or trial of said Appeal provided that said Thorn did not or should not prosecute his said appeal with effect and was not sufficient to indemnify or satisfy the said Plaintiff for the rents becoming due him from the time of the Commencement of said suit until its final determination upon said premises as above described provided the said Thorn should not prosecute his said appeal with effect as is provided by the Statute in such case. And although it was the duty of said William Safety defendant herein acting as Clerk, as aforesaid to have rejected the said bond for each and all the defects & Considerations aforesaid. Nevertheless the said defendant so being Clerk, as aforesaid not regarding his Official duty in that behalf but contriving and wrongfully & injustly intending to injure the said Plaintiff and deprive him of the

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benefit of his said judgment before said Justice and whatever judgment the said Circuit Court might render in his behalf and of the means of obtaining satisfaction for whatever judgment might be rendered in the said Circuit Court in his behalf and the rents becoming due from the Commencement of said suit until the final determination thereof as aforesaid did not nor would reject the said bond but on the Contrary wrongfully & injuriously approved accepted & filed the same at that time to Wit; April 18th AD 1860 in said Clerks office to Wit; at Brown County aforesaid.

And said Plaintiff avers that said appeal of said Thom having been perfected by the wrongful act of said defendant as aforesaid the same appeal was duly entered by said defendant as Clerk in the October Term AD 1860 of said Circuit Court at which Term of said Court to Wit; November 17th AD 1860 by the Consideration & Judgment of said Circuit Court the said Appeal was then & there dismissed the said Court being then & there empowered to dismiss the same and it was further adjudged by the Court that then & there the said Plaintiff recover judgment against said defendant Rufus B Thom in that suit for his Costs in & about the prosecution of that suit Expended to Wit the Sum of thirty one dollars & eighty Cents.

that being the sums said Plaintiff did expend in & about the prosecution of said suit as aforesaid,

And said Plaintiff avers that said suit was commenced on the 9th day of April AD 1860 & that from the time of the Commencement of said suit until the final determination thereof as aforesaid at the County aforesaid the sum of two hundred & forty dollars did become due & was due at the time of the Commencement of this suit from said Thom to this Plaintiff as & for the rent of the said premises above described & for the recovery of the possession of which said Plaintiff instituted the said suit against said Thom. Nevertheless the said Rufus B Thom hath not as yet though often requested nor either of said securities in said bond though often requested nor any person for them paid the said Plaintiff the rent becoming due from the Commencement of said suit until the final determination thereof to Wit, the sum of Two hundred & forty dollars aforesaid and hath not paid to the said Plaintiff the amount of said Judgment of said Circuit Court for Costs aforesaid or any part thereof upon the dismissal of said appeal as aforesaid, and did not prosecute his said appeal with effect but the said Judgment & Costs of said Court as well as the Costs of the said suit made before the said Justice &

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the Judgment therefor rendered by said Justice to Wit. Twenty five & 30/100 dollars still remain in full force form & effect and not in any respect annuled discharged paid off or satisfied all of which said defendant has been duly notified by said Plaintiff nor hath said defendant paid off or answered to the said Plaintiff for the rent accruing on said premises as aforesaid or the said Costs as aforesaid or said Judgment aforesaid or any or either of them or or any part thereof.

And said Plaintiff avers that said Rufus B Thorn before the time of the rendition of said Judgment to Wit; November 17th A.D. 1860 became & was totally insolvent & absconded from the State of Illinois and was at the same time utterly worthless and has ever since that time been insolvent & a non resident of the State of Illinois & now is insolvent & a non resident of Illinois and by reason of the premises the said Plaintiff hath been & is wholly deprived of the said Judgment & Cost & the said rent so accruing & becoming due on said premises as aforesaid and of the benefit of such bond as said defendant was authorized by law to accept & approve as such as aforesaid upon the appeal of said Thorn as aforesaid and of the means of satisfying said Judgment & Costs & rents as

aforesaid & kept the said sum of Forty dollars the penalty of said bond aforesaid which amount was utterly & entirely insufficient to pay or satisfy the same to wit, at Bacon County aforesaid to the damage of said Plaintiff of Five hundred dollars & therefore he brings Suit

A G Kirkpatrick P.A.

