

No. 13206

Supreme Court of Illinois

Lawrence

vs.

Bacon

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 162.

*Lawrence
vs
Bryan*

1861

*53206
Prepared*

STATE OF ILLINOIS, }
SUPREME COURT, } ss.

The People of the State of Illinois,

To the Sheriff of the County of

De Kalb

Greeting:

Because, In the record and proceedings, and also in the rendition of the judgments of a plea which was in the Circuit Court of *De Kalb* County, before the Judge thereof, between

Daniel Lawrence

plaintiff; and *Henry Bacon*

defendant....., it is said that manifest error hath intervened, to the injury of the said *Henry Bacon*

as we are informed by his complaint..... the record and proceedings of which said judgments 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

Daniel Lawrence

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 first Tuesday after the third Monday in April next, to hear the record 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 *Daniel Lawrence*

notice, together with this writ.

Witness, The Hon. John D. Eaton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this *5th* day of *April* in the Year of Our Lord One Thousand Eight Hundred and Sixty one

Lorenzo Deland
Clerk of the Supreme Court.

By *J. H. Deland* Deputy

162-97

No.

Daniel Lawrence
vs
Henry J. Acen-

SCIRE FACIAS.

Filed

April 16,

A. D. 1861

D. Lawrence

Per J. McDonald, Clerk.

I have duly served the within by reading the same
to the within named Daniel Lawrence this sixth
day of April A.D. 1861

Fees Mileage 1.00

Service 50

Return 10

\$1.60

Luther T. Clark, Sheriff

By Charles R. Roney

Deft

Fees paid by J. A. Wood for plaintiff in error

Chas. Clark Sheriff

By Charles R. Roney

Deft



STATE OF ILLINOIS, }
SUPREME COURT, } ss.

The People of the State of Illinois,

To the Clerk of the Superior Court for the County of Madison Greeting:

Because, In the record and proceedings, as also in the rendition of the judgments of a plea which was in the Superior Court of Madison County, before the Judge thereof, between

Daniel Lawrence

plaintiff, and Henry Bacon

defendant....., it is said manifest error hath intervened, to the injury of the aforesaid Henry Bacon

as we are informed by his complainant..... 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 first Tuesday after the third Monday in April 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. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 5th day of April — in the Year of Our Lord One Thousand Eight Hundred and Sixty one

George Seland
Clerk of the Supreme Court.

By J. H. Seland Deputy

162

Daniel Lawrence
No. *ad.*
Henry Bacon

WRIT OF ERROR.

FILED *Apr 1 5 1/2* A. D. 1861

L. Keland
Clerk.

State of Illinois }
La Salle County } ss

Henry Bacon
vs Plaintiff in Error

Daniel Lawrence

Def't. in Error

In the Supreme Court
April Term A.D. 1861

Charles H. Wood

of lawful age being duly sworn
says that he is acquainted with
Henry Bacon also with David Morford
and Frank W. Frye whom the said
Bacon proposes to offer as securities
upon the Bond for a supersedeas-

That the said Bacon is a man
of large property and that the
said Morford is a land holder
in Craigsville County and abundantly
good security for any judgment
that may be obtained in this cause,
and that the said Frye this deponent
is informed and believes is possessed
of property amply sufficient to pay
the judgment in this case should
he be required so to do and further
saith not.

Charles H. Wood

Subsd. & Sworn to before

on April, 25, 1861

L. Keland Clerk

162
Henry Bacon
Pltff. in Error
vs

Daniel Lawrence
Def't. in Error

Affidavit

Filed April 25, 1861
L. Deland
Clk.

1 The People of the State of Illinois to all to whom these presents shall come Greeting;

Know ye that we having caused to be inspected the Records and proceedings now remaining in the office of the clerk of the circuit Court in and for the county of Ingham and State of Illinois do find therein certain Records and proceedings in words and figures following to wit:

United States of America
State of Illinois
Ingham County

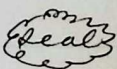
fs
Pleas before the Honorable Charles R Star Judge of the Twentieth Judicial circuit and Presiding Judge of the Ingham County Circuit Court in the State of Illinois, at a term of the said Ingham County Circuit Court begun and held at the Court House in the town of Middleport in said Ingham County on the third Tuesday (the same being the 19th day in the month of February in the year of our Lord one thousand eight hundred and sixty one

Present Hon Charles R Star Presiding Judge Twentieth Judicial Circuit
Charles H Wood States Attorney " " "
Luther F Clark Sheriff of Ingham County
Thomas Beunum Clerk of the Ingham County Circuit Court.

