

No. 373

Supreme Court of Illinois

Atchamul
N. Henkley

vs.

John
J. Dowling

(379)  7

Pocket No 85

No 38

Filed by the appellees

Dec. 31st 1834

State of Illinois,
Circuit & County of St. Davids. } et

Be it remembered, that heretofore to-wit- that
at a Circuit Court in and for the County of St.
Davids State of Illinois, began and held on Wed-
nesday the sixth day of April Year of our Lord eight-
een hundred & thirty five, at the Court House in
the Town of Galena in said County of St. Davids,
before the Hon. Sidney Bruce Judge of the 3rd judici-
al Circuit for said State of Illinois, having by agree-
ment with the Hon. Thomas Ford Judge of the 6th
judicial Circuit in said State to interchange Circuit
with him, at this said term of said Circuit Court of
St. Davids County aforesaid, the following proceedings
were had to-wit-

Nathaniel Hinkley having filed his -

Bond in the Clerk's Office of which this is a true copy
Know all Men by these presents, That we Nathaniel
Hinkley & Archibald A. Drummond are here and firm-
ly bound unto John Doshay, in the penal sum of
One Hundred Dollars to the payment of which,
well and truly to be made, we bind ourselves, our and
each of our, heirs, executors, and administrators, jointly
and severally, firmly by these presents; sealed with
our seals and dated this 10th day of January A.D.
1835.

The Condition of this obligation is such, that
whenever the above named John Doshay did on the
5th day of January before John Turney a justice of
the Peace for St. Davids County, recover a judgment
against the above named Nathaniel Hinkley for

Appeal
bond
from
Circuit
judgment

the sum of Fifty-two Dollars & Thirty-seven Cents
and costs; from which said judgment, the said
Nathaniel Hinkley wished to appeal to the Circuit
Court of St Davids County: Now if the said
Nathaniel Hinkley shall pay the said debt, and
all costs, in case the judgment shall be affirmed
on the trial of the appeal; then this obligation to be
void, otherwise to remain in full force & virtue.

Witness

"Saml. Smoker"

"Nathaniel Hinkley" *Debt*

"A. A. Drummond" *Debt*

Whereupon the following summons was issued
State of Illinois }
St Davids County } *ss*

"The People of the State of Illinois.
To the Sheriff of the County of St Davids County;
We command you, that you summon John Doshing
to appear before the Circuit Court of St Davids
County, at the next term, to be holden at Galena on the
first day of May next, to answer Nathaniel Hinkley
on an appeal. And have you there and then this writ.

Witness the Hon Richard M. Young, Judge of the
fifth Judicial Circuit of the State of Illinois,
at Galena this 12th day of January A.D. 1835.
Attest "Saml. Smoker" *Clk*

On the first day of which said April Term, John
Henry Edgar Justice of the Peace within & for the County
of St Davids. Filed the following Transcript of
Judgment—

John Doshing } Demand, accepted Order \$52.37 1/2

vs

Nathaniel Hinkley } Summons issued 27th December
1834, returnable 5th January 1835

W. K. Spatnik Controller

Transcript

of Justice

5th January 1835. Summons returned (executed) the Defendant did not appear. And no cause being shown to the contrary, judgment was rendered against Defendant in favour of Plaintiff for fifty two Dollars & 37 1/2 Cents & Costs.

Justices fees: Summons, docketing & judgment	56 1/4
Appeal & Transcript (150 pages)	75
Constables fees - 37 1/2	81 1/4

"I certify the foregoing to be a correct transcript from my docket."

Given under my hand & seal this 6th day of April 1835."

John T. Tunny "J. T. Tunny"

And said Justice also returned the original papers of said suit of which the following are true copies.

State of Illinois
County of St. Clair

The People of the State of Illinois

To any Constable of said County Greeting:

You are hereby commanded, to summon Nathaniel Hickley to appear before me, at my office in Saline on the 5th day of January next, at 11 o'clock in the forenoon to answer the complaint of John Dooling for a failure to pay him a certain demand not exceeding One hundred Dollars, and hence make due return as the law directs.

