

12405

No. _____

Supreme Court of Illinois

Simons.

vs.

Waterman.

71641  7

131

Michael Simon

John S. Watson

131

1850

12405

"United States of America"
"State of Illinois" f

Read before the Hon. Isaac
G. Wilson. Judge of the Nineteenth Judicial Circuit
in the State of Illinois at the October Term of the
DeKalb County Circuit Court begun and held
at the Court House in Sycamore on Tuesday
the 16th day of October in the year of our Lord
one thousand eight hundred and fifty five
and of the Independence of the United States
the Eightieth.

President. Hon. Isaac G. Wilson Judge
" " M. M. Boyce States Attorney
" " William Phelps. Sheriff

" Artist

James H. Hays Clerk

Be it Remembered that afterwards, to wit, on the 16th day of Oct. A.D. 1855, the same being one of the days of the Oct. Term A.D. 1855 of the District Circuit Court, the following, among other proceedings was had, and entered of Record in words and figures following, to wit -

2
 144 3.
 " John S. Waterman }
 59 vs
 " Arhemiah Simons } Appeal
 " " } Verne from Kane.

" This day came the parties
 " by their Attorneys, and on motion of the De-
 " fendant it is ruled by the Court that a
 " Certiorari issue to the Clerk of the Kane
 " Circuit Court, commanding him to send
 " up to this Court, an Amended Record in
 " this cause

Afterwards at the October Term A.D. 1855
 of the District Circuit Court aforesaid, to wit
 on the 17th day of October A.D. 1855, among
 other proceedings, the following was had, and
 entered of Record in Words and figures follow-
 ing, that is to say -

John S. Waterman }
 vs
 Arhemiah Simons } Appeal
 " " } Verne from Kane Co

" This day came the parties
 " by their Attorneys, waive a Jury, and for
 trial submit this cause to the Court,

And, again at the said Oct. Term A.D. 1855 of the DeKalb Circuit Court, aforesaid to sit on the 18th day of October A.D. 1855 the following, among other proceeding ~~was~~ ^{was} ~~and~~ ^{and} ~~intend~~ ^{intend} of Record, in words and figures following, that is to say -

59 " John S. Waterman }
 " vs } Appeal
 " Jeremiah Simons } Return from Nani
 " }

" This day came the parties by
 " their attorneys, and the Court being fully
 " advised in the premises after hearing the
 " evidence, and remarks of Counsel, finds the
 " issue for the Plaintiff, and assesses his
 " damages at the sum of Thirty Seven Dollars
 " and Sixty Six Cents: It is therefore considered
 " by the Court, that the Plaintiff have and
 " recover of the Defendant, Thirty Seven Dollars
 " and Sixty Six Cents, and his costs herein ex-
 " pended, and have execution therefor, and
 " thereupon the Defendant excepts to the opinion
 " of the Court.

Afterwards, to wit on the 25th day of Oct.
 A.D. 1855, being one of the days of the said Term
 of the DeKalb Circuit Court aforesaid, the

4 following. Proceeding among others was
return of Record in words and figures fol-
lowing, that is to say

" John S. Waterman }
vs } Appeal
" Abneriah Simons } Verdict from Court

" This day came the parties
" by their Attorneys, and the Defendant in
" this cause prays an appeal which is allowed
" provided he shall enter into a good and suf-
" ficient Bond to the Plaintiff in the sum of
" two hundred dollars with Cyrus Phelps as
" surety, conditioned as the law directs, and
" file the same in thirty days -

(Copy of Bill of Exceptions)

John S. Waterman } In Hall Circuit Court
vs } of the October Term 1855
Abneriah Simons } Appeal from a Justice
of the Peace

Be it Remembered that on the trial of
this cause, the Plaintiff to sustain his cause
of action, offered in evidence, two promissory
notes, in words & figures following, to wit -
(1st Note)

5th "

Sycamore Nov 3, 1852

" \$42.72 One day after date Promise
" to pay to the order of J. S. & J. C. Waterman
" Forty two & 7/10 Dollars Value Received
" with interest at 10 per cent

Arhemiah Simons'

(Endorsement on 1st Note)

" Pay J. S. Waterman

" J. S. & J. C. Waterman.

" Judgment entered on this note before me July 29th

" 1854 S. H. Todd, J. P.

" Given Oct. 18, 1855. J. W. Burroughs Clerk

(2^d Note)

" \$33.00

" Sixty days after date for Value Rec^d

" Promise to pay J. S. Waterman or order

" Thirty three Dollars with interest at 10 per cent.

