No. 14246

Supreme Court of Illinois

Schlump

vs.

Reidersdorf

71641 7

STATE OF ILLINOIS,

SUPREME COURT,

Third Grand Division.

1446

No. 130.

Schamp

1862

Appeal

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION,

APRIL TERM, A. D. 1862.

GEORGE SCHLUMP
vs.
JOHN P. REIDERSDORF. } *Appeal from Jo Daviess County.*

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1 This was a suit commenced before a Justice of the Peace in which
7 John P. Reidersdorf was the plaintiff, and George Schlump the defendant.
9 Demand sued for seventy four dollars. Judgment was rendered by the Justice of the Peace in favor of Reidersdorf for sixty two dollars and twenty eight cents, on the 27th day of July 1861.

On the 15th day of August 1861, Schlump appealed said suit to
2 the Circuit Court of Jo Daviess County. Service of summons on Reidersdorf, appellee on the 26th day of September, A. D. 1861, at the appearance term on Monday evening the 21st day of October 1861, at about 5 o'clock, being the first day of the October term of said Circuit Court, the plaint-
23. iff's atty. was notified that the defendant would make his application for a change of venue in said suit, and on Tuesday the 22d. day of October,
12 1861, being the second day of said Oct. term of court, the defendant filed his petition for a change of venue in said cause, which is in the words and figures following;

Page of Record. 13 STATE OF ILLINOIS, } ss.
JO DAVIESS CO.

In Circuit Court of Jo Daviess County, at the October Term, 1861.

JOHN P. REIDELSDORF }
vs. }
GEORGE SCHLUMP. }

George M. Schlump, sued by the name of George Schlump the defendant above named, being first duly sworn, on his oath says that he fears that he will not receive a fair trial in the said Circuit Court of said Jo Daviess county, in which the said cause is pending on account of this, that the said plaintiff John P. Reidelsdorf has an undue influence over the minds of the inhabitants of said Jo Daviess county, wherein the said action is now pending, and because the inhabitants of said Jo Daviess county are prejudiced against this affiant so that he cannot expect a fair trial in said cause. This affiant further states, that the said causes for a change of venue above alleged have come to the knowledge of this affiant within the past five days from the date of this application, which is made on this 22d. day of October 1861, and not before. He therefore prays a change of venue according to the statute in such case made and provided.

GEORGE M. SCHLUMP.

Subscribed and sworn to before me this 22d. day of October, 1861.

Wm. R. ROWLEY, Clerk.
By F. B. NEWHALL, Deputy.

JOHN P. REIDELSDORF, }
vs. }
14 GEORGE SCHLUMP. }

And now at this day comes the said defendant by his attorney, and moves the Court for a change of venue in said cause on the foregoing petition or affidavit.

LOUIS SHISSLER, Atty. for Defendant.

Endorsed and filed October 22d., 1861.

Wm. R. ROWLEY, Clerk.

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14 The plaintiff on the following day filed his affidavit and motion for a rule on defendant to give additional security, in words and figures as follows:

15 STATE OF ILLINOIS, }
JO DAVIESS Co. } ss.

John P. Reidersdorf, after being first duly sworn according to law, deposed and says upon his oath that he is the plaintiff in the suit now pending in the Circuit Court of Jo Daviess Co. Ill., appealed from justice Farrar, a justice of the peace in and for said county, by George Schlump the defendant. That the said plaintiff before said justice of the peace on the 27th day of July, A. D. 1861, recovered judgment against said defendant George Schlump for the sum of sixty two dollars and seventy five cents costs of suit, that the costs in said suit are very large because of the number of witnesses required in said suit, and the distance they reside from the place of trial; that the number of said witnesses is between thirteen and fifteen, and that most of them reside from twelve to fifteen miles from the city of Galena, the place said suit was tried, that SAID GEORGE SCHLUMP HAS APPLIED FOR A CHANGE OF VENUE OF SAID SUIT FROM SAID JO DAVIESS CO. CIRCUIT COURT; that if the same is granted, the penalty of the appeal bond given in said case will not cover the amount of said judgment and the costs therein. This affiant further deposes and says that the said George Schlump is insolvent, and that he has not sufficient property out of which to make said judgment and costs, that the security which the said George Schlump has given upon the appeal bond in said appeal case is Edward Hoocke, that said Edward Hoocke, as the affiant is informed and verily believes, has not sufficient property or effects out of which to make the amount of said judgment and costs after allow-
16 ing him the exemption of property from execution, provided by the statute of the State of Illinois, that by reason thereof, and the matter herein stated, the said appeal bond is unsufficient, and the said security is not good and sufficient security upon said appeal bond.

JOHN RETELSTORF.

STATE OF ILLINOIS, }
JO DAVIESS Co. } ss.

John P. Reidersdorf deposes and says that the matters and things in the foregoing affidavit which are stated on his information and belief he believes to be true, and the matters and things therein stated on his own knowledge are true in substance and in fact.

JOHN RETELSTORF.

Pag. of Record. Sworn to and suscribed before me, this 23d. day of October, A.D. 1861.

Wm. R. Rowley, Clerk.

17 JOHN P. REIDERSDORF.
vs.
GEORGE SCHLUMP.

In the Jo Davies County Circuit Court, of the October Term, A. D. 1861.

Now at this day comes the said plaintiff by Rawlins and Sheean his attorneys and moves the Court here to cause said defendant, George Schlump, to give additional security upon the appeal bond in said cause and to make said appeal bond good and sufficient by a day certain to be fixed by this Court.

RAWLINS and SHEEAN, Attys. for Plaintiff.

Endorsed, Filed October 23d, 1861.

Wm. R. Rowley, Clerk.

19 The defendant comes and files a new appeal bond which is approved by the Court.

The motion for change of venue taken up, and after argument by coun-
20 sel is overruled by the Court, to which ruling by the Court the defendant by his attorney then and there excepts.

