

14483

No. _____

Supreme Court of Illinois

Fosgate

vs.

Goutier

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 173

49

Jessup
vs
1863

Ford

14483

State of Illinois

In the Supreme Court
thereof at the April Term
A.D. 1863

Josiah Fosgate }
vs }
Thomas Gautier }

It is hereby stipulated
and agreed by and between Josiah
Fosgate the above plaintiff and
the said Thomas Gautier by Cross
Coy his attorney that the above entitled
cause may be dismissed both here
and in the Court below at the
costs of the said Josiah Fosgate
he having paid the said
demand in full, and settled
the suit

Josiah Fosgate
Thomas Gautier
By Cross Coy,
his Atty

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Fozgat

vs

Gautier

Stipulation

Filed April 23 1863

L. Lewis
Clerk

United States of America
State of Illinois } ss.
Kendall County }

Then before the Honorable
Madison E. Hallister Judge
of the ninth Judicial Circuit
of the State of Illinois and presiding
Judge of the Circuit Court of Kendall
County at a Term thereof begun and held at the Court
House in Oswego in said County on the thirtieth
day of January A. D. 1862 being as the 2^d Monday
of January A. D. 1862 and being also the Eighty sixth
Year of the Independence of the United States of America
I, the Hon. M. E. Hallister Judge aforesaid
D. P. Jones Esqr. State Atty
G. M. Hallinback Clerk
Saight Sadd Sheriff.
Attest, G. M. Hallinback
Clerk

It is Reminded that hereafter to wit, on
the 13th day of August A. D. 1861 there was filed in the
office of the Clerk of the Circuit Court aforesaid a
process in a certain matter in the words and
figures following to wit;

State of Illinois } ss. In the Circuit Court there
Kendall County } to the effect and Term 1861.

Thomas Gautier }
Josiah Hargett } Adversely
Damages \$600.00

Will the Clerk of the said Court please issue
a summons in the above case returnable to the
said Term as the law directs - directed to the
Sheriff of Kendall County
Gives Aug. 13th 1861 J. S. Boy
S. J. P., Atty.

Filed Aug. 13th 1861,
E. M. Kellumbeck Clerk.

And ~~affirmed~~ to wit on the ^{19th day of August A. D.} ~~1861~~ ~~the plaintiff in the action aforesaid by John S. Boy~~
~~W. D. Knight~~ ~~Sherriff of said County as~~
~~attorney filed in~~
~~turned into~~ the office of the Clerk of the Circuit Court
aforesaid his Declaration herein in the words and
figures following to wit;

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State of Illinois Kendall County, St.
In the Circuit Court thereof to the September
Term A. D. 1861.
Thomas Gautier vs. Josiah Pasgate,
Thomas Gautier plaintiff in
this suit by J. S. Boy his attorney complains
of Josiah Pasgate who is summoned in a plea
of trespass on the case on promises for that
whereas the said Defendant heretofore to wit, on the
twenty sixth day of October A. D. one thousand
eight hundred and fifty nine at Newark in said
County of Kendall made his certain promissory note
and then and then delivers the same to said
plaintiff in and by which said note said Defendant
promised to pay to said plaintiff by the name and
description of Tho. Gautier or order one
year after date which said note bore date

October 26th 1859 and which period of one year
has long since elapsed & in Amount Dollars for
Value received with use.

By means whereof and by force of the Statute in
such Case made and provided the said defendant be-
-came liable to pay said plaintiff said sum of Money
mentioned in said Note and being so liable in Consideration
that then and then undertook and promised to pay
the same to said plaintiff according to the tenor and
effect true intent and meaning of said Note to wit at
the place aforesaid and whereas also the said defend-
-ant afterwards to wit, on the 26th day of October
A.D. 1859 to wit at Newark in said County be-
-came and was indebted to said Plaintiff in a
large sum of Money to wit, six hundred Dollars
for Money before that time lent and advanced to
paid laid out and expended for said Defendant by
said Plaintiff at said Defendants request and also
in the like sum of or one extraordinary package
before that time sold and delivered by said Plaintiff to
said Defendant at like special instance and request
of said Defendant and being so indebted the said Defendant
in Consideration that then and then undertook and prom-
-ised to pay said plaintiff said last mentioned sum
of Money when the same afterwards requested yet the
said Defendant not regarding his several promises
and undertakings above set forth but contriving &c
Although after requested so to do has not paid said Plaintiff
within of said sum of Money or any part thereof
but so to do has hitherto wholly neglected and
refused and still doth neglect and refuse to the
damage of said Plaintiff of six hundred Dollars

And Sheweth he bring suit &c
Drew Lay Off. Attys.

