

No. 12731

Supreme Court of Illinois

Chappman et al.

vs.

Murdock

From my friend
Vol 7

Chas. L. Mumford

7

12731

111111

1859

State of Illinois
Kendall County

Now before the Honorable
Edwin S. Leonard Judge of the ninth Judicial
Circuit of the State of Illinois Presiding
as Judge of the Circuit Court of Kendall
County at a term thereof begun and held
at the Court House in Osceola in said
County on the thirtieth day of March in
the year of our Lord one thousand eight
hundred & fifty five

Present The Hon. Edwin S. Leonard Judge of
said

William H. S. Wallace State atty
Henry M. Day Sheriff

Attest John M. Crothers Clerk

Be it remembered that heretofore to
 wit on the 3^d day of September A.D. 1854 the
 same being one of the days of vacation before the
 September Term of the Circuit Court of said County
 of Kendall came Charles L. Murdock Supervisor of the
 Town of Oswego in said County of Kendall his attorney & files a
 petition in the office of the Clerk of said Circuit Court in the words
 & figures following to wit:

" Charles L. Murdock
 " Supervisor of the town of
 " Oswego in the County of
 " Kendall Successor to
 " Morris Gray who was
 " Supervisor of said Town
 " as
 " Christian Kampf
 " Charles L. Townsend
 " John N. Chapman
 " Lewis B. Judson
 " Erasmus M. Bradley
 "
 "
 "
 "
 "
 "
 "
 "
 " John M. Crothers Esq. Clerk

In Kendall Circuit Court

Issue summons in Debt in
 favor of the above named
 plaintiff against the above
 named defendants returnable
 according to law

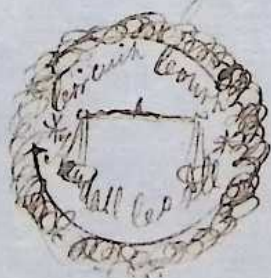
Debt \$ 6.800. 00
 Damages 3.000. 00

S. P. Randall
 Plffs Atty

And afterwards to wit: on the second day of September
A.D. 1854 issued out of the ~~court~~ office of the Clerk
of the Circuit Court of Kendall County, a summons
in 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 - Greeting:
" We command you to summon Christian Campbell
" Charles Townsend John W. Chapman Lewis B. Judson
" & Erasmus A. Bradley if to be found in your County,
" personally to be and appear before the Circuit
" Court of said County, on the first day of the
" next term thereof, to be holden at the Court
" house in Oswego, on the 18 day of September
" inst, to answer to a certain bill of ~~exhibition~~
" ~~in law and equity~~ ~~against~~ ~~the~~ ~~abundant~~
" ~~side thereof~~ ~~against~~
" Charles L. Murdock Supervisor of the Town
" of Oswego in the County of Kendall successor
" to Morris Gray who was Supervisor in a plea
" that they render unto him the sum of six thousand
" eight hundred dollars, which to him they owe
" ~~and~~ from him unjustly detain to his damage
" three thousand dollars as he says

" And have you then and there this
" writ, and make return thereon in what
" manner you execute the same.



" Witness John M. Brothers, Clerk of
" said Court and the seal of said
" court at Oswego, this 2nd day
" of September, A.D. 1854
" John M. Brothers
" Clerk

And afterwards to wit: on the Fourth day of September A.D. 1854, comes Matthias Beaupre, Sheriff of Kendall County, by Edward Mann his deputy, duly authorized according to law, and makes return of the above writ with the following endorsement thereon, in words and figures following to wit:

" Served the within writ by ~~the within~~ ^{reading}
" to the within named defendants ~~accepting~~
" ~~and~~ on the 4th day of September A.D. 1854
" Christian Kauff not found in my County
" this 4th day of September A.D. 1854
" M. Beaupre Sheriff of
" Kendall County
" By E. Mann,
" Deputy

" Services —————	2.00
" 6 miles travel —————	0.30
" 1 Return —————	0.10
	<u>\$ 2.40</u>