The defendant is defaulted, and the appeal dismissed by the Court at
21 the costs of the appellant, Schlump, and a procedendo ordered to issue to the Court below.

21 Defendant prays an appeal to the Supreme Court, and files his bill of
24 exceptions which are certified by the court, also files his appeal bond
26 which is approved by the Clerk.

ERRORS ASSIGNED.

1st. In overruling motion for change of venue.

2d. In the dismissal of defendant's appeal.

3d. In rendering a judgment in said cause.

E. S. LELAND AND L. SHISSLER,
For Appellants.

APPELLANT'S BRIEF OF POINTS AND AUTHORITIES.

1st. The Court should have granted the motion for a change venue.

The reasons assigned in the petition for change of venue, are statutory causes.

The plaintiff had reasonable notice of the intended application. The causes alleged, came to the defendant's knowledge *within five days* from the day of filing the petition, and not before, and the plaintiff's attorney was notified on the preceding day of the intended application.

The law requires the party making the application, to give reasonable notice to the adverse party, but makes no unreasonable, or unjust demands upon him. So here, where the party resided 15 miles in the country, and the causes for a change of venue came to his knowledge, for the first time on Friday the 18th day of October, and the Term of Court commenced on Monday, the 21st day of October, and on that day, the plaintiff's attorney was notified of the application for a change of venue, reason and justice would require no greater diligence.

The Statute is peremptory, and it declares that the Court *shall* award a change of venue, when the application is made in the manner, and for the reasons set out in the statute. The obligation of the Judge to allow it, is imperative, and admits of the exercise of no discretionary power.
1. Scam., 117.

There is no material variance between Reidersdorf & Reidelsdorf. Even on the principle of *idem sonans*, there is no variance. But Courts at the present day are not confined to the rigid rule of *idem sonans*, but adopting a more liberal, and reasonable one, enquire whether the variance be material or immaterial. 3. Scam. 25.

The plaintiff signs his name Retelstorf in his affidavit and motion for rule on defendant to file a new appeal bond, and it comes with an ill grace from him to interpose a nominal objection. Further, the plaintiff identifies the petition for a change of venue, by referring to it in his affidavit, and *bases* his motion for a rule on defendant to file a new bond, on this change of venue, alleging it as his main reason, and certainly he is estopped by his own affidavit in the case.

2d. The Court erred in dismissing the defendant's appeal.

3d. The Court erred in rendering judgment in said cause.

73 130

Schlumpf
vs
Reidersdorf

Abstracts
&
Brief

Filed April 2, 1862

L. Leland
clerk

Deft has written
argt on file but
no printed points
Cook for Defts

George Schumpf
vs
John P. Reidersdorf

Appeal from Joe Davies.

The error assigned is that the court overruled the motion for a change of venue.

No affidavit or petition for change of venue was incorporated into the bill of exceptions. a petition is copied in the proceedings but it is no way made part of the record, nor is it properly before this Court:

2 It does not appear that any notice was given of the application for change of venue. It is true that the bill of exceptions recites that on Monday, ~~morning~~ Evening, about 5 o-clock on the 21st day of October and on the first day of the term of the Court the Plaintiffs Attorney was notified that an application for a change of venue would be made &c. Now that was no part of the record of the Court of which it could make a record. Suppose the bill of exceptions had said, that Plaintiff owed the defendant $40 - the court had just the same right to interpolate such a statement and make it conclusive upon us, as to certify that defendant gave us notice of change of venue.

The circumstances of the case, the number and residence of the witnesses, the fact whether they were in attendance or not and many other circumstances must be taken into consideration before a correct determination can be made of the question whether sufficient notice ~~of the~~ had been given of the application for change of venue. The notice assumed by the bill of exceptions to have been given on Monday evening, and the motion was made next day, can this Court say that one half day notice or possibly one nights notice ~~even~~ was sufficient.

The case of Masset et al vs Johnson 22 Ill. 640 is absolutely decisive of this in any point of view.

But I rely most confidently upon the point that there is no petition or affidavit for a change of venue at which this court can look

B. C. Cook

for deft: in error.

73 130

George Schlumpf
vs
John P. Riedersdorf

Appeal from Fr Lawiss

Argument for appellee
B. Le. Brock

Filed April 29. 1862
L. Lecuyer
Clk.

STATE OF ILLINOIS,
SUPREME COURT. } ss. The People of the State of Illinois,

To the Sheriff of Jo Daviess County, 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 Jo Daviess County, before the Judge thereof, between John P. Reidersdorf

plaintiff, and George Schlump

defendant, it is said that manifest error hath intervened, to the injury of the said defendant

as we are informed by his complainant 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 ~~George Schlump~~ John P. Reidersdorf

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 ~~George Schlump~~ John P. Reidersdorf

notice, together with this writ.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 21st day of March in the year of our Lord One Thousand Eight Hundred and Sixty-Two.

R. Leland

Clerk of the Supreme Court.

by J. P. Rice Deputy

130

George Schlemp

No. 130 vs.

John P. Reidersdorf.

SCIRE FACIAS.

FILED April 16th A. D. 1862

L. Leland Clerk.

Sheriff's fees

12 Miles travel 60

Serving 50

return 10

$1.20

$1.20 Paid

G. J. C. Hawkins

Deputy

Executed this writ by reading the same to the within named John P. Reidersdorf. This the fourth (4) day of April A. D. 1862. J. H. Mines Sheriff. Fees 60 cents

G. J. C. Hawkins Deputy

130

George Schlemp

No. 130 vs.

John P. Reidersdorf.

SCIRE FACIAS.