(For copies of the proceedings of said cause Billings Vs Thorn & the said Appeal bond the said Plaintiff refers to the original of the same now in the hands of said defendant as Clerk aforesaid)

William Billings

vs

William Lafferty

The Clerk will please issue Summons herein to Sheriff of Bacon County in Trespass on the Case damages ($500. five hundred dollars

Kirkpatrick P.A.

Filed Sept 24 1862

W Lafferty Clerk

Copy of Bond

Know all men by these presents that we Rufus B Thom, J N Sharp, G R Gordon & Wm Johnson are held and firmly bound unto William Billings in the penal sum of Forty dollars lawful money of the United States; for the payment of which well and truly to be made we bind ourselves, and heirs, and Administrators, jointly severally and firmly by these presents.

Witness our hands and seals this 16th day of April 1860

The Condition of the above obligation is such that Whereas, the said Wm Billings did on the 16th day of April AD 1860 before E Doyle a Justice of the Peace for the County of Macon recover a judgment of guilty against the above bound Rufus B Thom in a suit of Forcible detainer from which Judgment the said Rufus B Thom has taken an appeal to the Circuit Court of the County of Macon aforesaid, and State of Illinois; Now if the said Rufus B Thom 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~~ And shall pay all rents becoming due if any from the commencement of this suit until its final determination then the above obligation to be void otherwise to remain in full force and effect

Rufus B Thom
J N Sharp
G R Gordon
Wm Johnson

Approved before me this 18th day of April 1860
Wm Safety Clerk

Filed April 18th 1860
Wm Safety Clk

Copy of Summons

State of Illinois } ss. The People of the State of Illinois
Warren County } To the Sheriff of Warren County Greeting

We Command You to Summon William Safety if to be found in your County, personally to be and appear before the Circuit Court of the County of Warren on the first day of the next term thereof to be holden at the Court House in Monmouth on the Fourth Monday in the month of October next to answer the Complaint of William Billings of a plea of Trespass on the Case to his damage the sum of Five hundred dollars as he says; and have you then and there this Writ. And make return thereon in what manner you execute the same

Witness William Safety Clerk of our said Circuit Court and the Seal thereof at Monmouth this 24th day of September in the year of our Lord one thousand eight hundred and sixty two

Wm Safety Clerk

(On the back thereof is the following)

10

"D did on the 24th day of Sept 1862 Serve this Writ by reading the same to the within named Wm Safety dated this 24 day of Sept 1862

David Turnbull Sheriff of Warren County

By Jas McCoy Dpt

Filed Oct 24th 1862

Wm Safety Clerk

State of Illinois }
Warren County } ss

Pleas before the Honorable Charles B Lawrence Judge of the tenth Judicial Circuit of the State of Illinois. At a Circuit Court began and held at the Court House in the City of Monmouth) in Warren County and State of Illinois On the Fourth Monday in the month of October in the year of Our Lord One thousand Eight Hundred and Sixty two. It being the 27th day of said month.

Present Hon Charles B Lawrence Judge
James McStewart States Atty
David Turnbull Sheriff
Wm Safety Clerk

William Billings }
vs } Trespass on the Case
William Safety }

(Copy of Demurrer)

State of Illinois } ss
Warren County } In Warren Cir Court
Term Oct 1862

William Billings
vs
William Laferty

The said defendant by his attornies Harris & Glenn Comes and defends the wrong and injury &c and says that the said declaration and each and every Count thereof and the matters therein Contained in manner and form as the same are above stated and set forth are not sufficient in law for the said Plaintiff to have or maintain his aforesaid action thereof against the said defendant and he the said defendant is not bound by law to answer the same and this he is ready to verify wherefore by reason of the insufficiency of the said declaration and each and every Count thereof in this behalf And the said defendant prays Judgment. And that the said Plaintiff may be barred from having or maintaining his aforesaid action thereof against him &c

Harris & Glenn
Defts Attys

Filed Oct 28th 1862
Wm Patterson Clerk

This day again Came on
~~this Cause for hearing on defendants demurrer~~
"And Afterwards to Wit on the 7th day of November
AD 1862 being at said October term the following
order was entered upon the records of our said
Court which is as follows to Wit:

William Billings
vs } Trespass on Case
William Safety

Now on this day Came on
this cause for hearing on defendants demurrer
& Plaintiff declaration. After hearing the same
the Court takes the same under advisement
for the present.