" Sycamore Nov 23 1852

" Arhemiah Simons'

(Endorsement on 2^d Note)

" Judgment entered on this note before me

" July 29th 1854. S. H. Todd J. P.

" Given Oct. 18, 1855. J. W. Burroughs Clerk

which said evidence was then & there objected
to by the Counsel for the Defendants, & the
objection overruled by the Court - to the ruling
of the Court in receiving said notes in evidence
the Defendant, at the same time by his counsel
then & there excepted

6. The Defendant then offered to prove that
"the name of the Plaintiff was John C.
"Waterman, and that J. S. Waterman
"was James S. Waterman, which evidence
"was objected to by the Plaintiffs Counsel
"and the objection sustained by the Court
"to which ruling of the Court in rejecting
"said evidence, the Plaintiff by his Counsel
"at the same time then & there excepted.

"This was all the evidence that was given
"on the trial. He therefore prays this Bill
"Of Exceptions may be signed & sealed, which
"is done in open Court. Dated October 23rd 1855

" Isaac G. Wilson Judge Circuit
(Exorcismen)
Filed Oct. 23, 1855. Jas. W. Swiney Clerk
(Copy of Bond filed & exorcismen thereon)

"Know all men by these presents, that
"Mr. Jeremiah Simons and Cyrus Phelps
"both of the town of Burlington, Kane County
"Illinois, James, are held and firmly bound
"unto John S. Waterman in the sum of two
"hundred dollars, to be paid to the said John
"S. Waterman, his certain attorney, executors
"administrators or assigns, to which payment
"well and truly to be made, we bind ourselves
"and each of us, our heirs executors, and
"administrators firmly by these presents

7 " Witness our hands and Seals at Syracuse
" this twenty fifth day of October A.D. 1855-

" The Condition of this obligation is such
" that Whereas the said John S. Waterman
" heretofore, to wit, on the Eighteenth day
" of October A.D. 1855 by the Consideration
" of the Circuit Court of DeKalb County, Illinois
" recovered a judgment against the above bounden
" Jeremiah Simons for the sum of Ninety
" Seven & 2/100 Dollars, and costs of suit
" from which said judgment the said Jer-
" emiah has taken an Appeal to the
" Supreme Court of the State of Illinois -
" Now if the said Jeremiah Simons
" shall duly prosecute his said appeal, and
" in case the judgment of the Circuit Court
" be affirmed, shall pay the said judgment
" and all costs interest and damages ad-
" judged against him, then this obligation
" to be void, otherwise to remain in full
" force and effect

Jeremiah Simons *Edw*
Cyrus Phelps *Edw*

(Endorsement)

" Approved & filed this 25th
" day of October A.D. 1855-

J. W. Bennett

Clk

8.

(Copy of Transcript from J.P. Docket)

" John S. Waterman } Summons issued
 " vs } July 21st A.D. 1854
 " Whermiah Simons } Returnable 29th inst.

" Judgment \$88.46 Returned served by
 " Const fee 1.50 Reading to the Defend-
 " Justice fee 1.06 Ant July 24th A.D. 1854
 " A. L. White Constable

" July 29th 1854. 10 o'clock A.M. - Suit called
 " and Defendant came not - The Plaintiffs de-
 " mand was two promissory notes, amounting to
 " Eighty eight dollars and forty six cents.
 " It is therefore considered by the Court that
 " the Plaintiff have judgment for Eighty
 " Eight Dollars, and forty six cents, and
 " two costs, which is two dollars and six cents

" I Sylvester H. Good, do hereby Certify
 " that the above is a true statement of the
 " proceedings had before me, Witness my hand
 " this 23 day of August A.D. 1854 - and that
 " inclosed are all the papers in my possession
 " in this cause. Sylvester H. Good (Sgd)
 " Justice of the Peace

(Endorsement) Filed Aug 24, 1854 L. Seaborn CLK

Filed March 29 1855. J. H. Boring

CLK

9 (Copy of Manuscript of Record of Name Circuit
Court & returns thereon)

United States of America ?
State of Illinois Name County 8

Present before the
Honorable Isaac C. Wilson Judge of the
Nineteenth Judicial Circuit, and Presiding
Judge of the Name County Circuit Court
of the State of Illinois, at a Term of said
Court, begun and held at the Court House
in Geneva in said County, on the twelfth
day of February, in the year of our Lord one
thousand eight hundred and fifty five