FILED April 16th A. D. 1862

L. Leland Clerk.

Sheriff's fees

12 Miles travel 60

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return 10

$1.20

$1.20 Paid

G. J. C. Hawkins

Deputy

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G. J. C. Hawkins Deputy

STATE OF ILLINOIS, SUPREME COURT,

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GEORGE SCHLUMP
vs.
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9 Demand sued for seventy four dollars. Judgment was rendered by the Justice of the Peace in favor of Reidersdorf for sixty two dollars and twenty eight cents, on the 27th day of July 1861.

On the 15th day of August 1861, Schlump appealed said suit to
2 the Circuit Court of Jo Daviess County. Service of summons on Reidersdorf, appellee on the 26th day of September, A. D. 1861, at the appearance term on Monday evening the 21st day of October 1861, at about 5 o'clock, being the first day of the October term of said Circuit Court, the plaint-
23. iff's atty. was notified that the defendant would make his application for
12 a change of venue in said suit, and on Tuesday the 22d, day of October, 1861, being the second day of said Oct. term of court, the defendant filed his petition for a change of venue in said cause, which is in the words and figures following;

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JO DAVIESS CO.

In Circuit Court of Jo Daviess County, at the October Term, 1861.

JOHN P. REIDELSDORF }
vs.
GEORGE SCHLUMP. }

George M. Schlump, sued by the name of George Schlump the defendant above named, being first duly sworn, on his oath says that he fears that he will not receive a fair trial in the said Circuit Court of said Jo Daviess county, in which the said cause is pending on account of this, that the said plaintiff John P. Reidelsdorf has an undue influence over the minds of the inhabitants of said Jo Daviess county, wherein the said action is now pending, and because the inhabitants of said Jo Daviess county are prejudiced against this affiant so that he cannot expect a fair trial in said cause. This affiant further states, that the said causes for a change of venue above alleged have come to the knowledge of this affiant within the past five days from the date of this application, which is made on this 22d. day of October 1861, and not before. He therefore prays a change of venue according to the statute in such case made and provided.

GEORGE M. SCHLUMP.

Subscribed and sworn to before me this 22d. day of October, 1861.

Wm. R. ROWLEY, Clerk.
By F. B. NEWHALL, Deputy.

JOHN P. REIDELSDORF, }
vs.
14 GEORGE SCHLUMP. }

And now at this day comes the said defendant by his attorney, and moves the Court for a change of venue in said cause on the foregoing petition or affidavit.

LOUIS SHISSLER, Atty. for Defendant.

Endorsed and filed October 22d., 1861.

Wm. R. ROWLEY, Clerk.

Page of Record

14 The plaintiff on the following day filed his affidavit and motion for a rule on defendant to give additional security, in words and figures as follows:

15 STATE OF ILLINOIS, } ss.
JO DAVIESS Co. }

John P. Reidersdorf, after being *first duly sworn according to law*, deposed and says upon his oath *that he is the plaintiff in the suit now* pending in the Circuit Court of Jo Daviess Co. Ill., appealed from justice Farrar, a justice of the peace in and for said county, by George Schlump the defendant. That the said plaintiff before said justice of the peace on the 27th day of July, A. D. 1861, recovered judgment against said defendant George Schlump for the sum of sixty two dollars and seventy five cents costs of suit, that the costs in said suit are very large because of the number of witnesses required in said suit, and the distance they reside from the place of trial; that the number of said witnesses is between thirteen and fifteen, and that most of them reside from twelve to fifteen miles from the city of Galena, the place said suit was tried, that SAID GEORGE SCHLUMP HAS APPLIED FOR A CHANGE OF VENUE OF SAID SUIT FROM SAID JO DAVIESS CO. CIRCUIT COURT; that if the same is granted, the penalty of the appeal bond given in said case will not cover the amount of said judgment and the costs therein. This affiant further deposes and says that the said George Schlump is insolvent, and that he has not sufficient property out of which to make said judgment and costs, that the security which the said George Schlump has given upon the appeal bond in said appeal case is Edward Hoocke, that said Edward Hoocke, as the affiant is informed and verily believes, has not sufficient property or effects out of which to make the amount of said judgment and costs after allow-
16 ing him the exemption of property from execution, provided by the statute of the State of Illinois, that by reason thereof, and the matter herein stated, the said appeal bond is unsufficient, and the said security is not good and sufficient security upon said appeal bond.

JOHN RETELSTORF.

STATE OF ILLINOIS, } ss.
JO DAVIESS Co. }

John P. Reidersdorf deposes and says that the matters and things in the foregoing affidavit which are stated on his information and belief he believes to be true, and the matters and things therein stated on his own knowledge are true in substance and in fact.

JOHN RETELSTORF.

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vs.
GEORGE SCHLUMP.

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Now at this day comes the said plaintiff by Rawlins and Sheean his attorneys and moves the Court here to cause said defendant, Georg Schlump, to give additional security upon the appeal bond in said cause and to make said appeal bond good and sufficient by a day certain to be fixed by this Court.

RAWLINS and SHEEAN, Attys. for Plaintiff.

Endorsed, Filed October 23d, 1861.

Wm. R. Rowley, Clerk.

19 The defendant comes and files a new appeal bond which is approved by the Court.

The motion for change of venue taken up, and after argument by coun-
20 sel is overruled by the Court, to which ruling by the Court the defendant by his attorney then and there excepts.

The defendant is defaulted, and the appeal dismissed by the Court at
21 the costs of the appellant, Schlump, and a procedendo ordered to issue to the Court below.

21 Defendant prays an appeal to the Supreme Court, and files his bill of
24 exceptions which are certified by the court, also files his appeal bond
26 which is approved by the Clerk.

ERRORS ASSIGNED.

1st. In overruling motion for change of venue.

2d. In the dismissal of defendant's appeal.

3d. In rendering a judgment in said cause.

