

No. 12526

Supreme Court of Illinois

Chappel.

vs.

Waldron.

71641  7

United States of America
State of Illinois
McHenry County

Came before the Honorable
Isaac S. Wilson Judge
of the Thirteenth Judicial Circuit of the State
of Illinois and presiding Judge of the McHenry
County Circuit Court at a Circuit Court begun
and held at the Court House in Woodstock in
said County on Tuesday the Twentieth day of
March in the year of our Lord One Thousand Eight
Hundred and fifty five and of the Independence
of the United States the Seventy Ninth
Present the Hon Isaac S. Wilson
Judge

Attest
Jed Johnson
Clerk

M. M. Boyce
G. M. Bentley
State attorney
Sheriff

Be it remembered that hitherto to wit on
the 5th day of March A.D. 1855 David A. Happle
the defendant in this suit filed in the office
of the Clerk ^{of the Circuit Court} of said County a Transcript of
a judgment rendered by ^{the Court} ~~James H. Happle~~
Justice of the Peace of said County in the words
and figures following to wit

William Waldon }
as }
David A. Happle }
December 19th 1854
Suit brought by change of
venue from before Alden
Jewett Esq - Subpoena
issued to defendant parties
appeared plaintiff claims
an award of arbitrators rendered on the eleventh

of Nov 1854 - after hearing the testimony judgment
 Justices Fees } is given to plaintiff for fourteen dollars
 Summons 18 3/4 } and Costs that being the amount
 Bookly Suit 12 1/4 } awarded by the Arbitrators
 2 Subpoenas 3 1/4 } Plaintiff being sworn upon
 Oath 6 1/4 } his oath he believes this judgment will
 Transcript 25 } be lost unless execution is issued to
 rec'd 25 } Const Barrow

Jewett's fees 1.25 } Judgment of 14.00
 Subpoena to ptiff 18 3/4 } Costs 8.73
 Cash to clerk 50 } January 8th 1855 Bond for appeal
 City Judgt 25 } presented and approved
 Execution 18 3/4 } January 11th 1855
 Cash to ptiff 6 1/4 } Execution returned
 City appeal 25 }

Taking bond & Secy 50 } State of Illinois
 Transcript 25 } McHenry County J. S. Seal P
 Constable Fees }
 Secy's Sum 25 } do hereby certify that the above Transcript
 Mileage 5 } & the accompanying papers contain
 Secy's Expense 62 1/4 } a full & perfect statement of all the
 Mileage 50 } places proceedings before me in said
 Cause

Witness my hand }
 John A. Humphrey 50 } In Witness whereof I have hereunto
 S. S. Sherwood 50 } set my hand & Seal this third day of
 A. B. Brown 50 } March A.D. 1855
 J. D. Walden 50 }
 O. Jones 50 }
 Allen Dixon 50 }
 Alfred Cobb 50 }
 Mariah Coolidge 50 }
 Julia Harvey 50 }

Seal J. S. Hyde Seal

Endorsed thereon filed March 5th 1855

W. Johnson

And hereof to wit on the day and year last
aforesaid the said David A. Chappel defendant
as aforesaid filed his bond herein which Bond
is in the words and figures following to wit

State of Illinois)
McHenry County)
Know all men by these
present that we David
A. Chappel & C. S. Smith
are held and firmly bound unto William M.
Walden in the penal sum of Forty Six Dollars
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
and severally & jointly by these presents Witness
our hands and Seals this Twenty Ninth day
of December 1854

The condition of the above obligation is
such that whereas the said William M. Walden
did on the nineteenth day of December AD 1854
before Saml. P. Heyde a Justice of the peace of
the County of McHenry recover a judgment against
the above bounden David A. Chappel for the
sum of forty six Dollars from which judgment
the said David A. Chappel has taken an appeal
to the Circuit Court of the County of McHenry
and State of Illinois

Now if the said David A. Chappel shall
prosecute his appeal with effect and shall
pay whatever judgment may be rendered
by the Court upon dismissal or trial of said

Endorsed thereon filed March 29th 1888

This day personally appeared the within summoned by reading and on hearing
of the within named defendant March 9th 1888 due service
And afterwards to wit on the 20th day of March 1888
it being one of the days of the March Term of the
McKung Circuit Court aforesaid the following
proceedings were had to wit

William Halden } Appeal

David A. Chappel } And now comes the
plaintiff by Hurlburt
and moves the Court to dismiss the appeal herein

And afterwards to wit on the 21st day of March
1888 it being one of the days of the March
Term of said Court the following proceedings
were had and entered of record that is to say

William Halden }

David A. Chappel } Appeal

And now come again
the parties by their respective attorneys and
the Court being fully advised on the motion
formerly entered herein sustains the same
to the opinion of the Court in sustaining said
motion the defendant by Murphy excepts
and thereupon the defendant by Murphy
moves the Court to transfer the cause to the County
Court which motion is overruled by the Court
and thereupon on motion of Hurlburt plaintiffs
attorney it is ordered that the appeal herein

be dismissed and that, a procedendo issue
to the Court below and it is further ordered
that the plaintiff have and recover of the
defendant his Costs and Charges in this Court
expended and that he have execution
therefor