Copy of Note and account paid upon
Newark October 26th 1859.

\$ 500⁰⁰ One year after date I promise to
pay Tho. Gautier or Order Five Hundred
Dollars for value received with me
(Signed) Josiah Fosgate

Josiah Fosgate
T. Tho. Gautier Dr.

To Money had and received	\$ 500.00
" Back up Sold and delivered	\$ 500.00

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And Afterward to wit on the 2^d day of September
A. D. 1861 the same being one of the days of the
September Term A. D. 1861, ^{and also the return day of said term} of the Kendall County
Circuit Court Dwight Ladd Sheriff of said County
returned into Court the summons issued her in which
said summons with the endorsements thereon is in
the words and figures following to wit,

State of Illinois }
Kendall County } ss
The People of the State of Illinois
to the Sheriff of said County
Greetings,

We command you that you summon
Josiah Fosgate If he shall be found in your
County personally to be and appear before the Circuit
Court of said County of Kendall on the first day

of the next Term Court to be holden at the
Court House in Oswego in said County, on the
first Monday of September A. D. 1861 to answer
unto Thomas Gautier in a plea of Trespass on
the Case upon promises to the damage of
said Plaintiff, as he says in the sum of Six
Armand Dollars

And have you shown and thus this writ
with an endorsement thereon in what manner
you executed the same



Witness George M. Hollenback Clerk
of our said Circuit Court and the
seal thereof at Oswego this 24th
day of August A. D. 1861.

G. M. Hollenback Clerk

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State of Illinois }
Russell County }

I duly executed this writ by reading
the same to the within named Justice
Assgate this 19th day of August 1861.

Dwight Ladd
Sheriff.

Filed September 2^o 1861

G. M. Hollenback Clerk.

And afterward to wit, on the 14th day of January
A. D. 1862 the same being one of the days of the law-
-day Term A. D. 1862 of the Newell County Circuit
Court sitting for the dispatch of Business in the Court
House in Oswego in said County. The plaintiff herein
by his attorney aforesaid files among the papers in this
Case his affidavit in the words figures following
to wit;

State of Illinois

Newell County

vs.
In the Circuit Court of the January
Term 1862.

Thomas Gautin

vs.

Josiah Forgate

John Coy Attorney for the above
named Plaintiff who first having

been duly sworn upon his oath deposes and says that
the said Defendant did on the 30th day of August
A. D. 1861 at Fox in the County of Newell offer to settle
up the above entitled Case and give the said plaintiff a
certain span of horses in satisfaction of the said Debt
in Expectation that the said plaintiff and the Affiant
signed the Stipulation now on file to dismiss the said Case
but after the said Stipulation was signed and delivered to the
said Defendant he the said Defendant refused to deliver
up the said Horses or anything in lieu thereof and put
the said Stipulation on file and the Affiant further says
that the said Defendant has wholly refused to deliver up
the said Team or to fulfill his part of the agreement
for which said Stipulation was given and that the said
Stipulation is only signed by the Affiant and the said
plaintiff and is not signed by the said Defendant
John Coy.

To Josiah Furgate Defendant in
the Above entitled Cause.

Take notice that I shall disregard
and deny the agreement to dismiss the above entitled
Cause now on file in the office of the Clerk of the Circuit
Court of said County on account of the failure on your
part to deliver over the property, which formed the
consideration of the said agreement. And try the said
Cause at the January Term of the said Court.

And take notice further that unless you produce
the note upon which the said Cause was brought and
which you obtained of me at the time you obtained
the said Agreement, and signed by you and in favor
of the said Plaintiff, on the trial of the said Cause I
shall give oral evidence of its contents.

Thomas Gautier

By Louis Loy his attorney

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State of Illinois }
Randall County } vs

Personally appears before me this day
Louis Loy who first having been duly
sworn upon his oath and doth depose and say that
he received the within notice on the within named
Josiah Furgate by reading the same to him and
delivering to him a true copy of the same this 2^d
day of January A. D. 1862.

Subscribed and sworn to before me
the 17th day of Jan. 1862

Louis Loy.
G. M. Hallenback Clerk.

Filed the 17th day of January A. D. 1862.