E. S. LELAND and L. SHISSLER,
For Appellants.

APPELLANT'S BRIEF OF POINTS AND AUTHORITIES.

1st. The Court should have granted the motion for a change venue.

The reasons assigned in the petition for change of venue, are statutory causes.

The plaintiff had reasonable notice of the intended application. The causes alleged, came to the defendant's knowledge *within five days* from the day of filing the petition, and not before, and the plaintiff's attorney was notified on the preceding day of the intended application.

The law requires the party making the application, to give reasonable notice to the adverse party, but makes no unreasonable, or unjust demands upon him. So here, where the party resided 15 miles in the country, and the causes for a change of venue came to his knowledge, for the first time on Friday the 18th day of October, and the Term of Court commenced on Monday, the 21st day of October, and on that day, the plaintiff's attorney was notified of the application for a change of venue, reason and justice would require no greater diligence.

The Statute is peremptory, and it declares that the Court *shall* award a change of venue, when the application is made in the manner, and for the reasons set out in the statute. The obligation of the Judge to allow it, is imperative, and admits of the exercise of no discretionary power.
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The plaintiff signs his name Retelstorf in his affidavit and motion for rule on defendant to file a new appeal bond, and it comes with an ill grace from him to interpose a nominal objection. Further, the plaintiff identifies the petition for a change of venue, by referring to it in his affidavit, and *bases* his motion for a rule on defendant to file a new bond, on this change of venue, alleging it as his main reason, and certainly he is estopped by his own affidavit in the case.

2d. The Court erred in dismissing the defendant's appeal.

3d. The Court erred in rendering judgment in said cause.

130
Schlumpf
vs
Riedesdorf et al
Brief

Filed April 2 1862
L Leland
clerk

State of Illinois
Supreme Court — Third Grand Division
April Term A.D. 1862

George Schlump
vs
John. P. Reidersdorf

Error to Jo Davies
Def. below

Lorenzo Leland: Clerk of said Court will please issue Sci. fa. in above entitled cause directed to Sheriff of Jo. Davies County.

Leland & Blanchard &
L. Sheseler
for Plaintiff in Error

Ottawa Mch 21-1862

130

George Schlump
vs
John P. Reidersdorf

Precipe

Filed March 21 1862
L. Leland
Clerk

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION,

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The Statute is peremptory, and it declares that the Court *shall* award a change of venue, when the application is made in the manner, and for the reasons set out in the statute. The obligation of the Judge to allow it, is imperative, and admits of the exercise of no discretiouary power.
1. Scam., 117.

There is no material variance between Reidersdorf & Reidelsdorf. Even on the principle of *idem sonans*, there is no variance. But Courts at the present day are not confined to the rigid rule of *idem sonans*, but adopting a more liberal, and reasonable one, enquire whether the variance be material or immaterial.
3. Scam. 25.

The plaintiff signs his name Retelstorf in his affidavit and motion for rule on defendant to file a new appeal bond, and it comes with an ill grace from him to interpose a nominal objection. Further, the plaintiff identifies the petition for a change of venue, by referring to it in his affidavit, and *bases* his motion for a rule on defendant to file a new bond, on this change of venue, alleging it as his main reason, and certainly he is estopped by his own affidavit in the case.

2d. The Court erred in dismissing the defendant's appeal.

3d. The Court erred in rendering judgment in said cause.

130 - 73

Schlumpf
vs
Teidersdorf
abstract and
Brief

Filed April 2 1862
L Leland
Clerk

STATE OF ILLINOIS, } ss. The People of the State of Illinois,
SUPREME COURT,

To the Clerk of the County Court for the County of Jo. Davis 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 Jo Davis County, before the Judge thereof, between John P. Reidersdorf

plaintiff, and George Schlumpf

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

as we are informed by 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 send 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 21st day of March in the Year of Our Lord One Thousand Eight Hundred and Sixty two.

L. Leland

Clerk of the Supreme Court.

by J. B. Rice Deputy

George Schlumpf

No. 130 vs.

John P. Reidersdorf

WRIT OF ERROR.

FILED ..... A. D. 186

..... Clerk.

State of Illinois
Jo Daviess County
Fourteenth Judicial Circuit } Pleas in the Circuit Court begun and held within and for the said County of Jo Daviess. On the Third Monday in the Month of October A.D. 1861 before the Honorable Benjamin R Sheldon sole Judge of the said fourteenth Judicial Circuit of the State of Illinois

R. H. McClellan Prosecuting Attorney Pro Tem.
Wm. R Worley Clerk.
Simeon K. Miner Sheriff.

John P. Reidersdorf
vs
George Schlumpf. } Appeal.

Be it remembered that heretofore to wit: On the 15th day of August A.D. 1861. the said defendant filed in the office of the Clerk of the Circuit Court of said Jo Daviess County, his appeal bond, which said appeal Bond, is in the words & figures following to wit

Know all men by these presents, that we George Schlumpf and Edward Haacke, are held and firmly bound unto John P. Reidersdorf

in the penal sum of Two hundred dollars, for the payment of which well and truly to be made we bind ourselves and each of our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated this 15th day of August, A.D. 1861.

The condition of the above obligation is such that whereas the above named John P. Reidersdorf, did on the 27th day of July before Oppie Farrar, a Justice of the Peace, for Go. Davies County, recover a Judgment, against the above named George Schlump, for the sum of Sixty two 25/100 Dollars and costs from which judgment the said George Schlump, wishes to appeal to the Circuit Court of Go. Davies County, Now if the said George Schlump, shall prosecute his appeal with effect, and shall pay whatever judgment, shall be rendered upon the dismissal, or trial of said appeal, then the above obligation to be void, otherwise to remain in full force and effect.

Witness

T. R. Bird

George M. Schlump (L.S.)

Edward his X mark Haacke (L.S.)