And afterwards to wit on the 5th day of September A.D. 1854 the same being one of the days of vacation before the September Term of said Court aforesaid again came the said plaintiff by his said attorney & files his declaration & said cause in the words & figures following to wit:

" State of Illinois }
" Kendall Circuit Court }
" Of Sept. Term 1854
" Charles L. Murglock who succeeded
" Morris Gray who was Supervisor of the town
" of Oswego in the County of Kendall and
" Stat. of Illinois, complains of Christian
" Kauff Charles D. Townsend John W. Chapman

" Lewis B Hudson and Erasmus D Bradley
" of a plea that they render to the said Charles
" L Murdock as such Supervisor and successor
" of Morris Gray aforesaid the sum of sixty
" eight hundred dollars which they owe to
" and unjustly detain from him -
" For that whereas heretofore
" to wit on the Seventeenth day of December
" in the year of our Lord one thousand eight
" hundred and fifty three at Oswego in the said
" County of Kendall made their certain writing
" obligatory sealed with their seals and now
" shown to the Court here, the date whereof
" is the day and year aforesaid and therein
" and thereby the said Christian Kampf
" a principal and the said Charles D Townsend
" John W Chapman Lewis B Hudson and
" Erasmus D Bradley as sureties acknowledge
" themselves to be held and firmly bound unto
" Morris Gray Supervisor of said Town of Oswego
" and to his successors in office in the sum of
" sixty eight hundred dollars to be paid to the
" said Morris Gray and to his successor in
" office which said writing obligatory was
" and is subject to a certain condition there-
" under written whereby after reciting to the
" effect following to wit: that whereas the
" said Christian Kampf had been elected
" collector for the said Town of Oswego for the
" current year and had accepted that office
" and was about taking upon himself the
" discharge of its duties, then, if the said Christian
" Kampf should as collector as aforesaid
" faithfully collect account for and pay over
" all taxes which he should be legally required

to collect, and also should with diligence
and fidelity execute and discharge all his
duties as such collector then the said obliga-
tion was to be void otherwise to remain
in full force and virtue. And although
the said Christian Kampf as such collector
as aforesaid entered upon and undertook
the said office of such collector as aforesaid
yet he hath not paid to Morris Gray nor
to his successor in office nor to any one
for him the said sum of sixty eight hundred
dollars nor any part thereof nor have any
of the said defendants paid the same, but
have wholly neglected and refused, and
still wholly neglect and refuse so to do.
And the said plaintiff avers that the
said Christian Kampf as such collector
as aforesaid by virtue of his said office
did after the making and executing the said
writing obligatory, proceed to collect from
the inhabitants of said Town of Oswego
divers large sums of money, to wit: the
sum of two thousand dollars, which it was
his duty to pay over to the said plaintiff
according to the form of the Statute in
such case made and provided, yet not-
withstanding his said duty the said Kampf
entirely neglected and refused to pay over
the same or any part thereof. And the
said plaintiff further avers that the said
Kampf did not as such collector as aforesaid
faithfully account for collect and pay over
all taxes which he was legally required to
collect and did not with diligence and
fidelity execute and discharge all his

" duties as such collector.

" By means whereof, and by
" force of the Statute in such case made
" and provided an action hath accrued
" to the said plaintiff to have and
" recover of and from the said defendants
" the said sum of sixty eight hundred
" dollars, and also his damages three thousand
" dollars wherefore he sues

S. P. Blandall
Att'y

" Copy of Bond above sued on
" Christian Kampf & others }
" To } Filed Dec 30 1853
" Morris Gray Supervisor }

" Know all men by these presents
" that we Christian Kampf of the Town of
" Oswego in the County of Kendall state of
" Illinois as principal and Charles D
" Townsend W Chapman E D Bradley & B
" Judson of said Oswego as sureties are holden
" and firmly bound unto Morris Gray
" Supervisor of said Town of Oswego and
" to his successor in office in the sum of
" sixty eight hundred dollars for the pay-
" ment of which well and truly to be made
" we bind ourselves our heirs executors and
" administrators firmly by these presents. Seals
" with our seals and dated this 17th day of
" December AD 1853 The condition of the
" above obligation is such that whereas
" the said Christian Kampf has been duly
" elected collector for the said Town of Oswego