Be it remembered that heretofore ^{on the 16th day of January A.D. 1861} to wit, there was filed in the office of the clerk of the Circuit Court of said Iroquois County a writ of summons, two transcripts and an appeal bond from a Justice of the Peace, and the said summons reads in words and figures following to wit:

" State of Illinois, Iroquois County ss

" The People of the State of Illinois to any Constable of
 " said County Greeting: You are hereby commanded
 " to summon Henry Bacon to appear before me, at my
 " office, in Onarga on the 10 day of January A.D. 1861 at
 " 3 o'clock, P.M. to answer the complaint of Daniel Lawrence
 " for a failure to pay him a certain sum not exceeding
 " one hundred dollars, and hereof make due return
 " as the law directs. Given under my hand and
 " seal this 4 day of January A.D. 1861

" Charles Rumley 
 " Justice of the Peace.

And on the back of said summons is the following endorsement

" Personally served the within by reading to the within
 " named defendant this 5th day of January A.D. 1861

" Fees Milage , 20

" Service *in* 25
 " , 45

E. D. Smith Constable,

And the transcript from Charles Rumley J. P. reads in words and figures following to wit:

" State of Illinois, Croquois County ss
 " In Justices Court, Before Charles Rumley J. P.
 " Daniel Lawrence
 " vs
 " Henry Bacon } Plaintiffs demand on
 " } Due bill \$57. 76

" 1861 January 4th Summons issued returnable January
 D Suit 12 1/2 " 10 Inst at 3 o'clock P. M.
 Sum 183 " January 10th Inst. Summons returned served on
 & Jud 25 " the 5th Inst by E. D. Smith, Constables fees 45 cents
 Sub 18 " Case called defendant swears a change of venue
 Change 25 " which is granted

Trans 25 " Charles Rumley J. P.
 Certified 25 " All the papers in the above case delivered to Moses A
 1/18 " Messer he being the nearest Justice of the Peace.
 Ed Smith, Charles Rumley J. P.

Const fees " State of Illinois
 Sum 45 " Croquois County ss I Charles Rumley a Justice of
 the Peace in and for the said County do
 Deft costs " hereby certify that the foregoing is a true copy of the pro-
 Sub 183 " ceedings in the case above entitled had before me and
 63 " that herewith enclosed are all the papers and documents
 " belonging to the said suit. Witness my hand this 10th
 " day of January AD 1861
 " Charles Rumley J. P.

And the transcript from Moses A Messer J. P reads in
 words and figures following to wit:

4

State of Illinois

Before M^r Messer J. P.

Sanguin County

Change of Venue from Charles Rumley J. P.

Demand \$57. 76

Daniel Lawrence

Leasts

"

as

Docket 13

"

Henry Bacon

July 25 1861 January 10th. Rec^d from Charles Rumley a Justice
 of the Peace - the papers in the above case, one subpoena
 37 1/2 issued on the part of the Plaintiff, one subpoena issued
 62 1/2 for the defendant, one subpoena returned served by
 200 for the defendant, one subpoena returned served by
 358 1/4 reading to the witness ~~the~~ this 10th day of January 1861
 25 Milage 5 cts Service 12 1/2 H. J. Frazer Constable.
 25 Subpoena returned served by reading to the within
 25 named R A Heingerford, G. Farboy & Hutter
 25 Parties in Court, defendant pleads the general issue
 4 and fraud in the transactions and in obtaining the note
 Fees on transcript filed on the part of Plaintiff, D. P. Norton and A B Roff
 206 sworn on the part of the Plaintiff. Frank H Fry.
 Constables fees 6, H. Smith, R A Heingerford, George Farboy & Hutter
 8 sworn on the part of the defendant. Charles Rumley
 12 1/2 H. F. Skels, W. S. Harris sworn on the part of Plaintiff
 Court adjourned till the 11th inst at 9 o'clock A.M.
 January 11th 9 o'clock A.M. R A Heingerford recalled
 \$4.50 to examine the goods. After hearing the evidence the
 Court considers that the Plaintiff have and recover
 of the said defendant as his demand on said note the
 sum of forty eight dollars and sixteen cents and costs
 A. B. Roff claims witness fees, costs taxed in this case at ten

dollars and Eleven cents \$10 11 1/2

3-

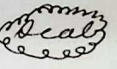
Me. H. Messer

" Plaintiff filed an appeal bond, Bond approved and approved
" granted January 11th 1861.

" State of Illinois

" Morgan's County ss

" I Moses H Messer a Justice of the Peace in
" and for the County aforesaid do hereby certify that the
" foregoing transcript is a true copy of the Records of the
" proceedings had before me in the above cause, and that
" the accompanying papers are all the papers in my hands
" pertaining to said case. Given under my hand and
" seal this 13th day of January A^d 1861

" Moses H Messer J. P. 