(L.S.)

Approved W. R. Rowley Clerk

Rec'd on costs $2.00

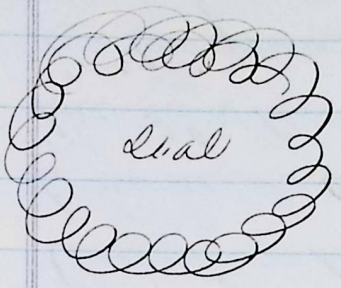
Endorsed

3. Filed Aug 15th 1861
W R Rowley Clerk

Upon the filing of which bond, there was issued out of the office of the Clerk of said Circuit Court a summons, which is in the words and figures following to wit:

State of Illinois }
Jo Daviess County } The people of the state of Illinois to the Sheriff of said County Greeting.

Whereas in a certain cause lately pending before Wm Farrer Esquire one of the Justices of the Peace, within and for said County, wherein John P Reidersdorf is plaintiff and George Schlump is defendant, judgment was rendered by said Justice against the said George Schlump, from which judgment the said George Schlump, has appealed to the Circuit Court of said County, We therefore command you that you summon the said John P Reidersdorf, to be and appear before said Circuit Court, on the first day of the next term thereof to be held at the Court House, in Galena on the 3d Monday in August Inst, at ten o'clock in the forenoon, and abide by and perform the Judgment of said Court in the premises —



Witness W R Powley, Clerk of said Court and the seal thereof at Galena in said County this 15th day of August, A.D. 1841

W R Powley, Clerk

On which summons was endorsed the following return. To Wit.

State of Illinois }
Jo Daviess County }

The within named Defendant is not found in my County this 17 day August A D 1841

S K Hiner Sheriff
By J. C. Hawkins Deputy

The Supersedias issued in said cause is in the words and figures following to wit:

State of Illinois } Sct.
Jo Daviess County }

The People of the State of Illinois To Wm. Farrar, a Justice of the Peace, and John C. Hawkins a Constable, in and for said County, Greeting:

Whereas in a certain suit lately depending

5. before you the said Wm Farrar, wherein John P. Reidersdorf is plaintiff, and George Schlump is defendant, judgment has been rendered in favor of the said John P Reidersdorf, for the sum of Sixty two 25/100 Dollars and Thirty two 70/100 costs as by the transcript of the said judgment from the docket of the said Justice, filed in the Clerks office of our Circuit Court, in and for said County, by the said George Schlump, in this behalf appears, And whereas the said George Schlump, has taken an appeal from the said judgment, and has given bond with security to the said John P Reidersdorf, for the due prosecution thereof, according to law, which said bond is filed as of record in the said Clerks office. We therefore command and enjoin you, the said Wm. Farrar and John C. Hawkins so being Justice and Constable as aforesaid, that you do entirely supersede and desist from proceeding any further in said suit, and that you do forthwith suspend all proceedings in relation thereto, and cease from molesting the said George Schlump, in anywise on that account, until the said Circuit Court shall make other order to the contrary, And this you are in no wise to omit at your peril.

To the Sheriff of said County to execute.

Witness, W. A. Rowley, Clerk of the Circuit Court of Jo Daviess County Illinois, at Galena this

6. Seal fifteenth day of August A.D. 1841
Attest. Wm. R. Worley Clerk

The return entered on the above superseedins is in the words and figures following to wit:

Executed this Writ by reading the same to the within named William Farrer and John Hawkins this 20th day of August. 1841
S. H. Miner Sheriff

The alias summons issued in said cause is in the words and figures following to wit

State of Illinois } ss.
Jo Daviess County }

The People of the State of Illinois to the Sheriff of said County Greeting:
Whereas in a certain cause lately pending before Wm Farrer Esquire. one of the Justices of the peace within and for said County. wherein John P. Reidersdorf is plaintiff. and George Schlump. defendant. Judgment was rendered ~~against~~ by said Justice against the said George Schlump. from which Judgment the said George Schlump. has appealed to the Circuit Court of said County.
We therefore command you again. that you

7. summon the said John P Reidersdorf to be and appear before said Circuit Court on the first day of the next Term thereof to be held at the Court House in Galena, on the third Monday in October next at Ten O'clock in the forenoon, and abide by and perform the judgment of said Court in the premises

Witness W R Bowley, Clerk of said Court and the Seal thereof at Galena in said County this 23d day of September A.D. 1861

seal

W R Bowley Clerk

The return on the above summons is in the words & figures following to wit:

State of Illinois } I have duly served this
Jo Daviess County } writ by reading the same to the within named John P Reidersdorf this 24th day of September A.D. 1861

S L Kimes Sheriff
By J. C. Hawkins Deputy

The Transcripts sent up by the Magistrate in said cause are in the words and figures following to wit:

John. P. Reidersdorf
vs
George Schlumpf

Demand $74 cts
Summons Served May 23d 1861 returnable on

8. the 28th at 9 o'clock A.M. also subpoena issued for George Altonas, Nicholas Dax, George Weigler, Andrew Smith, all delivered to Plaintiff. Returned the same, by reading said summons to the defendant, May 24th also by reading subpoena to the witnesses, signed Wm S Glass, Constable.
May 28th parties in Court, the Defendant makes affidavit for a change of venue, granted.
Transcript and papers of the suit delivered to Wm Farrar, the nearest Justice of the peace
Witnesses claim fees.

Justices Cost	1.20
Constable Glass	2.88
Witnesses	2.00

State of Illinois }
Gr Davis County } I, Lewis Zoeller a Justice of the Peace of said County do certify, that the foregoing is a true transcript of proceedings had in said cause, before me and herewith you will find all papers belonging to the same.

Given under my hand this 28th day of May A.D. 1861

Lewis Zoeller J.P.