And Afterwards to Wit on the 14th day of
November AD 1863 the following order was entered
upon the records of our said Court which is
as follows to Wit;

William Billings
vs } Trespass on the Case
William Safety

This day again Came on

Rufus B Thom
J N Sharp
G R Gordon
Wm Johnson

Approved before me this 18th day of April 1860
Wm Safely Clerk

Filed April 18th 1860
Wm Safely Clk

Copy of Summons

State of Illinois } ss. The People of the State of Illinois
Warren County } To the Sheriff of Warren county Greeting

We Command You to Summon William Safely if to be found in your County, personally to be and appear before the Circuit Court of the County of Warren on the first day of the next term thereof to be holden at the Court House in Monmouth on the Fourth) Monday in the month of October next to answer the Complaint of William Billings of a plea of Trespass on the Case to his damage the sum of Five hundred dollars as he says; and have you then and there this Writ. And make return thereon in what manner you execute the same

Witness William Safely Clerk of our said Circuit Court and the Seal thereof at Monmouth this 24th day of September in the year of our Lord one thousand eight hundred and Sixty two

Wm Safely Clerk

(On the back thereof is the following)

10

"D died on the 24th day of Sept 1862 Serve this Writ by reading the same to the within named Wm Safurty dated this 24 day of Sept 1862

David Turnbull Sheriff of Warren County
By Jas McCoy Dpt

Filed Oct 24 1862

Wm Safurty Clerk

State of Illinois }
Warren County } ss

Pleas before the Honorable Charles B Lawrence Judge of the tenth Judicial Circuit of the State of Illinois. At a Circuit Court began and held at the Court House in the City of Monmouth in Warren County and State of Illinois On the Fourth Monday in the month of October in the year of Our Lord One thousand Eight hundred and Sixty two. It being the 27th day of said month.

Present Hon Charles B Lawrence Judge
James M Stewart States Atty
David Turnbull Sheriff
Wm Safurty Clerk

William Billings }
vs } Trespass on the Case
William Safurty }

(Copy of Demurrer)

State of Illinois } ss Warren Cir Court
Warren County } Term Oct 1862

this Cause for hearing on defendant demurr to Plaintiff Declaration and the Court now being sufficiently advised in the premises sustain the demurrer. And on Plaintiff motion leave is given him to amend his declaration herein. And this Cause is Continued until the next term of this Court at the Plaintiff Costs. Therefore it is Considered by the Court that the said defendant have and recover of the said Plaintiff his Cost by him in this suit at this term of this Court made and may have Execution therefor.

And afterwards to Wit on the 28th day of March AD 1863 being at a regular term of said Circuit Court. the following order was entered upon the records thereof which is as follows to Wit:

William Billings
vs
William Safely
} Trespass on the Case

This day came the parties by their attorneys and by their agreement in Open Court. the Plaintiff withdraws his amended declaration filed herein at this term and abides by the demurrer sustained to the original declaration at the last term of this Court. It is therefore ordered by the Court that final Judgment be rendered on said demurrer. Therefore it

is Considered by the Court that said defendant have and recover of the said Plaintiff his Costs by him in this suit made and may have Execution therefor.

State of Illinois }ss
Warren County }

I Wm Lafferty Clerk of the Circuit Court in and for said County do hereby Certify that the above and foregoing are true Copies of the orders and proceedings in the foregoing Case as the same appears from the files and records of my office

In Testimony whereof I have hereunto set my hand and affixed the Seal of our said Circuit Court at my office in Monmouth this 11th day of April AD 1863

Wm Lafferty Clerk

$3,50

State of Illinois
Third Grand Division
Supreme Court of Illinois
April Term A.D. 1863

William Billings
v
William Lafferty
} Error to Warren

and said Plaintiff in Error William Billings comes and says that in the proceedings and decision and judgment of said Circuit Court of Warren County as appears from said record there is manifest error upon which he assigns the following to wit

1 The said Circuit Court erred in sustaining the demurrer of the defendant in Error to said declaration

2 The court erred in rendering final judgment in said demurrer against the plaintiff in error for costs.

And the said plaintiff in Error is ready to verify. whereupon

he prays that said judgment of said Circuit Court may be reversed and the cause remanded &c

A. G. Kirkpatrick
for plaintiff in Error

In Mills Errors &c

Geo. P. Hudson
Atty for defendant in Error.

120

William Billings

v

William Lafferty

Record

Errors

Filed April 20 1883

L. Leland

Clerk