

12029

No. _____

Supreme Court of Illinois

Lathrop

vs.

Warren

71641  7

Was before the Honorable John D. Caton
associate justice of the Supreme court of the state of
Illinois assigned to hold circuit Courts in and for
the county of Bureau in the state aforesaid at the
May Term of said court begun and held at the court
House in Princeton in said County on Monday the
the fifteenth day of May in the year of our Lord
One Thousand Eight Hundred and forty eight

Present Hon. John D. Caton judge

David Brown Clerk

Stephen Smith Sheriff

W. C. Cook State Atty

To wit on the 29th day of December
A.D. 1847 the defendant filed his
petition for a certiorari in the
Words and figures following:

State of Illinois }

Bureau County }

William Warren }

vs }

Allen S. Lathrop }

To Martin Ballou Esq Master
in chancery in and for the county of
Bureau and state of Illinois

Your petitioner Allen S. Lathrop states on
oath that on or about the 13th day of Nov. A.D. 1847 before
Thomas S. Olson a justice of the peace in and for the County
of Bureau and State of Illinois, William Warren of the County
aforesaid obtained a judgment against your petitioner in the
sum of fifty three dollars and seventy five cents debt and four
dollars and forty five cents costs, which judgment was obtained
under the following circumstances: The said Warren
commenced before D. G. Salisbury J.P. the suit upon which
said judgment was obtained on the 24th day of Oct A.D.

1847 on which day summons was issued and made returnable on the first day of Nov AD 1847. Previous to the return day of said summons your petitioner by his attorney and said plaintiff by his attorney agreed to continue the cause until the 4th day of the said November, on the 2^d day of November your petitioner made oath to an affidavit the purport of which was that this deponent did not believe that he could have an impartial trial before the said Salisbury, the said affidavit was made for the purpose of being left with William A Fraser attorney for this deponent to be used by him at his discretion, as soon as the said oath was made, this deponent made a demand upon the said Salisbury J.P. for the said affidavit, which the said justice refused to deliver up. This deponent says that he did not apply nor did he intend to apply to have said suit removed from before said justice but as it was impossible for him to attend to the trial on the fourth as he was compelled to be absent from Princeton, the affidavit was made to be left with his attorney as aforesaid. This deponent by his attorney appeared on the fourth day of November 1847 at the Office of D. G. Salisbury J.P. who informed him that he had nothing to do with said suit but had sent the papers appertaining thereto away some day or two before the suit was to have been heard before him the said justice. Your petitioner never had at any time any official notice that the said cause had been sent to Thomas S. Elston a justice of the peace neither was he aware that judgment had been rendered against him by said justice until after the expiration of 20 days from the rendition of the same. And your petitioner further says that he could not appeal in the ordinary manner as he was absent from home at the time said judgment was rendered and when he was informed of the fact the 20 days have expired, and the said judgment rendered and the said judgment was not the result of the negligence of this

deponent. And this deponent further says that the
said judgment in his opinion is unjust and erroneous
said judgment was obtained upon an action of trover
and conversion brought by said Warren against
this deponent to recover the value of a gelding and
this deponent says that the said judgment is unjust
as the title to said property was not in said Warren
said Warren pretended to claim said property by a
levy made upon said horse by virtue of several ex-
ecutions, which executions were never actually
levied upon said property. said horse had been
taken by a constable by virtue of an execution in favour
of this deponent and sold on the same to this deponent
and your petitioner prays a writ of certiorari may
issue according to the Statute in such case made
and provided

State of Illinois }
Bureau County }

Allen S. Lathrop the above named petitioner
being duly sworn according to law deposes and says that
all the matters and things set forth in the above petition
are true to the best of his knowledge and belief
sworn and subscribed before A. S. Lathrop

me this 28th day of Dec 1844

Martin Wallow

Master in Chancery

The clerk of the circuit court will issue a writ of
certiorari conformable to the foregoing petition upon
petitioners giving bond and security as the law directs
M Wallow

Master in Chancery

To wit on the first day of said Term

William Warren

vs

Appeal by Certiorari

Allen S Lathrop

This day came the Plaintiff by Cook his attorney and the defendant by Dickey his attorney and the said Plaintiff entered his motion to quash the writ of certiorari herein for want of a sufficient petition.