Endorsed
Filed Sept 5th 1861
W R Rowley Clerk

9.

John P. Reidersdorf
vs
George Schlumpf. } Justices Court before the undersigned
Demand on account $74.50

On change of Venue from Lewis Zoeller J.P. 28th May 1841. Transcripts and papers of suit being delivered to me, and parties in Court.

Defendant not having his important Witnesses they being out of the State asked that the cause be defered to the 28th June 1841, in order to give him time to get his Witnesses or their depositions, which was granted. — Parties in Court on the 28th June Defendant having a sore foot, pleaded inability to get his witnesses to court, asked to have the suit again deferred, untill the 27th July 1841, both parties and Counsel, agreeing, it was granted by the Court, at defendants Cost, parties in Court on the 27th July 1841. James Ingam, Nicholas Kary, Christian Kreuschanger, Nicholas Dax John Betts, Jacob Albright, J. Grundy, James Ingraham, Mr. McDonald, Mrs Reidersdorf John Hughs Mr Keeler, Geo. Durich, Andrew Smith, John B Hawkins, Geo Altona, Mr Wigles Witnesses.

And now on this 27th day of July 1841, on hearing the cause & the arguments of the Counsel It is ordered, that the said Plaintiff have judgment against said defendant, for the sum of Sixty two

Justices Cost $9.45

Constables Cost $13.77

Witnesses fees $10.50

Extra.
J. B. Hawkins cost for levying Execn, advertising property, and keeping property 20 days @ 50¢ per day $10.75

dollars and twenty-five cents, and also for costs of said suit. — Witnesses claim fees.

State of Illinois }
Do Davies County } I William Farrar one of the Justices of the Peace, within and for said County, do hereby certify that the foregoing transcript and judgment of John O. Reidersdorf vs George Schlumpf, is truly copied from the files and books of my Office and herewith you will find all papers belonging to said cause.

Given under my hand and seal this 15th day of August A.D. 1861

William Farrar J.P. (Seal)

Endorsed
Filed Sept 5th 1861
W R Romley
Clk.

The summons issued by the Magistrate is in the words & figures following to wit:

State of Illinois }
Do Davies County } sc. The People of the State of Illinois to any constable of said County Greeting:

You are hereby commanded to summon George Schlump

11. To appear before me at my Office in Salem on the 28th day of May at 9 o'clock A.M. to answer the complaint of John P. Reidersdorf for a failure to pay him a certain demand not exceeding one hundred dollars, and hereof make due return as the law directs
Given under my hand and seal this 23rd day of May A.D. 1861

Lewis Zoller J.P. (Seal)

The return endorsed on this summons is in the words and figures following to wit:
Served personally by reading to Defendant this 24th day of May 1861.
Wm. S. Glass Constable.

The affidavit for change of venue from before Justice Zoller is in the words and figures following to wit:

John P. Reidersdorf vs George Schlump — In Justice Court before Lewis Zoller J.P.

George Schlump being duly sworn says, that it is his belief that he cannot have a fair and impartial Trial in the Cause of John P. Reidersdorf, Plaintiff, against him Defendant and prays that a change of venue may be

granted to the nearest Justice
Subscribed and sworn to
before me this 28th day of
May 1861
Lewis Zoller J.P.

George W Schlump

Endorsed
Filed Sept 5th 1861
W R Rowley Clk.

And afterwards, To wit, On the 22nd day of October A.D. 1861, at the October Term A.D. 1861 in the record of the proceedings of said Court in the above entitled cause, appears the following entry To wit:

John P. Reiders dcd
vs
George Schlump.

Appeal.

The Defendant by his attorney comes and files affidavit and motion for a change of venue.

The affidavit and motion referred to in the last above recited entry is in the words & figures following to wit:

State of Illinois
Jo Daviess County

In Circuit Court of said Jo Daviess County at October Term 1861

13: John P. Reidelsdorf
vs
George Schlump.

George A. Schlump, sued by name of George Schlump the defendant above named, being first duly sworn: on his oath says, that he fears that he will not recieve a fair trial in the said Circuit Court of said Jo Davies County, in which the said cause is pending on account of this, that the said plaintiff John P. Reidelsdorf has an undue influence over the minds of the inhabitants of said Jo Davies County, wherein the said action is now pending, and because the inhabitants of said Jo Davies County are prejudiced against this affiant, so that he cannot expect a fair trial in said cause.— This affiant further states, that the said causes for a change of venue above alleged have come to the knowledge of this affiant within the past five days from the date of this application, which is made on this 22nd day of October 1861 and not before. He therefore prays a change of venue, according to the statute in such made and provided

Subscribed and sworn to before me this 22nd day of October 1861

George A. Schlump

Opar R. Romley Clerk
By F. R. Newhall deputy

John P. Rendelsdorf
vs
George Schlump } And now at this day comes the said defendant by his attorney and moves the Court for a change of venue in said cause on the foregoing petition or affidavit

Louis Shipler
Atty for Deft.

Endorsed
Filed October 22nd 1841
W R Morley Clk.