Given under my hand & seal this 27th day of December 1834"

John T. Tunny "J. T. Tunny"

Copy of Order sent on
15th November 1833."

"Twelve Months after date, please to pay John Dooling or order fifty two Dollars value received

And Charge same to your obliged
To Mr. Nathaniel Hinkley Legatee of Robert A. Drimmond
\$52.00

And afterwards tried at the said term of said Court,
on Friday the 10th. day of said Month of April, the
following proceedings were had -

John Dooling

vs
Nathaniel Hinkley } on Appeal from Justice

Now at this day come the parties
by their Attorneys, and said Defendant by His Honor
his Attorney moves to dismiss this suit for want of juris-
diction in the justice of the Peace; which Motion is overruled
by the Court and said parties submitting said
case to trial by the court. fine for the plaintiff Fifty
three Dollars & Thirty cents. Whereupon it is considered
by the Court that the said John Dooling the plaintiff
do have and recover of said Nathaniel Hinkley the
said sum of Fifty three Dollars & thirty cents,
together with his costs & charges by him in said suit
before said justice & on said appeal, in this Court
said out and expended & have his Execution therefor &c

And afterwards tried at the same term of said
court upon the 13th. day of April aforesaid the said
Nathaniel Hinkley filed his bill of Exceptions and
prays an appeal to the Supreme Court of the
state as follows -

Nathaniel Hinkley

adversus
John Dooling

Judgment on Appeal \$8.30

In this case said Defendant
Nathaniel Hinkley filed his bill of Exceptions to the
opinion of the Court and also prays an appeal

Trial
&
Judgment
in
Circuit
Court

Appeal

to
Supreme
Court

to the Supreme Court of the state and having
given bond in open Court with James Craig
his security (according to the statute) who is approved
by the Court, and said appeal accordingly
granted".

Copy of Bill of Exceptions -
"In the Circuit Court of Darius County"

April Term 1835

John Doshing

vs

Nathaniel Hinkley

} On appeal from Justice Turner
Judgment 52.37 1/2

"Be it remembered that on the trial of this
cause in the Circuit Court, the plaintiff Doshing
offered in evidence to support the action, an instrument
of writing of which the following is a copy -

"15th November 1833."

"I do hereby certify after date, please to pay John
Doshing or order Fifty-two Dollars value received
and Charge here to your obliged,

To Mr Nathaniel Hinkley Signed Robert A. Drummond
\$52 00 1/2

Bill
of

exceptions

"It also appearing to the Court that
the said plaintiff on the same day, & before the same
Justice, sued said Defendant on another assumpsit
order of said Defendant; Whereupon said defendant
his Council moved the Court to dismiss this
aforesaid action for want of jurisdiction in the
Justice below, who rendered the judgment in the
above cause because the plaintiff ought to have
consolidated both actions on the two assumpsit orders
where by the sums claimed, would have exceeded the
jurisdiction of said Justice in said cause; Which

Motion the Court overruled, & decreed that the justice had jurisdiction in said suit on the accepted order, and affirmed the judgment of the said justice to which opinion & decision of the Court the said Hinkley by his Council excepts & prays this Bill to be made part of the record which is accordingly granted.

"No objection was made in the trial to receiving the testimony - nor any motion to exclude the testimony - nor was this Bill of Exceptions tendered until after the cause was decided"

Witness my hand and seal this 13th day of April 1835

Signed Henry Breese ^{Chief Justice}
Copy of Appeal bond

Know all Men by these presents that we Nathaniel Hinkley and James Craig of the County of St. Davids & State of Illinois, are well and firmly bound unto John Doshing of the same County in the penal sum of One Hundred Dollars lawful money of the United States for the payment of which well and truly to be made, we bind ourselves and our heirs, executors and Administrators, jointly and severally, firmly by these presents. Witness our hands & seals this 13th day of April AD 1835.