G. M. Hallenback Clerk.

And afterward to wit on the same day to wit
on the 17th day of January A. D. 1862 the ~~same~~
said Court being still in session as aforesaid the
following proceeding was had in said Court in said
Cause and return of Record to wit;

Thomas Gaultie }
v. } Assumpsit
Josiah Fergate }
And now comes the Defendants
by Oggood his attorney
and moves the Court to dismiss this suit in
accordance with a stipulation heretofore filed
herein by the parties and thereupon comes the Plaintiff
by Cuy his attorney and the Court after hearing the
parties in relation to the motion of said Defendants
considers that said motion be overruled

9 And afterward to wit; on the 23rd day of January
A. D. 1862 the same being still one of the days of
Term of the Court sitting as aforesaid the following pro-
ceeding was had in the Cause and return of Record to
wit;

Thomas Gaultie }
v. } Assumpsit
Josiah Fergate }
And now comes the Plaintiff by
Cuy his attorney and the Defendant
being three times solemnly called comes not nor any
one for him but he fails and makes default herein
and it appearing to the Court that due notice of
the process of this Court has been had upon the said
Defendant more than ten days before the first day
of the present term of this Court It is therefore Con-

- sided by the Court that the Default of the said Defendant be entered.

And afterward to wit on the 27th day of January A. D. 1862 the same being still one of the days of the January Term of the Court aforesaid the following proceedings were had in said Court in said Cause and entered of Record to wit,

Thomas Gautier

v.
Josiah Fosgate

} Assumpsit

16 And now comes the Plaintiff by Coy his attorney and sheweth the Court upon motion of the Plaintiffs attorney proceeds to assess the Plaintiffs damages herein, and after due investigation the Court assesses the Plaintiffs damages herein at three hundred and sixty three Dollars which is entered of Record. It is sheweth considered by the Court that the Plaintiff have a recovery of and from the said Defendant said sum of three hundred and sixty three Dollars adduced as aforesaid together with the Costs and Charges by him in this behalf expended and that he have Execution therefor.

State of Illinois } ss

Randall County }

George W. Hollenback Clerk of the Circuit Court in and for said County, do hereby Certify that the above and foregoing is a true Copy of ^{all} proceedings had and entered of Record in said Court in the Matter in which Thomas Gautier is Plaintiff and Josiah Fosgate is Defendant - and that all papers now remaining on file ^{in my office} pertaining to said Cause are truly Copied herein.

Given under my hand and the
seal of said Court the 14th day
of April A. D. 1862...

W. M. Hollenback
Clerk.

State of Missouri
Rendall County Circuit Court

Thomas Gentry }
Joseph Fosgate } Appellant

Damages app^d by the Court
on default & Ind^g for the 12th
January Term A. D. 1862

The Defendant prays a writ of error & Super
Recede for the following reasons

1 The return of the Sheriff on the summons
is insufficient - It does not say that it
was read in the presence & hearing of the
Defendant. The return is in the following
words & figures - "State of Missouri, Rendall County,
"I duly executed this writ by reading the same
"to the within named Joseph Fosgate this
"14th day of August 1861 - David L. Leach Sheriff
"see 5th page of the Record

2^d The Declaration contains 2 counts - The 1st
count is on a promissory note for \$500,
The 2^d count is for \$600 for money
lent & advanced & and in the like sum for an
extraordinary shackles sold & delivered by Plt
Def and concludes with a general breach
& claims \$600, Damages - see 2^d 3^d & 4th pages Record

The Court app^d the damages to the
sum of \$363 - ^{costs are paid to of Record} It does not appear, whether the
damages were app^d on the note or for the
extraordinary shackles - The 1st sic of

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L.V. 73
Josiah Fosgate

vs
Thomas Gautier

Transcript of Record
County of Essex



Filed April 19, 1862
L. Leland
Clerk

State of Illinois
Kendall County } ss A. P. Brewster being duly
sworn doth depose and say that he is
a resident of said County of Kendall
that he has a family with whom he
resides, and is permanently settled in
said County so far as his present intentions
and expectations are concerned that
he is the owner in fee and in the
actual possession of real estate in
said County of the value of at least
~~Eight~~ ^{ten} ~~hundred~~ ^{four} ~~dollars~~ ^{over & above}
all incumbrances, and has personal
property free from incumbrance in
said County of the value of more
than Two Hundred dollars, and
further saith not

Subscribed and sworn
this 14th day of April
A. D. 1862 before me

A. P. Brewster

Albert Cook, N.P.