And afterwards to wit on the 23d day of October A.D. 1841, at the October Term A.D. 1841 of said court in the record of the proceedings of said Court in the above entitled cause, appears the following entry, to wit:

John P. Rendersdorf
vs
George Schlump } Appeal

The Plaintiff by his attorney comes and files affidavit and motion for rule on defendant to give additional security

The affidavit and motion referred to in the last above recited entry are in the words and figures following to wit:

15 State of Illinois }
Jo Daviess County } John C Reidersdorf after being first duly sworn according to law. deposes and says upon his oath. that he is the Plaintiff in the suit now pending in the Circuit Court of Jo Daviess County Illinois appealed from Justice William Farrar, a justice of the Peace, in said County by George Schlumpf the defendant. That he the said plaintiff before said Justice of the Peace on the 27th day of July A.D. 1865 recovered a Judgment against said Defendant George Schlumpf, for the sum of Sixty two dollars and seventy five cents and costs of suit. That the costs in said suit are very large, because of the number of Witnesses required in said suit & the distance they reside from the place of trial that the number of said witnesses is between thirteen and fifteen, and that most of them reside from twelve to fifteen miles from the City of Galena, the place said suit was tried, that said George Schlumpf has applied for a change of venue of said suit from said Jo Daviess County Circuit Court, that if the same is granted the penalty of the appeal Bond, given in said case will not cover the amount of said Judgment and the costs therein. This affiant further deposes and says that the said George Schlumpf, is insolvent, and that he has not sufficient property out of which to make

said judgment and costs. that the security which the said George Schlumpf has given upon the appeal bond in said appeal case is Edward Haacke. That said Edward Haacke, as the affiant is informed and verily believes. has not sufficient property or effects. out of which to make the amount of said judgment and costs. after allowing him the exemption of property from Execution. provided by the Statute of the State of Illinois, that by reason thereof, and the matters herein stated. the said appeal bond is insufficient, and the said security is not good and sufficient security upon said appeal Bond.

John Reitelsdorf

State of Illinois }
Jo Daviess County } ss John A Reidersdorf deposes and says that the matters and things in the foregoing affidavit which are stated on his information and belief, he believes to be true, and the matters and things, therein stated on his own knowledge, are true in substance and in fact

Sworn to and subscribed before me this 23d day of October A D 1861. N R Romley Clk

John Reitelsdorf

17. John P. Reidersdorf } In the Jo Daviess County Cir
vs } cuit Court, of the October Term
George Schlump } A D 1841 (on appeal)

Now at this day comes the said Plaintiff by Rawlins and Shuman his attorneys and moves the Court here, to cause said Defendant George Schlump, to give additional security upon the appeal Bond, in said cause, and to make said appeal Bond good and sufficient by a day certain to be fixed by this Court.

Rawlins & Shuman
Attorneys for Plaintiff

Endorsed
Filed Oct 23d 1841
W R Rowley
Clk

And afterwards, to wit On the 28th day of October A D 1841, in the record of the proceedings of said Court in the above entitled cause appears the following entry to wit:

John Reidersdorf }
vs } Appeal
George Schlump }

Now at this day came on to be heard the motion heretofore filed by plaintiff for rule on defendant to give additional security, and the Defendant is

ruled by the Court to give a new appeal Bond in the sum of Three Hundred Dollars, by Wednesday Morning next.

And afterwards to wit on the 30th day of October, A.D. 1841 of the October Term, of said Court, in the record of the proceedings of said court in the above entitled cause, appears the following entry to wit:

John P. Reidersdorf
vs
George Schlumpf
Appeal.

On motion of the Defendant by his attorney, the time heretofore granted to defendant in which to file new appeal Bond is extended until tomorrow morning.

And afterwards to wit on the 2nd day of November, A.D. 1841 as part of the said October Term A.D. 1841, of said Court, in the Record of the proceedings of said Court, in the above entitled cause appears the following entry to wit:

John P. Reidersdorf
vs
George Schlumpf
Appeal.

The defendant comes and files a new appeal

19. Bond, which is approved by the Court.

The appeal bond referred to in the above recited entry is in the words & figures following to wit:

Know all men by these Presents, That we George Schlump and Edward Haacke of the County of Jo Daviess and State of Illinois are held and firmly bound unto John O. Reidersdorf, in the penal sum of Three hundred dollars. for the payment of which well and truly to be made, we bind ourselves and each of our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated this 1st day of November A.D. 1861.

The condition of the above obligation is such, that whereas the above named John O. Reidersdorf, did on the 27th day of July, before Geo Farrar a Justice of the peace, for Jo Daviess County, recover a judgment against the above named George Schlump for the sum of Sixty two & 25/100 dollars, and costs from which judgment the said George Schlump wish to appeal to the Circuit Court of Jo Daviss County, Now if the said George Schlump shall prosecute his appeal with effect, and shall pay whatever judgment may be rendered upon the

20. dismissal or trial of said appeal then the above obligation to be void, otherwise, to remain in full force and effect.

George W Schlump (Seal)
Edward his X mark Haacke (Seal)

Witness
Louis Shifsler

Approved by order of Court. W R Rowley Clerk

Endorsed
Filed Nov 2nd 1841
W R Rowley Clerk

And afterwards to wit On the 4th day of November AD 1841 as per of the said October Term AD 1841 in the Record of the proceedings of said Court in the above entitled cause appears the following entry to wit

John O. Reidersdorf
vs
George Schlump
} Appeal

Now at this day came on to be heard the motion heretofore filed by defendant for a change of venue herein. which motion after argument by counsel is overruled by the Court, to which ruling of the Court the defendant by his attorney excepts.

21. And afterwards to wit on the 7th day of November A.D. 1861 as ye of the said October term A.D. 1861 in the Record of the proceedings of the said Court in this Cause appears the following entry to wit.

John P. Reidersdorf
vs
George Schlumpf.
Appeal.

Now at this day comes the plaintiff by Shuman his attorney, and the Defendant being three times solemnly called came not but made default. It is thereupon considered by the Court, that this appeal be dismissed at the costs of the appellant and that Execution issue against him therefor. And it is further ordered that a procedendo issue to the Court below.

And afterwards to wit on the 9th day of November A.D. 1861 as ye of the said October term A.D. 1861 of in the Record of the proceedings of said Court in this cause, appears the following entry to wit

John P. Reidersdorf
vs
George Schlumpf
Appeal.

Now at this day came the defendant by his attorney, and prays an appeal to the supreme Court, which is granted, conditioned that the

21. And afterwards to wit on the 7th day of November A.D. 1861 as ye of the said October term A.D. 1861 in the Record of the proceedings of the said Court in this Cause appears the following entry to wit.

