

No. 14079

Supreme Court of Illinois

David Sheldon

vs.

Wm. Peoples et al

71641  7

David Sheldon

vs

Wm Reichle & Jos. Baines

The Plaintiff moves to dismiss this Appeal, which motion is by the Court overruled.

October Term of the Madison Circuit Court 1833

Reichle & Baines

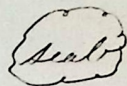
vs

David Sheldon

Be it remembered that on the trial of this cause the said David Sheldon Claimant by his counsel moved the Court to dismiss the appeal herein for the following reasons, viz, 1st no appeal bond has been executed and given by Reichle & Baines the appellants in this case, as required by law. 2nd No appeal bond has been given in this case by a person properly and legally authorized by the appellants in this case. 3rd the appeal bond given in this case is not executed by the proper parties and is not such as the law requires" which motion to dismiss for the reasons aforesaid the Court overruled to which opinion of the Court in overruling the motion to dismiss the said Sheldon by his counsel excepts, and prays that this his bill of exceptions may be signed & sealed & made a

part of the record which is done

Thos. W. Smith



as garneshees Joseph M. Fairfield George J. Bristow, David
Sheldon and Z. H. Judson, Francis Arney Russell H. Mallory
A. M. Fountaine and A. B. Fountaine. Dougherty & Larson, George
W. Cook and Asa Eastham, October 11th 1832.

Wm. Orear, M. J. M. C.

To the introduction of which said attachment and the said
endorsement thereon as evidence to the Jury, the Plaintiff David
Sheldon by his Counsel objects, but the Court overruled the
objection and permitted the said attachment and endorse-
ment to be read in evidence to the Jury, To which opinion
of Court the Plaintiff by his Counsel excepts and tenders
this his bill of exceptions and prays that the same may
be signed and sealed and made a part of the record
which is done accordingly

Theo. W. Smith (Seal)

Know all men by these presents that we William Reihle
& Joseph Baines Merchants trading under the name and
style of Reihle & Baines of Philadelphia Tho^s. Pogue and
Joseph Coddington of the County of Morgan and State of
Illinois are held and firmly bound unto David Sheldon,
also of the same County and State in the penal sum of
four hundred dollars current money of the United
States, for the payment of which well and truly to be
made we bind ourselves our heirs executors and ad-
ministrators jointly severally and firmly by these presents
witness our hands and seals this 6th day of October 1832

The condition of the above obligation is such that where-
as a writ of attachment numbered and bearing date the
27th day of September 1832, issued out of the Clerk's
Office, and ~~as is the seal of the Circuit Court of Morgan~~
County in said State in favor of William Reihle &
Joseph Baines Merchants trading under the name, firm
and style of Reihle & Baines by J. B. Seaton their agent
and attorney in fact, and against the goods and chat-
tels lands and tenements of Samuel P. Judson for the
sum of three thousand five hundred and eighteen dol-
lars and seventy five cents debt, which said attachment

came to the hands of W^m Orear Sheriff of the said County of Morgan on the 27th day of September 1832 and was by him on the 29th day of September of the year last aforesaid, levied upon sundry goods & chattles and Merchandise the items of which may be seen or are contained on an Inventory now in the hands of the said W^m Orear (Sheriff) which was taken when the goods above named were attached, whereupon ~~the said property was claimed by the above David S. Sheldon~~ as being his own goods & chattles and as belonging of right to him, who gave notice to the said Sheriff of his said claim and intention to prosecute the same according to Law, and thereupon the said Sheriff proceeded forthwith to summon a jury of twelve respectable householders of SD County to attend in the house of Thos. Pogue on the sixth day of October 1832 to try the said Claimants rights to the said property & gave notice thereof to the said S. B. Sontow Agent and attorney in fact for Reihle & Baines, and the said Jury and the said Parties having attended at the time and place aforesaid, such proceedings were then and there had before the said Sheriff and the said Jury that a verdict was found in favor of the said David Sheldon against Reihle & Baines who claimed under an attachment against the property of Samuel P. Judson and the said

Reihle and Baines by their agent S. B. Sexton thinking themselves aggrieved by the said verdict of the said Jury prayed an appeal thereupon to the Circuit Court of the said County of Morgan and tendered the said Joseph Goddington, Thomas Pogue as their securities in the appeal bond which is accepted and approved of by the said Sheriff: Now if the said Reihle & Baines shall well and truly prosecute their said appeal to effect and without delay, and doth pay or cause to be paid, all costs that have accrued or may accrue on said appeal if Judgment shall be given against them in the said Circuit Court, on the trial of the said appeal then the above obligation to be void otherwise to remain in full force and virtue.