" for the current year and has accepted the
" office and is about taking upon himself the
" discharge of ~~its~~ duties. Now if the said
" Christian Hampf shall as collector
" aforesaid faithfully collect account for
" and pay over all taxes which he shall
" be legally required to collect and also
" shall with diligence and fidelity execute
" and discharge all his duties as such
" collector then this obligation to be void
" otherwise it shall remain in full force
" and virtue

" This certifies that I have	Christian Hampf	Test
" examined the within bond	Charles R. Townsend	Test
" that the sureties therein named are	J. W. Chapman	Test
" knowing to me of sufficient ability	L. B. Jackson	Test
" and hereby approve of the same	E. D. Bradley	Test

Filed Dec 30 1834

Amos C. Smith Clerk

And afterwards to wit on the 19th day of September
A.D. 1854 the same being one of the days of the September
Term A.D. 1854 said Court being organized accordy
to law & sitting judicially for the dispatch of
business the following amongst other proceedings
were had in said Court to wit:

" Charles L. Murdock Supervisor of the	} Debt.
" Town of Oswego in the County of Kendall	
" successor to Morris Gray who was Supervisor	
" of said Town	
" vs	
" Christian Kauff Charles D. Townsend	
" John W. Chapman Lewis B. Hudson &	
" Erasmus D. Bradley	

" This day came the plaintiffs
" by Randall his attorney and upon his motion
" defendants are ruled to plead herein by
" tomorrow morning

And afterwards to wit on the 20th day of
September A.D. 1854 the same will being
one of the days of the term aforesaid of
said Circuit Court aforesaid came
defendants by Smith their attorney & file
their demurrer to plaintiffs declaration
in said cause in the words & figures follow-
ing to wit:

" State of Illinois Kendall County & Circuit Court
" thereof - September Term A.D. 1854 -
" Charles L. Murdock Supervisor &c plaintiff
" vs
" Action of Debt

" Christian Kauff Charles D. Townsend John W.
" Chapman Lewis B. Hudson and Erasmus D.
" Bradley - defendants

" And now come the said defendants
" by Smith this Attorney. And defend the wrong
" and injury when due - And say actio non
" because they say that the said declaration
" and the matters therein alleged are not
" sufficient in law for the said plaintiff to
" maintain his action aforesaid and ^{that} they
" are ready to verify wherefore they pray
" judgment &c

" A B Smith for deft

And afterwards to wit on the 20th
day of September A.D. 1834 the same being
one of the days of the term aforesaid
of the Court aforesaid the following amongst
other proceedings now had in said Court
to wit

" Charles L. Murdock Supervisor of
" the Town of Oswego in the County of
" Kendall successor to Morris Gray
" who was Supervisor of said Town
" vs
" Christian Camp Charles Townsend
" John W. Chapman Lewis B. Hudson
" & Erasmus D. Bradley

Webb

" This day came the
" plaintiff by Randall his attorney and
" defendants by Dickey Wallace Holme &
" Smith their attorneys and the Court having
" heard the demurrers ~~of plaintiff~~ of defendants
" to plaintiffs declaration and being fully
" advised in the premises overrules the
" same at defendants costs to be taxed. And
" leave is granted to defendants Townsend
" Chapman & Bradley to plead over & the other
" defendants say they will abide by their
" demurrer -

And afterwards to wit on the day & year
last aforesaid again came defendant
Defendant Charles D Townsend & Dickey his
attorney & files the following pleas in said
cause to wit:

State of Illinois
* Kendall Co vs Circuit Court thereof Sept Term 1852,
" Charles L Murdock Supervisor vs Plaintiff
" do. Action debt

" Christian Kamp
" Charles D Townsend
" John W Chapman
" Lewis B Sadson
" Erasmus D Bradley } Defendants