The Condition of this obligation is such, That whereas the said John Doshing, did on the 10th day of April in the year aforesaid in the Circuit Court in and for the County of St. Davids aforesaid in the State of Illinois, recover judgment against the above named Nathaniel Hinkley for the sum of fifty three Dollars & thirty Cents

And Dollars costs of said suit from
which judgment is aforesaid of said Circuit Court
the said Nathaniel Winkley has procured for obtain-
ed an appeal to the Supreme Court of said
State; Now if the said Nathaniel Winkley shall
prosecute his said appeal with effect, and shall
moreover pay the amount of the judgment, costs,
interest & damages incurred and to be incurred ag-
ainst him in case the said judgment shall be
affirmed in the Supreme Court then this
obligation to be void else to remain in full force
& virtue."

Taken before me in
open Court April 14th AD 1835
Samuel Smucker Clk

Nathaniel Winkley
James Craig

State of Illinois
Circuit & County of Jo. Daviess }
I Samuel Smucker
Clerk of the Circuit Court within and for the
County of Jo. Daviess & Circuit, do hereby certify
the foregoing is a true, full & correct transcript
from ~~all~~ the records & papers of said Court remaining
in my office & of all the proceedings of said suit wherein
John. Dowling is Plaintiff & Nathaniel Winkley
defendant.

In testimony whereof I have hereunto
set my hand & affixed the seal of said
Court at the Town of Galena and State
aforesaid this Twenty second day of May
in the Year of our Lord eighteen hundred & thirty five
Samuel Smucker Clk
of the Circuit Court

Appeal No 2
Nathaniel Hinkley
19

John Bowling
cr. 56 —

Transcript in appeal
from Jos. Davis
Circuit Court —

Clerks Fee	
Transcript & paper	\$2.87
Certificates & fees	50
	<u>\$3.37</u>

Filed June 2, 1835
M. B. Sumner

State of Illinois
Circuit and County of Jo Daviess 35th Dec

It is remembered, that heretofore to-wit — that
at a Circuit Court in and for the County of Jo
Daviess, State of Illinois, began and held on Monday
the sixth day of April, Year of our Lord eight
hundred & thirty five, at the Court House in the
Town of Galena in said County of Jo Daviess,
before the Hon. Sidney Bouse, Judge of the 3^d
Judicial Circuit for said State of Illinois, having
by agreement with the Hon. Thomas Ford Judge of
the 6th Judicial Circuit in said State to interchange
Circuits with him at this said term of said Circuit
Court of Jo Daviess County aforesaid, the following
proceedings were had to-wit —

Nathaniel Hinkley having filed his —
Bond in the Clerk's office of which this is a true copy

"Know all men by these presents, that we
Nathaniel Hinkley, & Archibald N. Drummond,
are held and firmly bound unto John Dowling in
the penal sum of Two Hundred Dollars, to the
payment of which, we and truly to be made, we
bind ourselves, our, and each of our, heirs executors, and
administrators, jointly and severally, firmly by these
presents; sealed with our seals and dated this 10th
day of January, A.D. 1835.

The condition of this obligation is such,
That whereas the above named John Dowling in-
did on the 5th day of January, before John Turney
a Justice of the Peace for Jo Daviess County, receive a
judgment against the above named Nathaniel Hinkley

for the sum of Ninety-five Dollars $\frac{64}{100}$ and costs;
from which said judgment, the said Nathaniel
Hinkley wishes to appeal to the Circuit Court of
St Davids County. Now if the said Nathaniel
Hinkley shall pay the said debt, and all costs, in
case the judgment shall be affirmed on the trial
of the appeal, then this obligation to be void, other-
wise to remain in full force and virtue."