William Reihle

Joseph Baines by *(Seal)*
their attorney in fact
Stephen B. Sexton

Thomas Pogue *(Seal)*

Joseph Goddington *(Seal)*

Afterwards (to wit,) on the 7th day of November 1833 a paper was filed by the Clerk of said Court, which is as follows

In the Circuit Court of the of the
October Term A.D. 1833.

State of Illinois }
Madison County } set

David Sheldon appellee }

vs

Reihle & Baines appellants }

On Appeal

~~David Sheldon, appellee.~~
David Sheldon, by Thomas & Prickett his attorneys
comes, and moves the Court to dismiss the appeal herein
for the following reasons - 1st No appeal bond has
been executed & given by Reihle & Baines the appellants
in this case, as required by Law. 2nd No appeal bond
has been given in this case by any person properly and
legally authorized by the appellants in this case.
3rd The appeal bond given in this case is not executed by
the proper parties; and is not such as the Law requires

Thomas & Prickett, for appellee

On the day of the date last above mentioned the
following entry was made a part of the records of
this Court

...to wit, on the
of August A.D. 1837, a promissory note ex-
ecuted by James Day to Bushman Eaton & Co. was filed
in the Clerk's office of the Circuit Court of La Salle
County, which note is in the words and figures following
to wit:

" \$ 1000.00

Ottawa July 13, 1835

Eighteen months after date I promise to
pay Messrs. Bushman Eaton & Co One thousand dollars
with Interest at Ten per cent. for value Recd.

James Day "

And at the same time was filed, also a Mortgage,
whereupon the said Clerk issued a scirefacias in the
words and figures following, to wit:

"State of Illinois } Set

La Salle County }

The People of the State of Illinois
To the Sheriff of said County, Greeting:

Whereas, James Day did on the Thirteenth day
of July in the Year of our Lord One thousand eight hundred
and thirty five execute and deliver to Bushman Eaton & Co
a Mortgage on the west half of the north east quarter of

section number twelve in Township number thirty three North of Range number three east of the third principal Meridian to secure the payment of the sum of three thousand dollars to the said Cushman Eaton & Co. as appears by a Copy thereof, filed in the Clerk's office of our said ^{circuit} Court, which is in the words and figures following, to wit:

This Indenture made and entered into this thirteenth day of July in the year of our Lord one thousand eight hundred and thirty five between James Day of the town of Ottawa, County of La Salle, and State of Illinois, Merchant, of the one part, and Cushman Eaton & Co. of the same place of the ~~of the~~ other part: Whereas the said James Day in and by three certain promissory notes under his hand bearing even date herewith, stands bound unto the said Cushman Eaton & Co. in the sum of three thousand dollars, payable as follows, to wit:

One thousand six months after date, one thousand twelve months after date, both without interest, and one thousand eighteen months after date with interest at ten per cent. as in and by the said recited promissory, being thereunto had more fully and at large

...in consideration of the
...debt or sum of three thousand dollars and
for the better securing the payment thereof with its
interest, unto the said Bushman Eaton & Co. their Executors
Administrators and Assigns in discharge of the said
recited promissory notes, has Granted bargained sold
released and Confirmed and by these presents does
Grant bargain sell release and confirm unto the
said Bushman Eaton & Co. their heirs and assigns
the west half of the North East quarter of section
number twelve in Township number thirty three North
of Range number three East of the third principal
Meridian, together with all and singular the heredi-
taments and appurtenances therunto belonging or in
any wise appertaining.

To have and to hold the said tract of land to the only
proper use benefit and behoof of the said Bushman Eaton & Co.
their heirs and assigns forever.

Provided always, nevertheless, that if the said
James Day, his heirs executors, Administrators and Assigns
shall and do well and truly pay or cause to be paid unto
the said Bushman Eaton & Co. their Executors Administrators or

assigns, the aforesaid debt or sum of three thousand dollars on the days and at the times hereinbefore mentioned and appointed for payment thereof with the interest according to the said recited promissory notes without any fraud or further delay, then and from thenceforth as well this present Indenture and the estate hereby Granted, as the said recited promissory notes shall cease, determine and become absolutely null and void to all intents and purposes, any thing hereinbefore Contained to the contrary notwithstanding.

In Witness whereof the said James Day hath herunto set his hand and seal the day and year first above written

Signed sealed & delivered

James Day 

in presence of

J. Cloud

Darius Adams,

State of Illinois }

La Salle County }

This day personally appeared before the undersigned, an Acting Justice of the peace within and for said County the within named James Day whose signature bears to the foregoing Deed of Mortgage, to me _____ a person who has executed

...emony whereof I have herewith set my hand and seal
this 14th day of July A.D. 1835.

J. Clond J. P. *Seal*

Recorders Office }
La Salle County } I do hereby certify that the foregoing
Mortgages and Certificate is duly recorded in Book A.
Page 350 & 357.