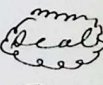
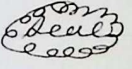
And the said Appeal bond reads in words and figures
following to wit:

" Know all men by these presents, that we Daniel Lawrence
" & AB Roff are held and firmly bound unto Henry Bacon
" in the penal sum of one Hundred and twenty 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, severally and firmly by these presents.
" Witness our hands and seals this 11th day of January
" A^d 1861.

" The Condition of the above
" obligation is such, whereas the said Daniel Lawrence did
" on the 11 day of January A^d 1861, before Moses H Messer Esq
" a Justice of the Peace for the County of Morgan's recover a

" Judgment against the above bounden Henry Bacon for the sum
 " of Forty Eight Dollars and Sixteen cents and costs of suit
 " from which said judgment the said Daniel Lawrence
 " has taken an appeal to the Circuit Court of the County of
 " Stroganovs aforesaid and State of Illinois. Now if the said
 " Daniel Lawrence shall prosecute his appeal with effect
 " and shall pay whatever judgment may be rendered by
 " the Court upon dismissal or trial of said appeal, then the
 " above obligation to be void, otherwise to remain in full
 " force and effect.

" Taken and approved by me this 11th
 " day of January A.D. 1861.
 " Moses H. Messer
 Justice of the Peace

Daniel Lawrence 
 A. B. Roff 

And afterwards to wit on the said 16th day of January
 aforesaid there was issued from the office of the clerk of
 the said Circuit Court a writ of summons which reads
 in words and figures following to wit:

" State of Illinois
 " Stroganovs County, ss The People of the State of Illinois to the
 " Sheriff of said County Greeting: We command
 " you to summon Henry Bacon if to be found in your
 " County, personally to be and appear before the Circuit Court
 " of said County, on the first day of the next term thereof
 " to be holden at the Court House in Middleport on the
 " third Tuesday in the month of February next to answer
 " Daniel Lawrence on an appeal from the judgment of

7 " Moses H. Messer Esq a Justice of the Peace in and for
" said County in a certain suit lately depending before
" him wherein Daniel Lawrence is Plaintiff and the
" said Henry Bacon is defendant and have you then
" and then this writ, with an endorsement thereon as to
" the manner in which you may execute the same,

" Witness Thomas Bennett Clerk of said
" Circuit Court and the seal thereof hereto
" affixed, at my office in Middleport, this
" 16th day of January AD 1861.

" Thomas Bennett
" Clerk

And upon the back of said Summons is the following
endorsement,

" Served by reading to the within named Henry Bacon
" this 26th day of January 1861.

" Fees Service 50 Luther T. Clark

" 20 miles travel 1.00

" Return 1.00

" \$1.60

Sheriff

And afterwards to wit on the 19th day of February in
the year 1861 the same being one of the regular days of the
February Term of the Ingham County Circuit Court for the
year last aforesaid the said Court being then duly organized
and sitting as a Court for the transaction of business
certain proceedings were had and entered of Record by said

8 Court in words and figures following to wit:

" Daniel Lawrence
" 246 vs
" Henry Bacon } Appeal

" And now comes the defendant
" into Court by Wood his attorney on whose motion it is
" ordered that the depositions on file in this cause be
" published.

And afterwards to wit on the 20th day of February in
the year 1861 the same being one of the regular days of
the February Term AD 1861 of the said Court and
the said Court being then duly organized and
sitting as a court for the transaction of business certain
other proceedings were had and entered of Record by said
Court in words and figures following to wit:

" Daniel Lawrence
" 246 vs
" Henry Bacon } Appeal

" And now comes the Plaintiff into
" Court by Roff his attorney and enters his motion to the
" Court for leave to dismiss the appeal in this cause.
" Comes also the defendant by Wood his attorney and
" enters his motion to the Court for leave to file an appeal
" bond and join in the appeal in this cause.

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And afterwards to wit on the 22nd day in the month of February aforesaid in the year 1861 aforesaid the same also being one of the regular days of the February Term of said Court for said year 1861 the said Court being then duly organized and sitting as a Court for the transaction of business certain other proceedings were had and entered of Record by said Court in words and figures following to wit:

" Daniel Lawrence
 " 246 vs } Appeal
 " Henry Bacon }

" The motion by Plaintiff for leave to
 " dismiss the appeal in this cause coming up for argument
 " the Court ordered that Plaintiffs motion be granted,
 " and on motion it is ordered that the appeal in this
 " cause be and it is hereby dismissed. To the decision
 " of the Court in dismissing said appeal the defendant
 " by his attorney enters his exceptions.