Witness,
"Saml Smoker"

"Nathaniel Hinkley" *Read*
"A. N. Drummond" *Read*

Whereupon the following summons was issued—
State of Illinois }
St Davids County } ad-

"The People of the State of Ill.
To the Sheriff of the County of St Davids, Greeting,
We command you that you summon John Dowling
to appear before the Circuit Court of St Davids
County, at the next term to be holden at Galena,
on the first day of May next, to answer Nathaniel
Hinkley on an appeal And have you then and there this
writ."

Witness the Hon. Richard M. Young, Judge
of the Fifth Judicial Circuit of the State of Illinois,
at Galena this 12th day of January A.D. 1835."

Attest "Saml Smoker" Clerk

On the first day of which said April Term
John Turney Esqr. Justice of the Peace within &
for the County of St Davids—Filed the following
transcript of judgment—

"John Dowling,

vs

Nathaniel Hinkley.

{ Demand, accepted order \$5.64
Summons issued 27th December 1834.
Returned 5th January 1835.
Kirkpatrick Constables.

Transcript

of

Judgment

by Justice

5th January 1835, Summons returned "executed".
The defendant did not appear. And no reason being
shown to the contrary, judgment is rendered against
Defendant in favour of Plaintiff, for \$95.64 the
amount of order & interest & costs.

Justices Fee; Sum ^t , docket, & judgment	00.56 1/4
Appeal & transcript	50 paid — 00.75
Constables Fee 37 1/2	8 1/4

I certify the foregoing to be a correct transcript from
my docket. Given under my hand and seal this
6th day of April 1835.

John Turner J. P. Clerk

And said Justice also returned the original papers
of said suit, with the following as true copy.

State of Illinois

County of St. Charles

At The People of the State of Illinois

To any Constable of said County, Greeting:

You are hereby commanded to summon Nathaniel Henkle
to appear before me, at my Office in Galena on the 5th
day of January next at 11 o'clock in the fore noon, to
answer to the complaint of John Doshing, for a failure
to pay him a certain demand not exceeding one hundred
Dollars, and hereof make due return at the last return.

Given under my hand & seal, this 27th day, of
December, 1834.

John Turner J. P. Clerk

Copy of Order said on—

15th November 1833. Twelve Months after date please
to pay to the order of John Doshing, Ninety five Dollars
for value Received and charge same

To your oblige,

Robert A. Drummond

To Mr Nathaniel Henkle

\$95.00

Accepted
Nathaniel Henkle

And afterwards to wit, at the said term of said Court,
on Friday the 10th day of said month of April, the
following proceedings were had -

John Dowling

versus.

Nathaniel Hinkley

On appeal from Justice -

Trial

and

Judgment

by Circuit
Court -

"Now at this day came the parties
by their Attornies, and said defendant by his Attornies
his Attorney moved to dismiss this suit for want of jurisdiction
in the Justice of the Peace, which motion is
overruled by the Court - and said parties submitting
said cause to trial by the Court, after hearing the
evidence and argument, the Court find for the plaintiff
the sum of Ninety Seven Dollars & Thirty Seven
Cents.

Therefore it is considered by the Court that the
said John Dowling the Plaintiff, do have and
recover of the said Nathaniel Hinkley, the said sum
of Ninety Seven Dollars & Thirty Seven Cents together
with his costs & charges by him in said suit
before said Justice and in said appeal in this Court
paid out and expended, and have Execution there
for."

And afterwards to wit - at the same term
of said Court, upon the 13th day of April of course
also the said Nathaniel Hinkley filed his Bill
of Exceptions, and prayed an appeal to the
Supreme Court of the State as follows -

Nathaniel Hinkley

versus

John Dowling

Judgment on appeal for
97.37.

appeal

In this case, the said Defendant
Nathaniel Hinkley files his Bill of Exceptions to the
opinion of the Court, and also prays an appeal to

to
Supreme
Court

to the Supreme Court of the State, & having given
bond in open Court with James Craig his security
according to the Statute which is approved by the Court
and said Appeal accordingly granted."

