

12929

No. _____

Supreme Court of Illinois

Swingley

vs.

Haynes

SUPREME COURT OF ILLINOIS,

Third Division—April Term, 1859.

NATHANIEL SWINGLEY,
vs.
JOHN E. HAYS.

} *Appeal from Ogle.*

POINTS.

On the trial of an appeal in the circuit court, no exception can be taken to the form or service of the summons before the justice.

1 Purple's Statute, page 612, Section 66.

B. C. COOK,
For Appellant.

Ballard vs McCarthy 11 Ill 301
Vaughn vs Thompson 15 Ill 39

190
Swingley's Hays 84
Brief

Pleas in the Circuit Court of Ogle
County Illinois in a certain case now pending
in said Court wherein Nathaniel Swingley
is Plaintiff and John E. Haynes is De-
fendant.

Magistrates
Summons

State of Illinois }
Ogle County }

The People of the State of
Illinois to any constable
of said County Greeting.

You are hereby commanded to summon
John Haynes to appear before me at my office
on the 23rd day of May A.D. 1857 ~~at~~ one o'clock
P.M. to answer the complaint of Nathaniel
Swingley in an action of debt for a failure to
pay him a certain demand not exceeding one
hundred dollars and thereof make due re-
turn as the law directs.

Given under my hand and seal
this 13th day of May A.D. 1857

(Signed) W. B. Gilla Snapp-J.P.

Endorsement
of service

Served the within by leaving a copy thereof
at the place of residence of the within named
Defendant with a white person upward of ten
years of age the defendant being absent.

May 18th 1857

(Signed)

N. P. Swingley
Constable

Filed June 25 1857

(Signed) M. W. Smith

Clerk

Transcript
from Magistrate
Bookst.

Transcript of proceedings lately had
Place in and for the County of Ogle in the
State of Illinois between Nathaniel Smingley
Plaintiff and John E. Haynes Defendant.

State of Illinois
Ogle County

In Justice Court before
Barzilla Knapp Justice

Nathaniel Smingley Demand of Plaintiff \$99.54
vs John E. Haynes for Property sold and delivered.

1857 May 13 Summons issued & delivered
to Epton Smingley Constable to serve re-
turnable the 23rd day of May instant
at one o'clock P.M.

Plaintiff's Costs.

Justices fees

Summons -

Not returning suit

One subpoena

Swearing two Jurors

Entering Judgment

Filing Transcript

18th May 18th Summons returned by Constable

12th Smingley served by leaving a copy at the

18th dwelling house of Defendant as the law

12th directs Defendant being absent.

25 May 13 1 o'clock P.M. Demand of Plaintiff

25 being on book account for Property sold & deliver-

ed. Henry & Raymond & A Brown summoned

attended and sworn as witnesses on the

part of the Plaintiff. Defendant failed to

appear & show cause why Judgment should

not be rendered. Whereupon it is considered

by the Court that the said Plaintiff have &

recover of the said Defendant the sum of

Twenty eight dollars & thirty four cents for

his demand against the said Defendant

and the costs of suit herein taxed at

one dollar and thirty seven cents.

Barzilla Knapp.

Constables Fees

On Summons .35

" Subpoena .75

State of Illinois
Ogle County

I Barzilla Snapp a
Justice of the Peace in and for said County
do certify that the foregoing transcript is
truly copied from the files and books in
my office. In witness whereof I have here-
unto set my hand and seal this 15th day
of June A.D. 1857
(Signed) Barzilla Snapp-J.P.

Filed June 25-1857
(Signed) M. W. Smith
Clerk

Appeal Bond. To have all men by these presents
that we John C. Haynes, Henry L. Raymond
and James H. L. Clayton are held and firmly
bound unto Nath. Svingley in the penal sum
of Two Hundred and ten Dollars lawful money
of the United States for the payment of which
well and truly to be made we and our heirs
our heirs and administrators jointly severally
and firmly by these presents.

In witness our hands and seals this
eleventh day of June A.D. 1857

(Signed)

John C. Haynes
Henry L. Raymond
J. H. L. Clayton

L. S.
L. S.
L. S.

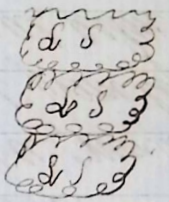
The condition of the above obliga-
tion is such that whereas the said Nath.
Svingley did on the twenty third day of May

Ad 1857 before Bargilla Knapp a justice of
the peace for the County of Ogle recover a judg-
ment against the above bonded John C. Haynes
for the sum of One hundred and 5/100 dollars
from which judgment the said John C. Haynes
has taken an appeal to the Circuit Court of the
County of Ogle a fore said and State of Illinois

Now if the said John C.
Haynes 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

(signed)

John C. Haynes
Henry C. Raymond
J. H. Clayton



Approved by me at my office this 12th
day of June Ad 1857
(signed) Bargilla Knapp J. P.