Present the Honorable Isaac C. Wilson Judge
Millard M. Boyce States Attorney
Lawrence P. Barker Sheriff

Attest
Nathan Dearborn Clerk

Be it remembered that whereas heretofore
to wit on the 8th day of November A.D.
1854, the same being one of the days of the
said Name County Circuit Court of the
November Term thereof A.D. 1854 the follow-
ing among other proceedings were had, and entered
of Record in the words and figures following to wit

10 John S. Waterman }
148 v Appeal
Abneriah Simons }

This day comes the Defendant, and enters his motion for leave to interpose a defence in this Court,

And afterwards to wit, on the 11th day of November A.D. 1854, the same being one of the days of the said Court, of the November Term thereof A.D. 1854, the following among other Proceedings were had and entered of Record in the words and figures following to wit:

148 John S. Waterman }
v Appeal
Abneriah Simons }

This day comes on to be heard the Defendant's motion for leave to interpose defence in this Cause heretofore entered herein - After Argument of Counsel the Court being fully advised gives the Defendant leave to interpose defence upon condition that the cost of the Court below are paid before the case is reached for trial,

And afterwards to wit, on the 1st day of January A.D. 1855 the same being one of the days of the said Court of the January Special

Ann A.D. 1855 the following Among other
proceedings were had and entered of Record
in the words and figures following, to wit:

95- John S. Waterman }
v } Appeal
Jeremiah Simons }

This day comes the
Plaintiff by Harrison his Attorney, and
the Defendant being three times solemnly
called, comes not but makes default

It is therefore considered by the Court
that the Appeal herein be dismissed for
want of prosecution, and that a Writ of
Procedendo issue to the Court below -

And it appearing to the Court that this
Writ was appealed for delay - It is therefore
considered by the Court that the Plaintiff
have and recover of and from the Defendant
the sum of it being ten per
cent damages, together with his costs in this
behalf expenditure, and that he have execution
therefor - Whereupon the Defendant comes
into Court, and enters his Motion to set
this default aside after agreement of
Counsel, the Court being fully advised
grants the same set aside.

And afterwards
to wit, on the 14th day of February A.D. 1855 the

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same being one of the days of the said Court of the
February Term thereof A.D. 1855 the following
among other proceedings were had and entered
of Record in the words and figures following
to wit:

" John S. Waterman }
" vs
" Whemiah Simons } Appeal

This day comes the
Defendant and moves the Court for a change
of venue herein, after argument of Counsel
the Court being fully advised orders the
same changed to the County of De Kalb

State of Illinois

Same County

I Luther Draborn Clerk of
the Same County Circuit
Court do hereby certify that the above and
foregoing is a true correct and complete
transcript of all the proceedings had in
the above entitled Cause as appears from the
Records of said Court - And I do further
certify that the accompanying papers marked
A. B. C. D. E. F. G. H. & I
are all the papers appertaining to said Cause
on file in said Court.

(Signature)

Witness Luther Draborn Clerk of
our said Court and the Seal thereof at
Gena in said County this 13th day of March
A.D. 1855

(Indorsed) Filed March 29, 1855. J. H. Beechey Clerk

State of Illinois, } ss.
Kane COUNTY, }

THE PEOPLE OF THE STATE OF ILLINOIS, TO THE SHERIFF OF SAID COUNTY—GREETING:
WE COMMAND YOU, That you SUMMON

John A. Waterman

if *to* ~~shall~~ 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 *Geneva*, in said County, on the *first* Monday of *November* next, to abide by and perform the Judgment of said Court, on a certain appeal at the suit of

him vs Jeremiah Simons

and make due return of this writ

And have you then and there this writ, with an endorsement thereon, in what manner you executed the same.

Luther D. Beaton
WITNESS JAMES H. BEVERIDGE, Clerk of our said Court, and the Seal thereof, at *Geneva in said County*, this *24th* day of *August* A. D. 185 *4*

Luther D. Beaton **CLERK.**

State County Court
Nov Term A.D. 1854

John S. Waterman
vs

Arhemink Simons

Apprentice Simons

Filed March 29, 1855

J. B. Beveridge
clerk

Writ 20 m. 1.00

Ret 10
1.10

James Waterman not found in my County
Oct 24th 1854 W. B. Beveridge

AS COMMISSIONER OF THE STATE OF ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS TO THE SHERIFF OF SAID COUNTY - GREETING:

Whereas the said James Waterman is a person of color and is a slave of the said James Waterman

13 (Copy of Summons issued from J. P. Court.)