Copy of Bill of Captions

In the Circuit Court of Darnall County,
John Doring

vs

April Term 1835.

Nathaniel Hunkley, On appeal from Justice Turner's Judgment
for \$95.64.

"Be it remembered, that on the
trial of this cause in the Circuit Court, the plaintiff
Doring offered in evidence to support the action an
instrument of writing of which the following is a Copy
"15th November 1833"

"Twelve months after date, please to pay to the
order of John Doring Ninety five Dollars for value
received and charge same to your obligor -

"To Mr Nathaniel Hunkley" (Signed Robert A Drummond)
\$ 95.

It also appearing to the Court that on
the same day, that the plaintiff also sued said Defen-
dant, before some justice of the peace, on another account
was drawn by some person upon said Defendant in
favor of said plaintiff, for the sum of 53 Dollars upon
which, judgment was also rendered against said
defendant. Whereupon the said Defendant moved
the Court to dismiss this former suit for want of
jurisdiction in the justice below, who rendered the
judgments in the above cases, because the plaintiff
ought to have ^{consolidated} both actions on the two
accepted orders, whereby the sum claimed would,

Bill
of

exceptions

have exceeded the jurisdiction of said justice in
said case; which motion the Court overruled & decided
that the justice had jurisdiction in said suit on
the accepted order, & affirmed the judgment of the
said justice, to which opinion & decree of the Court
the said Haskley excepts by his Council, & prays
this bill to be made part of the record which is
accordingly granted.

No objection was made on the
trial to receiving the testimony, nor any notice to
exclude the testimony - nor was this Bill of Excep-
tions tendered until after the case decided -

Witness my hand & seal this

13th day of April 1835

Silvery Bouse (Seal)

Copy of the Appeal Bond -

Know all Men by these presents, that
we Nathaniel Hinkley, and James Craig, of the
County of Jo Daviess and State of Illinois, are
here and firmly bound unto John Docking of
the same County, in the penal sum of Two hundred
Dollars lawful money of the United States, for
the payment of which, will and truly to be made,
we bind ourselves, and our heirs, executors, and Admin-
istrators, jointly and severally, firmly by these presents.
Witness our hands and seals this 13th day of April, A.D. 1835.

The condition of the above obligation is such,
that whereas the said John Docking, died on the tenth
day of April in the year aforesaid, in the Circuit
Court in and for the County of Jo Daviess aforesaid,
& State aforesaid, never against the above bounden
Nathaniel Hinkley, a judgment for the sum of
Ninety seven Dollars & Thirty seven Cents and
Dollars costs of said

appeal No 1

373

Samuel Hinkley
vs.

John Dowling

vs.

Transcript in appeal
from J. Davie's
Circuit Court

Clerks Fee

Transcript & prints \$2.89

Certificates & fees 50

\$3.39

Filed June 2^d 1833

J. M. Duncan

State of Illinois }
Supreme Court } set } June Term in the Year of our Lord
One thousand, one hundred & thirty five,

Nathaniel Hinkley }
vs } In Error. On Judgment in so Default
John Dowling } Circuit Court for \$53.38 Cents

Afterwards to wit, on the day of
June A.D. 1835, at this same term of the court, before the
justices thereof comes the said Nathaniel Hinkley, and
says that in the record and proceedings, aforesaid, and also
in the rendition of the judgment, aforesaid, there is manifest
error in this to wit: ~~At~~ the said Circuit Court, erred in
not dismissing said suit for want of jurisdiction, in the
justice below who rendered the judgment in the above case,
when it appeared, that the said Plaintiff Dowling below
died on the same day, and before the same justice, as
the said Nathaniel Hinkley on another accepted order,
other than the one sued on in this cause the amount of
both of which orders, exceeded the jurisdiction of said
justice in said cause. ^{2nd} The said Circuit Court erred in
this, in deciding that ^{the} justice of the peace who gave judgment
in this cause had jurisdiction of the same, when it
appeared on the trial of said cause in said Circuit
Court, ~~that~~ John Dowling had died. Said defendant
on the same day, and before the same justice, on another
accepted order the amount of which, added to the amount
of the order in which judgment was given in this aforesaid
cause, would exceed the sum of One hundred Dollars
the jurisdiction of said justice