August 6th 1835,

Witness David Walker Clerk
for J. B. Campbell Recorder

We therefore command you, that you make known
the said premises to the said James Day, and that you
summon him, 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 Ottawa on the third Monday in Septem-
ber next, to show cause if any he has why Judgment should
not be rendered against him in favor of the saidushman
Eaton & Co for the said sum of Three thousand dollars, or
such sum of money as may be due by virtue of said

Mortgage, according to the true intent and meaning thereof,
and have you then and there this Writ, and make return
thereon in what manner you execute the same.

Witness Joseph Cloud, Clerk of said Court, and
the private seal of said Clerk (no Judicial seal
being as yet provided for said Court) at Ottawa
this 1st day of August A.D. 1837.



J. Cloud, Clerk

And on the said Writ of Scirefacias the Sheriff of said
County made the following return, to wit:

"By virtue of this Writ to me directed, I have summoned
the within named James Day to appear at the day and
place within mentioned to show &c. as by said Writ he is
required, and as within I am Commaunded, 25th August 1837.

Serving & returning 62½

Mileage 1 Mile 6¼
0.68¾

A. Woodruff, Sheriff

By B. Leavens Dep. Shff

And on the said 22nd day of September A.D. 1837, in the
said Circuit Court the following proceedings were had

At:

Friday September 22nd 1837

U.S.

a Mortimer

Scire facias does not shew a cause of action, on which the Court could render judgement without the intervention of a jury. It does not shew the amount due. It is upon a mortgage for the security of several promissory notes. The writ commands the appearance to shew cause, why a judgement should not be rendered for \$3000, or such sum as may be found due on the mortgage.

2nd The judgement is upon the promissory note filed, which is no part of the record, and not on the scire facias.

3rd no oyer was craved of the note, or declaration filed. The Circuit Court could not regard the note as furnishing the criterion of damages. It being only matter of evidence and not the foundation of the action. It required the intervention of a jury to assess the damages.

4th The judgement is for too much, if the note is regarded as the foundation of the action and not the mortgage. And if the mortgage and not the note is the foundation of the action there is nothing showing what was the amount of damages. The scire facias, claiming to be due \$3000, or such other sum as might appear to be due.

5th It is no where shown who Cushman Eaton & Co. were. They

are not named in the whole record. It was therefore erroneous to render judgement unless all the plaintiffs were named.

6th The summons directs the appearance to the first day of the Term of the Court. The Record shows that judgement was rendered on the fifth day, but does not show that the Court was adjourned and continued until that day.

7th The Record shows that this Hon. Jesse B. Thomas, Judge of the first Judicial Circuit of the State of Illinois, presided at the time of rendering the judgement - But does not show that it was by interchange of Circuits according to Law, the judgement being rendered in the 7th Judicial Circuit.

Grant & Peyton

Attorneys for Deft.

Joinder in Error

Davis & Torrance For Defts.

...community called came not but
default, and this suit being founded on a note for
the payment of money only, and the payment of the same
secured by a Mortgage on the West half of the North East
Quarter of Section Number twelve in township number thirty
three North of Range number three east of the third prin-
cipal Meridian. It is therefore considered that Judgment
be rendered against the defendant by default, and this Court
directs the Clerk to Assess the damages which is according-
ly done, and the Amount thereof found to be One thousand
two hundred and nineteen dollars and seventeen cents.
It is therefore considered that the said plaintiffs recover
of the said defendant the said sum of One thousand
two hundred and nineteen dollars and seventeen cents,
and that they also recover of the said defendant their
costs and charges in this behalf expended, and that a
special writ of fieri facias be issued against the
premises described in the said scire facias and that the
same be sold to satisfy the damages and costs aforesaid.

appeal, which bond is also herewith returned, I at the same time levied on a lot of goods wares and Merchandise found in the possession of J. H. Judson in Beardstown as the property of the Defendant an Inventory whereof is hereto annexed and the said J. H. Judson claimed the said goods wares and merchandise as his property, whereupon at the request of the said J. H. Judson I summoned and empannelled a Jury to inquire whether or not the said goods wares and merchandise belonged to the said Judson and a trial of the rights of property was had before me pursuant to the Statute at Beardstown on the 6th day of October 1832 and the Jury found the right of property to be in the said J. H. Judson as will appear by the verdict of the Jury herewith returned, from which verdict the Plaintiffs appealed to the Circuit Court of Morgan County and executed an appeal bond pursuant to the Statute which bond is herewith returned, and the said J. H. Judson executed his bond for the delivery of the property in case the Plaintiff succeed in the appeal, which bond is also returned herewith, and I have also levied upon one lot of ground and the appertinances thereon being Lot N^o Two Block N^o One in Beardstown. I have also summoned