" State of Illinois

" Kane County of the People of the State of Illinois to my
Constable of said County, Greeting:

" You are hereby commanded to summon
" Arhemiah Simons, to appear before me at my
" office in Genoa on the 29th day of July A.D. 1854
" at 10 o'clock A.M. to answer the Complaint
" of John S. Waterman for a failure to pay him
" a certain demand not exceeding one hundred
" dollars; and thereof make due return as the
" law directs - Given under my hand and
" Seal this 21th day of July A.D. 1854

" Sylvester H. Todd (Seal)
Justice of the Peace

(Indorsement thereon)

" John S. Waterman } Demand \$98.90

vs

Justice fee 56

" Arhemiah Simons } \$99.46

" By virtue of the Command I did on the
" 24 day of July A.D. 1854 serve this Summons
" by reading to Arhemiah Simons,

" Dros 1.50 A. L. White Const

" Filed March 29. 1855. J. H. Beveridge clk

(Copy of the Appeal Summons and the indorse-
ments thereon)

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State of Illinois
De Kalb County

J. James W. Blevins
Clerk of the De Kalb County

Circuit Court, do hereby certify that the above
& foregoing is a true and complete tran-
script of the proceedings had in this Court
in the case of John S. Waterman vs Arhi-
miah Simons, as above entitled, as appears
of Record - further, that accompanying
the same and attached thereto, are true
& perfect copies, with the endorsements
thereon of the "Bill of Exceptions"
"Appeal Bond," "Transcript from Justice's Office"
"Transcript from Name Circuit Court" "Summons
issued from Justice Court" & "Appeal Summons"
pertaining to said cause now on file in this
Court.

Witness James W. Blevins Clerk of
our said Court and the Seal thereof
at Lye anore in said County, this
10th day of June A.D. 1856.
James W. Blevins
Clerk

Fees for Transcript \$3.50

Paid by Arhimiah Simons

Abimeah Simons } Supreme Court
Plaintiff in Error } Error to De Kalb
vs

John S. Waterman } I do hereby enter
Defendant in Error } myself security
for costs in this
cause, and acknowledge myself bound to pay
or cause to be paid, all costs which may ac-
cure in this action either to the opposite
party, or to any of the officers of this Court
in pursuance of the laws of this state - Dated
this 16th day of June A.D. 1856
A. G. Allen

Supreme Court - June Term
1856 -

Mahendah Simons }

^{vs}
John S. Waterman } Error to be Reversed

And now comes said Simons
by Allen his attorney and says
That in the proceedings & judg-
ment herein - there is manifest
Error in this -

1st The Court Erred in
admitting the evidence offered
by the plaintiff ~~and~~

2nd The Court Erred in
rejecting the evidence offered
by defendant -

And for said
Errors asks That said Judgment
may be reversed and for naught
held

A.C. Allen atty
for plff in Error

And the said deft in error by
Huntington his atty comes & says
that in the judgment Rendered & pro-
ceedings aforesaid there is no
error whereupon he prays judgment

A. W. Huntington

Filed June 18, 1856
S. Deland
Clerk
[2405-10]

131
Nehemiah Simons
By
John S Waterman

Filed June 16, 1854
L. Leland
Clerk

No Superadded
penitence

Nehemiah Simons }
John S^r Wateman }

This Suit was original. Tried before a Magistrates Court and judgment rendered on the 29th day of July 1854 for Wateman. No appearance on the part of the plaintiff in error.

Suit was appealed to the Kane County Circuit Court. And by ~~Simons~~ at the instance of Simons venue changed to the County of DeKalb. in the Circuit Court the said Simons made application to be allowed to make his defence. which the Court conditionally permitted, the condition was that the said Simons was to pay a certain amount of costs.

Now we affirm that said Simons did not pay the costs - nor did he ever file in said cause

any pleadings whatever. nor
did he offer any defence
upon the merits.

Upon the trial
Simons offered to prove that
"The name of the plaintiff was
"John C. Waterman and that
"J. S. Waterman was James S. Waterman

This could not be permitted
for two reasons - First
because Simons made no
defence in the court below &
could not unless by permission
of the court make any in
the circuit court and
not having complied with
the order of the court in
paying the costs was not
entitled to say the least to
a dilatory defence

Secondly
This defence is a defence
in any sense could not be
permitted unless pleaded in
abatement - and there is no
pretense that Simons plead
in abatement.

This point is
fully decided in 13th of Ill
page 571.

Serious

M

Watman

Enu fin
DeKalb

argument
by A. M. Herington