John P. Reidersdorf
vs
George Schlumpf.
Appeal.

Now at this day comes the plaintiff by Shuman his attorney, and the Defendant being three times solemnly called came not but made default. It is thereupon considered by the Court, that this appeal be dismissed at the costs of the appellant and that Execution issue against him therefor. And it is further ordered that a procedendo issue to the Court below.

And afterwards to wit on the 9th day of November A.D. 1861 as ye of the said October term A.D. 1861 of in the Record of the proceedings of said Court in this cause, appears the following entry to wit

John P. Reidersdorf
vs
George Schlumpf
Appeal.

Now at this day came the defendant by his attorney, and prays an appeal to the supreme Court, which is granted, conditioned that the

said George Schlumpf, enter into and file with the Clerk of this Court within thirty days from this date a good and sufficient appeal bond properly conditioned, in the penal sum of Three Hundred Dollars, with Edward Staacke as surety.

And afterwards, to wit On the 11th day of November A D 1841 as part of the said October Term A D 1841, in the record of the proceedings of said Court in this cause, appears the following entry to wit:

John P Reidersdorf
vs
George Schlumpf } Appeal.

The Defendant by his attorney comes and files a Bill of Exceptions, which is certified by the Court.

The Bill of Exceptions referred to in the last above recited entry, is in the words & figures following to wit:

State of Illinois } In the Circuit Court
Jo Daviess County } of said Jo Daviess County at the October Term thereof A D 1841

23. John D Reidersdorf
vs
George Schlumpf

Be it remembered that at the October Term of said Circuit Court, the said cause then pending on an ~~appeal~~ appeal from a Justice of the Peace, On Monday Evening, about 5. o'clock, being the 21st day of October, and the first day of the said term of said Circuit Court the plaintiffs attorney was notified that an application for a change of venue would be made by said defendant. And on the following day the defendant filed a petition and motion for a change of venue. And thereupon the Plaintiff filed affidavit & motion for rule on defendant to file a good and sufficient appeal bond. And a rule having been granted against said defendant, the defendant subsequently appeared with his security, Edward Haacke, and filed a new appeal bond, which security having qualified the new appeal bond, was held by the Court to be sufficient, and was thereupon approved, and afterwards, on the 4th day of November, 1861 still being of the term of said Circuit Court came on to be heard the motion for a change of venue heretofore filed in said cause before the Hon Benjamin R Sheldon, Judge of said

Court. and after argument by Counsel the said motion was refused. and denied by said Court to which ruling and decision of the Court the defendant then and there excepted, and the defendants counsel having afterwards, withdrawn his appearance in said cause, and declined further to prosecute his appeal, and having made default, the Court ordered the defendant to be defaulted. and the appeal of said defendant to be dismissed for want of prosecution, which was accordingly done.

Benj. R Sheldon (Seal)

Endorsed

Filed Nov 11th 1841

W. R. Rowley Clk.

The appeal bond filed by the defendant in said cause is in the words & figures following Towit:

Know all men by these presents, that we George Schlump and Edward Haacke of the County of Jo Daviess and State of Illinois, are held and firmly bound unto John P. Reidersdorf, also of the same County and State in the penal sum of Three 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 administrators, jointly, severally

25. and firmly by these presents. Witness our hands and seals this 15th day of November. A.D. 1861

The condition of the above obligation is such that whereas, the said John P Reidersdorf did on the 6th day of November in the Circuit Court in and for the County and State aforesaid recover a judgment against the above bounden George Schlump, of a dismissal of appeal and a procedendo ordered to the justice of the peace, and costs from which said judgment of the Circuit Court the said George Schlump has prayed for and obtained an appeal to the supreme Court of said State. Now if the said George Schlump, shall duly prosecute his said appeal with effect, and shall moreover pay the amount of the judgment, costs interest and damages rendered and to be rendered against him, in case the said judgment shall be affirmed in the Supreme Court then the above obligation to be void otherwise to remain in full force and virtue

George A Schlump (Seal)
Edward his X mark Haacke (Seal)
N. Spencer Caldwell, Witness as to the signature of Edward Haacke.

Approved

Wm R Rowley Clerk
By J R Bird deputy
November 22nd 1861

Endorsed
Filed Nov 22nd 1861
Wm R Rowley Clerk
By J. R. Bird deputy

State of Illinois } I William R Rowley
Jo Daviess County } Clerk of the Circuit Court in and for said County, do hereby certify the foregoing to be a full true and correct Transcript of the records and proceedings of the said Circuit Court, together with the Bill of exceptions, as certified to by the Court in the above entitled cause of John P. Reidersdorf vs George Schlump.

In Testimony Whereof I have hereunto set my name and affixed the seal of said Court at my Office in Galena this 6th day of December A.D. 1861

Wm R Rowley Clerk
by J R Bird. Deputy

Clerks fees.

Transcript	$1.50	~~paid~~
Certificate and Seal	35	$1.85 paid
		75.20
Costs of Court.		2.50
unt paid deft	Ball due	72.70

George Schlump
vs
John P. Reidersdorf

Supreme Court
3rd Grand Division
April Term A.D. 1862

And now at this day comes the appellant and says there is manifest error in the record proceedings and judgment in the above cause and shows to this Court the following.

1st In overruling the motion for change of venue.

2d In the dismissal of the defendants appeal.

3d In rendering a judgment in said cause.

Wherefore he prays ~~that~~ the judgment of this Court, and that the same may be corrected, and said cause remanded in pursuance to law &c.

L. Shissler & E. S. Leland
for appellant.

George Schlumpf
vs
John R. Reidersdorf
Record

Filed Apl. 22. 1862
L. Leland
Clk.