And thereafter to wit on the day and year last
aforesaid the said defendant J. A. Chapel
filed his bill of exceptions herein in the
words and figures following that is to say

McHenry Circuit Court
March Term AD 1855

Wm. Waldron
vs
J. A. Chapel } appeal

Be it remembered that on
the 22^d day of March AD 1855 being one of
the days of said Term the plaintiff Comes and
moves the Court to dismiss the appeal herein
for the reason that said appeal was unproperly
taken to the Circuit Court when by law it
it ought to have been taken to the County Court
of McHenry County And thereupon it was
admitted by the respective parties that the
suit was originally commenced and tried before
Scrib P. Hyde Esq. a Justice of the Peace in
said McHenry County and that the same was
tried and judgment rendered on the 19th
day of December AD 1854 from which judgment
the said defendant prayed an appeal to the

Circuit Court That after the taking of said appeal
a regular term of the McHenry County Court
was held in said County commencing on the
first Monday in March A.D. 1835 and that no
term of the Circuit Court intervened between
said judgments and the term of the County
Court which said motion was resisted by
the said defendant. The court after argument
sustains said motion and dismisses said
appeal awarding a proceeding to the Court
below to which ruling and judgment of
this Court in sustaining said motion and
in dismissing said appeal the defendant
then and there at the time excepts and prays
that this his bill of exceptions may be signed
& sealed which is done in open court.

Charles Wilson Clerk

State of Illinois J. P. John Undersigned Clerk
McHenry County of the Circuit Court
in & for said County in
the State aforesaid do hereby certify that the
foregoing is a true and perfect copy of the record
and proceedings of the above entitled Cause in
this office

Witness Joel N. Johnson Clerk of
our said Court and the Seal thereof
at Woodstock this 10th day of July
AD 1855

J. N. Johnson
Clerk

In the Supreme Court

David A Chappell } Error to Me.
William Walson } -y cir. court

And now comes the said
plaintiff in error & for error
assigns

1st that the court below
erred in dismissing the
appeal ~~the~~ motion of the
said defendant

2^d that the court below
refused to try the cause & ven
and judge for the left &
avoided a procedure to the
justice who tried the cause

Wherefore he prays that the
cause be reversed &

Thos J Murphy

~~30~~ ~~60~~

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Wm. Walden

as

David A. Chappel

Filed May 2 1896

L. Leland Clerk

State of Illinois }
Supreme Court } S. S. June Term 1852
David A. Chappel pff in Error
vs
William Walden dft in Error

And now the said plaintiff by
T. Murphy his attorney comes and
says that there is manifest Error
in the Record and proceedings had
in this cause — And assigns the
following as causes of Error
first

The Court Erred in sustaining
the motion of the appellee below to
dismiss said Appeal upon the
grounds which it did, — and further
~~that the~~

June 19th 1852

T. Murphy
pffs atty

Assignment of
Errors

J. D. Wierzbicki

State of Illinois Supreme Court of said
State in & for the 3^d grand division
June Term 1850
David A. Chappel, pff in Error
vs
William Hadden, Dft in Error

There is but one question involved
in this case, and that is the circuit court
Err^r in sustaining the motion of the pff
below - to dismiss the appeal taken from
the Justice of the Peace - and dismissing said
appeal for the causes and upon the
grounds which it did, as appears from
the Bill of Exceptions taken in the case
We think it did -

This was a suit originally brought before
a Justice of the Peace of McDonough Co the
Dft in Error - against the pff in Error
and a judgment rendered by said Justice
against the pff in Error for fourteen dollars
& costs of suit and by him appealed
to the circuit court of said County -
It is insisted by the Dft in Error that
by Law the appeal ought to have
been taken to the County Court of
said County - by an act of the Legislature
of this State entitled, an act to amend an
act establishing County Courts approved
Feb. 12th 1849 and extending the Jurisdiction
of the Basal - Winnebago Boone - & Madison
County Courts approved Feb. 27th 1850
In section four of said act. It is enacted
among other things that all appeals

taken and prosecuted from the decision
and judgment of Justices of the Peace
in said County shall be taken to and
prosecuted out of the County Court of said County
this is the Authority upon which it is
contended that the Circuit Court had
not Jurisdiction, and that the appeal was
improperly taken to the Circuit Court
when by Law it ought to have been taken
to the County Court -

The pff in Err - insists that the
said fourth section of said act
above referred to contravenes the
Eighth section of the fifth Article
of the constitution of the State of Illinois,
which provides that