Justice of the Peace



Know all Men by these Presents, That *we*

Josiah Fosgate as principal, and *A. P. Brewster*

as security, are held and firmly bound unto *Thomas Gantier*

in the penal sum of *Six hundred Dollars* good and lawful money of the United States, for the payment of which, well and truly to be made, the said *Josiah Fosgate and A. P. Brewster* bind themselves, their heirs, executors and administrators, jointly, severally and firmly by these Presents.

Witness, *our hands & seals and dated*

this *14th* day of *April* A. D. 18*62*

The Condition of the above Obligation is such, That, whereas the above named *Thomas Gantier*

did, at the *January* Term of the *Kendall County Circuit Court*, in the State of Illinois, A. D. 18*62* recover a judgment against the above bounden

Josiah Fosgate

for the sum of *Three hundred and sixty three* Dollars to reverse which said judgment, the said *Josiah Fosgate*

has sued out a Writ of Error from the Supreme Court, within and for the Third Grand Division of said State, which Writ of Error is made a Supersedeas. Now if the said *Josiah Fosgate*

shall duly prosecute said Writ of Error, and pay, or cause to be paid, the amount of said judgment, and all judgments, costs, interest and damages which the said Supreme Court shall adjudge against *the said Josiah Fosgate* and abide the order and judgment of said Supreme Court in this behalf, then this obligation is to be void, otherwise to remain in full force and effect.

Josiah Fosgate [SEAL]
A. P. Brewster [SEAL]
[SEAL]
[SEAL]

No. 173 49

SUPREME COURT,
THIRD GRAND DIVISION.

Josiah Forzani

vs.

Thomas Gauthier

SUPERSEDEAS BOND.

Filed April 19th 1862

L. Leland, Clerk.

Oguzo May 7-1862

Clerk of Supreme Court

Dear Sir

I did not receive the enclosed writ until
the return day of the same had expired
Please send me another if proper

Yours de

Dwight A. Allen

STATE OF ILLINOIS, }
SUPREME COURT, } ss.

The People of the State of Illinois,

To the Clerk of the Circuit Court for the County of Kendall Greeting:

Because, In the record and proceedings, as also in the rendition of the judgments of a plea which was in the Circuit Court of Kendall County, before the Judge thereof, between Thomas Gantier

plaintiff, and Josiah Forgate

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

_____ as we are informed by his complaints _____ 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 judgments thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court 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 12th day of April in the Year of Our Lord One Thousand Eight Hundred and Sixty two



L. Leland

Clerk of the Supreme Court.
by J. D. Rice Deputy

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Joseph Fosgate

No. 173

vs.

Thomas Gautier

WRIT OF ERROR.

*This Writ of Error is made a
Supersedeas, and as such is to be
obeyed by all concerned.*

L. Leland

473. Clerk Deputy

FILED

April 19

A. D. 1862

L. Leland

Clerk.



W. L. Leland Esq. ^{Clerk Sup Court}
If the Indyt is not
properly described
in the bond enclosed
as to the Amount you
will please alter and
rectify it according to
the facts for which
this ^{is} your Authority
~~you so doing~~ - make
the bond correspond
with the Indyt and
please send \$5 Dollars
enclosed - Josiah Fozgate
- A. R. Brewster

Mr Leland - I hope you will
hand the bond and affidavit justi-
-fying the bail, ^{to my attorney} and obtain the
order and issue the writ of error
& return without delay - the Sheriff

Wm in Dwight Ladd

Yours truly
Wm. Holmes

Wm

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

To the Sheriff of Kendall County, GREETING:

Because, In the record and proceedings, and also in the rendition of
the judgments of a plea which was in the Circuit
Court of Kendall County, before the Judge thereof, between
Thomas Gautier

plaintiff, and Josiah Fosgate

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 judgments 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 Thomas Gautier

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
^{A.D. 1867}
~~next~~ to hear the record and proceedings aforesaid, and the errors assigned, if
^{A.D. 1867} 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 Thomas Gautier

notice, together with this writ.

Witness, The Hon. John D. Eaton, Chief Justice of our
said Court, and the Seal thereof, at Ottawa, this 17th
day of April 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

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Josiah Forqueto
Josiah Forqueto
No. vs.
Thomas Gantier

SCIRE FACIAS.

FILED... *May 9*... A. D. 1862

L. Seland Clerk.