" And now comes the said
" defendant Charles D Townsend and says
" actio non - because he says that the
" said defendants are not indebted to said
" plaintiff in the manner and form as
" alleged in said declaration and of this
" he puts himself upon the country
" Dickey Atty for
" said debt

And for a further plea in this behalf said
defendant Townsend says that said supposed
writing obligatory mentioned in plaintiffs decla-
ration is not his act and deed nor did he ever
execute the same and of this he puts himself
upon the country -

Dickey for said def^t

And for a further plea said defendant
Townsend says - that said ~~Charles~~ Christian
Kampf did not by virtue of such office proceed
to collect from the inhabitants of the Town of
Oswego aforesaid - the said supposed sum
of two thousand dollars (or any part thereof)
which it was his duty to pay over to the
said plaintiff according to the form of the
Statute in such case made & provided
and of this he puts himself upon the country

Dickey atty for

Said def^t

And on the twentieth day of September 1854 aforesaid
also came defendants John W Chapman & Erasmus D Bradley
& Nelson & Smith their attorneys and filed their pleas in said
cases as follows to wit

And said John W Chapman, and Erasmus
Bradley come and say actio non because
they say - that said Christian Kampf -
before the commencement of this suit departed
this life - at Chicago viz at the County of
Kendall aforesaid viz On the 1st day of
June A D 1854 - and this they are ready to
verify wherefore &c -

Nelson & Smith
Attys for said def^t

" And for a further plea herein such defen-
" dants say actis now because they say -
" that said Christian Kauff did not proceed
" as alleged in said declaration to collect
" said supposed sum of money by virtue
" of his said supposed office - ~~which it is~~
" ~~his duty to pay over~~ in manner and form
" as the same is therein alleged, and of
" this they put themselves upon the Country

Helme & Smith

for said depts
Chapman & Bradley

" And for a further plea herein said
" Chapman and Bradley - by Smith & Helme
" says - that said Kauff did not (as alleged
" in said declaration) collect a large amount
" of money - ~~which is~~ such as is alleged
" in said declaration - and nor is it true
" as alleged in said declaration that
" said Kauff did not faithfully
" collect account for and pay over all
" taxes which he was legally required to
" collect - and of all this they put themselves
" upon the Country

Helme & Smith

Attys for said depts

And afterwards to wit on the 20th day of September aforesaid
again came plaintiff & Randall his attorney & files a substitute to
Defendant Townsend's 2nd plea & demurs to the other pleas of defendant
in the premises & signs following to wit

C. L. Murdock Supervisor &c

vs
Christian Kampff & others

And the said plaintiff as to
the plea of the said Charles D Townsend
by him firstly above pleaded says that
the same is not sufficient in law to bar
his action, wherefore for want of a
sufficient plea in this behalf he prays
judgment &c

J W Randall
Plffs Atty

C. L. Murdock Supervisor &c

vs
Christian Kampff & others

And as to the plea of the said
Charles D Townsend by him secondly
above pleaded wherein the said Charles
D Townsend has put himself up on the country
the said plaintiff doth the like

J W Randall
Plffs Atty

" C. S. Murdock Supervisor &c

"
" Christian Kampf & others

" And the said plaintiff as to the
" plea of the said Charles D Townsend by
" him ^{above} thirdly pleaded says that the same
" is not sufficient in law to bar his action
" wherefore for want of a sufficient plea
" in this behalf he prays judgment &c
" J W Randall
" Plffs Atty

" C. S. Murdock Supervisor &c

"
" Christian Kampf & others

" And the said plaintiff as to the
" plea of the said John Chapman and Erasmus
" Bradley by them firstly above pleaded says
" that the same is not sufficient in law to
" bar his action, wherefore for want of a
" sufficient plea in this behalf he prays
" judgment &c
" J W Randall
" Plffs Atty