" It is therefore considered and ordered by the
 " Court that the defendant have and recover of and
 " from the Plaintiff his costs expended in the defense of
 " this suit in the Circuit Court and that he have
 " execution therefor against the said Plaintiff.

And afterwards to wit on the 23^d day of February 1861 there was filed in the office of the clerk of said Court a Bill of Exceptions which reads in words and figures following to wit;

State of Illinois	} Broguois Cir Court	
Broguois County		
		of the Feb Term 1861

Daniel Lawrence	} Bill of Exceptions
vs	
Henry Bacon	

Be it remembered that on the 20th day of February AD 1861 the same being one of the regular days of the Feb Term AD 1861 of the Broguois County Circuit Court a motion was made by the said Plaintiff to dismiss his appeal in the said cause wherein in the Court below before the justice of the peace he had recovered a judgment against the said defendant for the sum of forty Eight ¹⁶/₁₀₀ dollars on the 11th day of January AD 1861, and the same day the ^{said} Plaintiff filed an appeal bond in due form of law for the appeal of the said cause to the Broguois County Circuit Court, which said bond was approved by the justice and the appeal duly allowed. And on the 22nd day of February AD 1861 the said motion coming on for a hearing the defendant by his counsel offered to file an appeal bond with good and sufficient security in said cause conditioned according to law, and moved for leave to join in said appeal and upon said motion read to the Court the affidavit of the defendant which is in the words and

11 figures following to wit

" In the Troquois Circuit Court
" February Term 1861

" Daniel Lawrence

" vs

" Henry Bacon

" State of Illinois }
" Cook County } p

" Henry Bacon being
" duly sworn says that he is defendant in the above en-
" titled cause and that he has a good defense to said
" action on the merits thereof. ^{Deponent} ~~Defendant~~ further
" states that on the rendition of judgment against
" him in said cause by the Justice of the Peace who
" originally tried the same he the said deponent intended
" to have taken an appeal from said judgment to this Court,
" that he subsequently ascertained that the Plaintiff had
" taken such appeal and deponent supposed that it was
" not necessary for him to join in said appeal in order
" to secure a trial of said cause in this Court.

" Deponent further states that injustice will be done him
" if he is debarred from a trial of said cause in this
" Court, by any action of the Plaintiff in dismissing his
" said appeal or otherwise, wherefore he prays to be
" allowed to join in said appeal

" sworn and subscribed before me Henry Bacon
" this 16th day of February, 1861

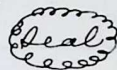
" Benj. F. Mellerd J.P.

12 " Filed Feb 22nd 1861 "

" Thos Bennett clerk "

" By Bryant Dep "

" But said Court overruled the motion of the said defend
" ant for leave to join in said appeal as ~~f~~ aforesaid
" and granted the motion of the said Plaintiff, dismissed
" said appeal and awarded a writ of Proceadends to
" the justice who tried said cause, to all which the de
" fendant by his Counsel then and there excepted, and
" inasmuch as the matters aforesaid do not appear
" by the record of said cause the said defendant here
" prays the Court to sign and seal this Bill of Exceptions.

" L. R. Starr 
" Judge of the Twentieth
" Judicial Circuit of the
" State of Illinois.

State of Illinois
Iroquois County

I Thomas Vennum Clerk of the Circuit Court in and for the said County in the State aforesaid do hereby certify that the above and foregoing is a true complete and perfect transcript of the Record of the proceedings of the Iroquois County Circuit Court in said entitled cause, wherein Daniel Lawrence is Plaintiff and Henry Bacon is defendant, and also a true copy of the papers filed in said cause pertaining to or forming any part of the Record in said cause.

In attestation of which I hereunto set my name and the seal of the Circuit Court of said Iroquois County at office in Middleport in said County this 1st day of April AD 1861

Thomas Vennum
Clerk

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And now comes the said Henry Bacon by Wood his Attorney and says that there is manifest error in the foregoing record, in this, to wit

1st The court erred in allowing Plaintiffs motion to dismiss his appeal-

2nd The court erred in overruling defendants cross motion for leave to join in the appeal -

3^d The overruling defendants motion and dismissing the appeal was, contrary to law, to equity and to justice and to right.

Chas. H. Wood
for Pltff. in Error

Jointer in Error.

A B Hoff

April 25th 1861.

for Defendant in Error

162
Daniel Lawrence
vs
Henry Bacon

Record

Filed April 25th 1861
A. A. Wood
Clerk.

Fees of Clerk on Transcript \$2.00