Filed June 25 1857

(signed) M. W. Smith Clerk

Summons
on the Appeal

State of Illinois ss
Ogle County ss

The People of the State of
Illinois, to the Sheriff of
said County, Greeting.

We command you to Summon Nathaniel
Swingle if he shall be found in your County,
personally to be and appear before the Cir-
cuit Court of said County, on the 1st day of

The next term thereof to be begun and holden
at the Court-house in Oregon, on the first Mon-
day of October next, to answer to an appeal
taken by John E. Haynes from a judgment ren-
dered by Brajilld Snapp a Justice of the
Peace of said County, on the 23^d day of May A.D.
1857, against the said John E. Haynes and in
favor of the said Nathaniel Smungley and have
you then and there this writ.

deal

Witness, Mortimer W. Smith clerk
of our said Court, and the Seal there-
of, this 25th day of June A.D. 1857
(signed) M. W. Smith clerk
per H. J. Smith dep.

Service of the
above

State of Illinois
Ogle County

I have duly served
the within on the within named Nathaniel
Smungley this 5th day of August A.D. 1857
by reading the same to him in his presence &
hearing.

(signed)

E. B. Tyler Sheriff
By W. L. Stoddard
Deputy

Filed Aug 10 1857
(signed) M. W. Smith Clerk

Motion to
dismiss

October term of said Court
Nathaniel Smungley }
vs } Oct 6 1857
John E. Haynes. }

This day comes the said

Defendant by H M Miller his attorney and makes motion that the said cause be dismissed for the following reasons -

1 From the papers in the cause it appears that the Court below had no jurisdiction.

2 That service in the Court below is manifestly

(signed)

H M Miller

Att'y for Defendant

Filed Oct 6 1857.

(signed)

Wm W Smith Clerk.

October 8th.

Nathaniel Springley

vs

John E Haynes

Appeal

This day came the said Defendant by Miller his attorney and entered his motion that this suit may be dismissed.

October 9th 1857 of said October Term

Nathaniel Springley

vs

John E Haynes

Appeal

This day came the said parties by their attorneys and thereupon came on to be heard the said Defendant's motion to dismiss this suit which said motion was founded on the reasons following

First From the papers in the cause it appears that the Court below had no jurisdiction

Second That the service in the Court below is insufficient. And after argument of Counsel and the Court being advised therein is allowed and it is ordered that the said cause be dismissed

at Plaintiff costs, and that the defendant
have and recover of the Plaintiff his costs in
and about this cause expended, and that
he have execution therefor.

Stipulation State of Illinois

Ogle County & Circuit Court of said County
October Term 1857

Samuel Smiley &

vs

It is here by stipulated
John E. Hayes and agreed by the parties
to the above entitled suit by their counsel that
said cause may be docketed by the clerk of the
supreme court of the Third Grand division of said
State, and heard and determined at the next
term thereof to be begun and holden at Ottawa. The
writ of error and the service thereof is here by waived
and the said parties stipulate that their appear-
ance may be entered by the clerk of the said su-
preme court and that the same may be heard and
determined by said supreme court in its regular
order on the docket and that the clerk of said Ogle
County may make up the record without a writ
of error.

H A Mix for Plaintiff
Filed March 11. 1858. H M Miller Atty for Defendant

M W Smith clk

By H J. Smith dep.

State of Illinois }
County of Ogle } 25

I Mortimer W Smith clerk of
the Circuit Court in and for said County do hereby
certify that the above and foregoing is a true and correct
copy of the Record and Papers in the above cause now
on file in my Office.

In testimony whereof I have hereunto

set my hand and affixed the seal of
said court this 17th day of March
AD 1858

Mortimer W Smith clerk
By H. H. Smith dep

6224 Pa. Dec. 1858

And now comes the plaintiff in error & says
that in the recore & proceedings aforesaid
and in the recitation of the Judge aforesaid
there is manifest error in this & over
the court erred in sustaining said
motion & dismissing said suit

2 The court erred in rendering the Judge aforesaid
in manner & form aforesaid

B. C. Cook

Samuel Snowd ley
170 W
John E Graynes

transcript

Filed April 19. 1859
L. Leland
Clerk