" C. S. Murdock Supervisor &c

"
" Christian Kampf & others

" And the said plaintiff as to the
" plea of the said John Chapman and
" Erasmus Bradley by them secondly above
" pleaded says that the same is not sufficient

in law to bar his action wherefore for
want of a sufficient plea in this behalf
he prays judgment &c

S W Randall
Plffs Atty

Ed Murdock Supervisor of
Christian Knapp & others

And the said plaintiff as to
the plea of the said John M Chapman and
Erasmus D Bradley by them thirdly above
pleaded says the same is not sufficient
in law to bar his action wherefore for
want of a sufficient plea in this
behalf he prays judgment &c

S W Randall
Plffs Atty

And afterwards to wit on the 22^d day
of September AD 1834 the same still being
one of the days of the September Term AD
1834 of said Court as aforesaid the following
amongst other proceedings were had in said
Court to wit:

Charles L. Murdock Supervisor
of the Town of Oswego in the County
of Kendall Successor to Morris Gedy
who was Supervisor

vs
Christian Campf Charles D Townsend
John Chapman Lewis B Hudson &
Erasmus D Bradley

Debt

This day again
came the plaintiff by his attorney and
defendants Chapman Bradley & Townsend
by their attorneys and the Court having heard
the parties in relation to demurrers of
plaintiff to the ~~answer~~ pleas of defendants
~~Townsend by him herein firstly & thirdly~~
~~pleaded~~ Chapman & Bradley by them herein
firstly secondly & thirdly pleaded & the
~~answer~~ pleas of defendant Townsend by
him herein firstly & thirdly pleaded sustaining
the demurrer to each of said pleas - It is therefore
considered by the Court that plaintiff recover of
each of said defendants his costs about each
of said demurrers respectively expended
& that he have execution therefor -

And afterwards to wit on the 23^d day
of March A D 1835 the same being one
of the days of the March Term A D 1835 of
said Court the Court being organized
according to law & sitting judicially for
the dispatch of business the following
amongst other proceedings were had
in said Court to wit:

" Charles L Murdock Supervisor
" of the Town of Oswego, successor
" to Morris Gray who was Supervisor
" vs

" Christiana Camp Charles D
" Townsend John W Chapman
" Lewis B Judson & Erasmus D Bradley

Debt

This day came

plaintiff again by his Attorney and
Defendant by Helme & Smith Attorneys
and issue having been joined by agreement
of parties a jury is waived and this cause
submitted to Court for trial who having
heard the evidence & suggestions of Counsel
and it appearing to the Court from the
evidence that said defendants Christiana
Camp Charles D Townsend John W Chapman
Lewis B Judson & Erasmus D Bradley do owe
to the said plaintiff the sum of Sixty Eight
hundred dollars in said plaintiff's declara-
tion mentioned and that ^{said} plaintiff hath
obtained damages by reason of this

breaches in said declaration set forth
in the sum of fourteen hundred and
twenty three Dollars and the Court
being fully advised in the premises
It is therefore Considered by the Court
that plaintiff recover of said Defendants
the said sum of Eighty Eight hundred
and twenty three Dollars as well as four teen hundred
and twenty three dollars his damages aforesaid
~~and also~~ ^{and also} his costs in this behalf expended
to be taxed. And that he have execution
for his said damages and costs

And thereupon come the defendants
and enter a motion for a new trial which
is overruled by the Court And again come
defendants and enter a motion in arrest
of judgment in this cause which is also
overruled by the Court

And afterwards come Defendants
Charles D Townsend John W Chapman
Lewis B Hudson & Erasmus D Bradley
and enter a motion for an appeal which
is granted by the Court upon condition
that said Defendants file with the Clerk a
bond in the penalty of two thousand Dollars
conditioned according to law with Walter
Loucks & W A Davis or either of them as
securities within forty days from this date
at the time of preparing and presenting a
bill of exceptions is by agreement extended
thirty days —

And afterwards to wit on the 20th day
of April AD 1835 came defendants by
their attorney & after a bill of exception
in the office of the clerk of said Court in
the words & figures following to wit:

- " State of Illinois
- " Kendall County Circuit Court
- "
- " Charles L. Muddock
- " Supervisor of the Town of
- " Harts in the County of Kendall
- " Successor to Morris Gray who
- " was Supervisor of said Town
- " Christian Kampf
- " Charles L. Townsend
- " John W. Chapman
- " Lewis B. Ladd on D
- " Erasmus D. Bradley

" Be it remembered that on the trial of the
" issue joined in this Cause as to Charles D
" Townsend and assessment of damages as
" to the other defendants, the said Plaintiff to
" maintain said issue on his part offered in
" evidence a bond or instrument in writing
" in the words and figures following to wit:
" "Know all men by these presents
" that we Christian Kampf of the Town of
" Oswego in the County of Kendall State of
" Illinois as principal and Charles D
" Townsend J W Chapman E D Bradley & B
" Hudson of said Oswego as Sureties are holden
" and firmly bound unto Morris Gray
" Supervisor of said Town of Oswego and to his
" Successor in office in the sum of Fifty Eight
" hundred Dollars for the payment of which
" well and truly to be made we bind ourselves
" our heirs Executors and Administrators
" firmly by these presents sealed with our
" Seals and Dated this 17th day of December
" A.D. 1853 - The condition of this obligation
" is such that whereas the said Christian
" Kampf has been elected collector for the
" said Town of Oswego for the current
" year and has accepted that office and is
" about taking upon himself the discharge of
" its duties - Now if the said Christian
" Kampf shall as collector as aforesaid

" faithfully collect accounts for & pay over
" all taxes which he shall be legally required
" to collect, and also shall with diligence and
" fidelity execute and discharge all his
" duties as such collector then this obligation
" to be void otherwise it shall remain in
" full force and virtue "

" Christian Kampff 
" Charles Townsend 
" J. W. Chapman 
" J. B. Judson 
" E. D. Bradley 

" upon which the said Instrument were the
" following endorsements

" This certifies that I have
" examined the within bond, that the sureties
" therein named are known to me to be of sufficient
" ability and I hereby approve of the same
" Oswego Dec^r 1853

" Morris Gray
" Supervisor of the Town of Oswego
" Filed Dec 20th 1853

" J. M. Brothers
" Clerk

" To the reading of which said Instrument in
" evidence the defendants by their counsel objected
" but the Court overruled the objection and
" admitted the same to be produced and
" read in evidence in the case and the
" same was thereupon then & there read

" as evidence by the Plaintiffs counsel -
" And the Defendants by their counsel excepted
" No proof or evidence was introduced or
" offered on the trial of said issue of assessment
" relative to said bond or its contents except as
" hereinafter mentioned - nor was there any
" proof or evidence relating to any other ^{bond} ~~writing~~
" or ~~bond~~ writing obligatory - All the other
" evidence in the case related to said Kamm
" having been elected to the office of collector
" of said Town, his acceptance & entering upon
" the duties of said office, the delivery to him
" of the lag list & warrant, the amount paid
" over and the amount uncollected or unpaid
" ~~which is not deemed material to be incorporated~~
" ~~and any other evidence there might have been~~ ^{been} ~~of the breach of~~
" ~~said bond & relative to the damages occasioned by said breach~~
" ~~into this bill of exceptions~~

" The Court to whom the cause
" was submitted for trial (a jury having been

" expressly warned by the said parties, found
" for the Plaintiff \$6800, Debt and assessed
" Plaintiff's damages at \$1423.00 - The defendants
" counsel thereupon moved for a new trial
" which motion was overruled by the Court.
" The defendants counsel also moved in
" arrest of judgment which last motion was
" also overruled by the Court, to which
" last mentioned rulings the Defendants by
" their counsel ^{then & there} excepted and judgment was
" entered for \$6800, Debt and Execution
" awarded to collect the said \$1423,

" The defendants counsel there
" upon requested the Judge before whom said
" cause was tried to set his hand and seal to this
" bill of exceptions and prayed that the same
" might be made a part of the Record in this
" Case and it is done - Edwin S. Leland Esq. (Seal)
" Judge of the Court