And, To wit on the second day of said Term

This day came the Plaintiff by Cook his attorney and the defendant by Dickey his attorney, and the court being fully satisfied of the insufficiency of the petition of said appellee it is ordered that the foregoing motion be sustained, that the writ of certiorari be quashed and this appeal be dismissed, and a writ of procedendo be awarded to the justice of the peace from whose docket it had been taken, And it was further considered by the court that the said Plaintiff have and recover of the said defendant all his costs and charges in and about this appeal in this behalf expended and that execution issue therefor.

And the said defendant thereupon prayed an appeal of this cause to the Supreme Court which is granted by the Court provided the said defendant file his appeal bond with the clerk of this court in the penal sum of one hundred dollars with Benjamin Wood as security conditioned as the law directs in appeals to the Supreme Court, said bond to be filed within thirty days from this date

To wit on the 22 day of May A.D. 1848, the said
defendant filed his appeal bond in the words and
figures following to wit:

Know all men by these presents that we Allen
D. Lathrop and Benjamin Newell of the County of Warren
and State of Illinois are held and firmly bound unto
William Warren also of the same County and State in
the penal sum of One Hundred Dollars current money
of the United States for the payment of which well and
truly to be made we bind ourselves, our heirs exe-
cutors and administrators jointly severally and firmly
by these presents. Witness our hands and seals this
twenty second day of May Eighteen Hundred and forty
Eight

The condition of this obligation is such
that whereas the said William Warren did on the
Sixteenth day of May A.D. 1848 in the Circuit Court in
and for the County of Warren and State aforesaid obtain
the dismissal of an appeal from a justice of the peace
which appeal had been taken to said Circuit Court by
the said Allen D. Lathrop, also an order for a procedendo
to the justice of the peace from whose docket the said
appeal had been taken, the judgment of the Court having
been rendered against the said Lathrop for the sum of
Fifty three dollars and seventy five cents damages and
four dollars and fifty five cents costs. And whereas
the said William Warren did further obtain a
judgment against the said Lathrop in said Circuit
Court for the sum of twenty five dollars the cost of said
appeal, from which proceeding and judgment of the
5th Circuit Court the said Allen D. Lathrop has prayed for
and obtained an appeal to the Supreme Court of said
State. Now if the said Allen D. Lathrop shall
duly prosecute his said appeal with effect and

shall moreover pay the amount of the damages
judgment costs and interest rendered and to be
rendered against him, in case the said judg-
ment shall be affirmed in the said Supreme Court,
then the above obligation to void, otherwise to
remain in full force and virtue

Allen S. Lathrop

EST

Benja Newell

EST

Taken and entered into before
me at my Office in Princeton this
23 day of May A.D. 1848

David Brown Clerk

by S. V. Thompson deputy

State of Illinois
Bureau County

I Justin H. Olds, clerk of the circuit
court in and for said county, do hereby certify the
foregoing to be true copies of the petitions for certiorari,
all the orders of the court, and the appeal bond in
the above entitled cause, as the same appear of record
in my office.

Witness my hand and the seal of said
court at Princeton, this fourteenth day of
June in the Year of our Lord One thou-
sand Eight Hundred and Forty nine

Justin H. Olds Clerk

Filed June 16, 1849.
William C. H.

12029

Conf. City

William H. H.

Allen S. Lathrop

50

1849

53.75

Fees for copy of record = 2.62
Certificate & seal 50

It is ordered by the Court, that the clerk
of the third division, shall hereafter, in
making up the docket, place all of the
cases from ~~a particular~~ ^{each} county together,
the counties to be arranged in the following
order,

Jacketing Cases
Rule 5th entered -

Filed July 29. 1850.
Shelton Clk.

Wagon
Lake
Well
Iraguais
Grundy
Dussaye
McHenry
Boon
Munichago
Stephenson
Jadavies
Carroll
Egle

Lee
Whiteland
Henry
Raceland
Henderson
Warren
Knob
Stark
Floria
Marshall
Putnam
Burton

Taywell
Woolford
McLane
Livingston
Lacalle
Kendall
Stone
DeKalb.