Asa Eastham on this the 26th of February 1893 -

Serving on two 1 00

Travel 37 miles @ travel 20 miles 1.25

2.25

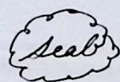
Walter Butter D.P.

for William Orear

I levied this attachment on the 29th of September 1892, on sundry goods wares and ~~merchandise as the property~~ of the defendant an Inventory whereof is herewith annexed and David Sheldon, claimed the said goods wares and merchandise as his property whereupon at the request of the said David Sheldon I summoned and empanelled a jury to inquire whether or not the said goods wares and merchandise belonged to the said David Sheldon and a trial of the right of property was had before me pursuant to the statute at Bairdstown on the 6th day of October 1892, and the jury found the property to be in the said Sheldon as will appear by their verdict herewith returned from which verdict the said Plaintiffs appealed to the Circuit Court of Morgan County and executed an appealed bond which is also herewith returned and the said David Sheldon executed a bond for the delivery of the said property in case the said Plaintiffs succeeded in the

same may be liable to further proceedings thereon at a Court to be holden for the said County on the third Monday of April next and that you also summons George J. Bristow, Joseph M. Fairfield, James G. Blain George W. Cook Asa Eastham, John Almeron Judson David Sheldon Francis Arney, Russell H. Mallary A.M. & A.B. Fontaine Willcom Lewis and Carson & Dougherty as garneshees to be and appear at the April Term next to answer what may be objected against them when you shall make known how you shall have executed this writ and have then and there this writ.

Witness the Hon. Samuel D. Lockwood Judge of the said Court at Jacksonville this 27th day of September A.D. 1832, the seal of said Court being hereunto affixed.



Dennis Rockwell Clk.

Served on the following persons as garneshee.
On Joseph M. Fairfield George J. Bristow David Sheldon J. H. Judson on the 28th of Sept. on Francis Arney, Russell H. Mallary and A.M. & A.B. Fontaine on the 2nd of October on Carson & Dougherty on the 28th Sept. on William Lewis on the 11th October 1832 served on George W. Cook and

14079
David Sheldon

versus

William Reible and
Joseph Baines

Trial of the rights of Property on
change of Venue from the Morgan
Circuit Court.

Be it remembered that on the
trial of this cause the defendants offered to read in evidence
the following writ of Attachment, and endorsement thereon.

~~The People of the State of Illinois, To the Sheriff of~~
Morgan County, Greeting, Whereas William Reible and Joseph
Baines Merchants trading under the name firm and style of
Reible and Baines by Stephen B. Sexton their agents and
attorney in fact have this day complained on oath to Dennis
Rockwell clerk of the Morgan Circuit Court, that Samuel
P. Judson is justly indebted to them in the sum of three
thousand five hundred and eighteen dollars and seventy five
cents, and oath having also been made that the said
Samuel P. Judson resides out of this State and the said
Reible & Baines having given bond and security according
to law. We therefore Command you that you attach as
much of the estate real or personal of the said Samuel
P. Judson to be found in your County as shall be of value
sufficient to satisfy the said debt and costs and such
estate in your hands to secure and so to provide that the

Reihle & Baines } Notice
vs } On appeal Trial of the right of
David Sheldon } Property - Motion to dismiss appeal

Reasons. 1st Because the original writ of attachment by virtue of which the Property in question is claimed by Reihle & Baines is void, in this, that the Plaintiff in said attachment is a foreigner or non-resident, the defendant in said attachment also being nonresident the agent of the Plaintiff in said attachment being also nonresidents - 2nd The bond in said attachment suit is not double the amount claimed in the affidavit as required by Law. 3rd The affidavit does not describe with sufficient certainty the amount and nature of the indebtedness.

Menshall, atty. for Sheldon.

Whereas an attachment has issued out of the Clerks office of Morgan County bearing date September 27th 1832, in favor of William Reihle and Joseph Baines merchants trading under the firm of Reihle & Baines against Samuel P. Hudson, and sundry Merchandise having been

Attached in the hands of David Sheldon as the property
of Samuel P. Judson, we the undersigned Jurors having been
summoned by William Ocan Sheriff of Morgan County to
try the right to S. property between David Sheldon and
Reihle and Barnes Claiming under an attachment against the
above named Samuel P. Judson, do find and determine the prop-
erty, to be the property of the above named David Sheldon -

Given under our hands &c this 6th Oct. 1832.

Richard Gravey
William Shoopman
John L. Toler
Philip Seabersfield
Henry Williams
John S. Nashler

Thomas Payne
Zachariah Bridgewater
Alexander Huffman
John W. Leppincott
Benjamin Montgomery
Thomas M. Clark