And afterwards to wit on the 1st day
of May AD 1855 came defendants & filed
in the office of the Clerk of said Circuit
Court an appeal Bond in the words
of figures following to wit

" Know all men by these presents that we
" John W Chapman Lewis B Jackson Erasmus
" H Bradley Charles D Townsend William N
" Davis of the County of Kendall
" and State of Illinois are held & firmly bound
" unto Charles L Murdock Supervisor of the
" Town of Oswego in the County of State of Ill.
" said in the penal sum of Two thousand Dollars
" lawful money of the United States of America
" to be paid to him the said Charles L Murdock
" as such Supervisor or to his successor in office
" To which payment well & truly to be made
" we bind ourselves our heirs executors
" and administrators firmly by these presents
" sealed with our seals Dated this Thirtieth
" day of April AD 1855
" Where as at the March Term of the

Kendall County Circuit Court in said State
of Illinois begun and held at the Court House
in said County on the Twelfth day of March
AD 1855 and ending on the twenty third
day of the same month in a certain action
of Debt then pending in said Court wherein
the said Charles L Murdock Supervisor
of the Town of Oswego in the County of Kendall
Successor to Morris Gray who was Supervisor
of said Town, was Plaintiff and Christian
Kampff and the above bounden John W
Chapman Lewis Budson Erasmus D
Bradley & Charles D Townsend were defendants
the final judgment of the said Court was
rendered in said cause in favor of the said
Plaintiff and against the said Defendants
for the sum of Eighty eight hundred Dollars
Debt and Fourteen hundred & twenty three
Dollars damages besides costs and execution
was awarded by the said Court to collect
said Damages & Costs - From which said
Judgment the said Chapman Budson
Bradley & Townsend have prayed for and
taken an appeal to the Supreme Courts
of said State of Illinois - Now therefore
the condition of the above obligation is
such that if the above bounden John W
Chapman Lewis Budson Erasmus D
Bradley & Charles D Townsend shall duly
prosecute said appeal and pay the said
Judgment costs interest & damages in case
the said Judgment shall be affirmed then
the above obligation to be void otherwise
of full force & virtue

John W Chapman (Sd)

L B Johnson Seal
E D Bradley Seal
Charles Townsend Seal
William Noble Davis Seal

State of Illinois
Kendall County

John W. Brothers Clerk
of the Circuit Court of said County
certify the foregoing to be a true
perfect & correct copy of the Records
& files in the cause therein, entitled,
as appears from the Original Records
& files remaining in my office & that the true
herein attached & passed up the original copy of said files in this cause
In testimony whereof I have
hereunto set my hand & the seal
of said Court at Osceola in
said County this 19th day of June
A D 1835

John W. Brothers Clerk

know all men by these presents that we
John W Chapman Lewis P Judson Erasmus
D Bradley Charles D Townsend William N
Davis of the County of Kendall
and State of Illinois are and are jointly bound
unto Charles L Murdock Supervisor of the
Town of Oswego in the County & State aforesaid
in the penal sum of two thousand dollars
lawful money of the United States of America
to be paid to him the said Charles L Murdock
as such Supervisor or to his Successor in
Office - To which payment well & truly to
be made, we bind ourselves, our heirs ex-
-ecutors & Administrators firmly by these
presents - Sealed with our Seals - Dated this
Thirtieth day of April A.D. 1855

Whereas at the March Term of the Kendall
County Circuit Court in said State of Illinois
begun and held at the Court house in said County
on the Twelfth day of March A.D. 1855 and con-
-ing on the Twenty third day of the same month
in a certain action of Debt then pending
in said Court wherein the said Charles L Murdock
Supervisor of the Town of Oswego in the County
of Kendall Successor to Morris Gray who was
Supervisor of said Town, was Plaintiff and
Christian Kempf and the above bounden

Filed May 1 1855
J. W. Chapman

Official Record
(2)