3rd The said Circuit Court come in this, that the two
suits brought as aforesaid by the said John Dowling
against the said Nathaniel Winkley on the said
acceptance orders as stated in said bill of exceptions
filed in this cause on the same day, and before the same
justice, were properly and upon and that the said
justice had jurisdiction of the same

4th That said Circuit Court come in determining that
the said justice of the Peace, & jurisdiction of said
demands was upon as before stated, when by
the 16th section of the act concerning justices of the
Peace & constables approved February 3^d, 1827 (page
371 revised code) the said suits before said justice
upon the two acceptance orders as stated in said bill
of exceptions ought to have been consolidated.

And the said Nathaniel Winkley prays that
the judgment aforesaid, for the ~~the~~ errors aforesaid,
and for other errors apparent in the records and
proceedings aforesaid, may be reversed, annulled, and
altogether held for nothing, and that he may be
restored to all things which ~~and~~ he has lost by
occasion of the said judgment &c.

Nathaniel Winkley

In Supreme Court

Nathaniel Winkley

John Dowling

Argument of error
of record
of record

State of Illinois }
Supreme Court } at June Term in the Year of our Lord
one thousand one hundred & thirty five

Nathaniel Hinkley }
vs } In Error On Judgment in said
John Doring } Circuit Court for \$97.37 cents

Afterwards to wit on the
day of June A.D. 1835, at this same term of the
Court before the justices thereof comes the said Nathaniel
Hinkley, and says that in the record and proceedings,
aforesaid, and also in the rendition of the judgment, aforesaid,
there is manifest error in this to wit: That the
said Circuit Court erred in not dismissing said suit,
for want of jurisdiction, in the justice below, who rendered
the judgment in the above cause, when it appeared,
that the said Plaintiff Doring below, did on the
same day and before the same justice see the said
Nathaniel Hinkley on another accepted Order, other
than the one shown in this cause, the amount
of both of which orders exceeded the jurisdiction of
said justice in said cause.

Says The said Circuit Court erred in this, in
deciding that the justice of the peace who gave judgment
in this cause had jurisdiction of the same, when it
appeared on the trial of said cause, in said Circuit
Court, said John Doring had seen said defendant
on the same day, and before the same justice on another
accepted order the amount of which, added to the
amount of the order in which judgment was given
in this aforesaid cause would exceed the sum of one
hundred Dollars, the jurisdiction of said justice.

Says The said Circuit Court erred in this, that
the two suits brought as aforesaid by the said John
Doring against the said Nathaniel Hinkley on
said accepted orders as stated in said Bill of Exceptions

filed in that cause, on the same day and before
the same justice, were properly sued upon, and
that the said justice had jurisdiction of the same
4^{thly} That said Circuit Court erred in determining
that the said justice of the peace, had jurisdiction
of said demands sued upon, as before stated whereby
the 16th section of the act concerning Justices &
Constables approved February 3^d, 1837 (page 371
revised Code), the said suits before said justice upon
the two aforesaid demands as stated in said bill of
Exceptions ought to have been annulled.

And the said Nathaniel Hinkley prays that
the judgment aforesaid, for the errors aforesaid, and
for other errors apparent in the record and proceedings
aforesaid, may be reversed, annulled, and altogether
for nothing. And that he may be restored to all things
which he has lost by occasion of the said judgment.

Nathaniel Hinkley

In Supreme Court

Nath Hinkley

John Doolittle

Applicant of or
on the part of
John Doolittle in Court