"There shall be two or more Terms of the
"Circuit Court held annually in each
"County in this State at such times as
"shall be provided by Law and said Court
"shall have Jurisdiction in all cases at
"Law and Equity and, in all cases of appeals
"from all inferior Courts -

It may be argued & counsel that
the Circuit Court is not entirely divested of
its ~~authority~~ Jurisdiction for the reason
that by said act above referred to, there
is a time when appeals may be taken
to the Circuit Court, but, the right to
appeal to the Circuit Court is one which every
citizens has by the Supreme Law of the Land
and for all practical purposes the right
has been denied to the pff in Error
It needs no argument whatever
to show

that the case now under consideration is just such a case as was contemplated by the framers of our constitution at the time of framing the foregoing section, that is a fact which will not be denied by the counsel for Dft in Error. This last mentioned fact taken for granted — It is insisted and relied upon by the Dft in Error that the constitution in terms provides that the circuits shall have ^{Jurisdiction} It is not within the power of the Legislature to take that Jurisdiction away — or in other words by the Supreme Law of the Land (the constitution) the circuit court has Jurisdiction of this cause and no subordinate power can divest it of such Jurisdiction.

It may be that under the 18th section of the same article of the constitution the Legislature have the power to establish an additional court of appellate Jurisdiction and provide appeals may (not must) be taken to the county court but that they have no power whatever by any act of the Legislature to infringe upon the Jurisdiction of the circuit court or take away therefrom a Jurisdiction which ^{the} constitution has in terms given it — would be a conclusion which is sustained reference would only have to be made to the constitution as above referred to.

June 19th 1856

J. D. Murphy
for Dft in Error

Supreme Court
June Term 1856
D. A. Chappell
vs

Wm Walden

Argument of counsel

Filed June 20. 1856
S. Leland
Clerk

F. Murphy
att'y

Woodstock June 17th 1854
S, Land Esq

Dr Sir

Enclausal

please find the assignment of Errors
& argument in the within entitled
cause which you will please
place on file in your office so
that the case may receive the attention
of the court when reached in its order
I should have sent them much sooner in
the term but for sickness when the case
is disposed of please advise me & send your
Bill for trouble which I will pay
an much oblige

Yours truly
J. Murphy

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L. Seidman Esq

Ottawa

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STATE OF ILLINOIS,

WRIT OF ERROR.

Supreme Court,

ss.

The People of the State of Illinois,

To the Clerk of the Circuit Court for the county of *McHenry* 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 *McHenry* county, before the Judge thereof, between *William Waldon*

plaintiff, and *David A Chappel*

defendant it is said manifest error hath intervened, to the injury of the aforesaid *David A Chappel*

as we are informed by *his* complaint, and we being willing that error, should be corrected if any there be 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 the 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 Ottawa, in the county of La Salle, on the *Second Monday in June* 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;

Walter B. Seates
WITNESS, the Hon. ~~SAMUEL H. TREAT~~, Chief Justice
of our said Court, and the Seal thereof, at Ottawa, this *2nd* day of *May*
in the Year of Our Lord One Thousand Eight Hundred and Fifty-*Six*.

L. Seland

Clerk of the Supreme Court.

By J. B. Rice Deputy

David A. Chappel
20 ~~24~~ 61
William Waldon

Writ of Error

Filed May 2. 1856
L. Leland Clerk,

STATE OF ILLINOIS,

Supreme Court,

} ss.

The People of the State of Illinois,

To the Sheriff of the County of *McHenry* — Greeting:

BECAUSE in the record and proceedings, and also in the rendition of the judgment of a plea which was in the circuit court of *McHenry* — county, before the Judge thereof, between *William Waldon Plaintiff & David A. Chappel*

defendant, it is said that manifest error hath intervened, to the injury of the said *David A. Chappel*

as we are informed by *his* complaint, the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the state of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said *William Waldon*

that *he* be and appear before the Justices of our said Supreme Court, at the next term of said court, to be holden at Ottawa, in said state, on the *Second Monday in June* next, to hear the records and proceedings aforesaid, and the errors assigned, if *he* shall see fit; and further to do and receive what said court shall order in this behalf; and have you then there the names of those by whom you shall give the said *William Waldon*

notice, together with this writ.

Walter B. Seates
WITNESS, the Hon. *Samuel H. Treat*, Ch'f Justice of our said
Court, and the Seal thereof, at Ottawa, this *2nd* day of *May*
in the Year of Our Lord One Thousand Eight Hundred and Fifty-*six*,

Leland
Clerk of the Supreme Court. Dr—
By *J. B. Rice* Deputy

David A. Chappell
to
William Waldron

Scire Facias

This day personally
served the within on
the within named defendant
by reading the same
to and in his hearing
May 6th 1856

Good Sir	150
Mileage	60
Return	10
	<u>\$1.20</u>

Wm Brimley
Sheriff
Wm Hinesbarger

Filed June 20, 1856
Leland
Clerk

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David A Chappell
vs
William Waldron

1858

12526

1858