John W Chapman Lewis B Judson Erasmus D Bradley
& Charles D Townsend were Defendants the final
Judgment of the said Court was rendered in said
cause in favor of the said Plaintiff and against
the said Defendants for the sum of sixty eight hundred
Dollars and Fourteen hundred & twenty three
Dollars damages besides Costs and expenses was
awarded by the said Court to collect said Damages &
Costs. From which said Judgment the said Chapman
Judson Bradley & Townsend have prayed
for & taken an appeal to the Supreme Court
of said State of Illinois. Now therefore the
condition of the above obligation is such that
if the above bounden John W Chapman Lewis B
Judson Erasmus D Bradley & Charles D Townsend
shall duly prosecute said appeal and pay the
said Judgment Costs interest & damages in
case the said Judgment shall be affirmed
then the above obligation to be void otherwise
of full force & virtue.

John W Chapman Seal
L B Judson Seal
E D Bradley Seal
Charles D Townsend Seal
Wm Noble Davis Seal

And now comes the said Plaintiff in Error, and saith
that in the Record and proceedings aforesaid there is manifest
Error in this:

1. The Court below ought to have the declaration read on Demurrer;
and the Declaration was reached by the Plaintiffs Demurrer to
the defendants, Chapman's & Bradleys pleas:
2. The Court ought not to have allowed the Bond set out in
the Record to have been read in evidence; because:
 - (a) If ^{it} was the bond declared on, it was not the defendants Bond:
nor one by which they were bound:
 - (b) If ^{it} was not the bond declared on, it should have been excluded
for variance.
- 3 The Court ought to have sustained the defendants motion for
arrest of Judgment:
- 4 The Court ought to have sustained the defendants motion for
a new trial.

T. L. Brethley & John C. Chapman
for Plaintiff in error

And now comes the said Defendant in error,
J. F. Pannumotte his atty. And says
in error

J. F. Pannumotte

20⁴⁰ ~~702~~ 7

L. S. Murdoch Sub
ats.

Christian Casuff

Wals

Transcript

Jan. \$10,00

Filed June 21. 1855.
L. Heland Clerk

Hobart paid me
\$5. for file

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 judgment of a
 plea which was in the circuit court of *Kendall* — county, before the Judge there-
 of, between

Charles L. Mundack _____

plaintiff, and

John W. Chapman Adm. inpts. &c.

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

defendants _____

as we are inform-

ed by *their* complaint, 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 there-
 of 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 *2^d Monday in June* — 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.

Walter B. Seales
~~SAMUEL H. HARRIS~~

Chief Justice

of our said Court, and the Seal thereof, at Ottawa, this *34th* day of *July*,
 in the Year of Our Lord One Thousand Eight Hundred and Fifty-five.

L. Selena

Clerk of the Supreme Court.

¹³
J. W. Chapman ⁴⁰ study

⁵
Chas. L. Clendish

Writ of error -

To June Term, 1856.

Chapman et al, Plffs in Error } In Supreme Court,
vs.
Murdoch, deft in Error } Points.

The declaration was reached by the Plaintiffs (below) demurrer, to the defendants, Chapman & Madleys pleas: (all their pleas having been held bad, & therefore none to stand between the Declaration and Demurrer) and the Declaration is bad:

1 For want of sufficient averments:

(a) The character in which Murdoch sued, and his title to maintain the suit are not well averred: For:

1 It is not averred, (except by implication and implication is not an averment and therefore it is not averred)

that Murdoch ever was Supervisor

2. It is not well averred that he was the successor of Gray, the Supervisor to whom the bond was given—

3 Supposing it to be well averred that Murdoch was Supervisor, and the successor of Gray, still there is no averment when he was Supervisor, or that he was Supervisor at the time of the Commencement of the suit, and that certainly is material in order to show that he was clothed with a character or title to sue.—

(b) The declaration is bad for want of an averment that the defendants

executed the Bond. — There is hardly a pretence of such an averment.

2^d The Breaches are not well assigned:

1. The 1st breach is immaterial, the Condition of the Bond being set out in the Declaration.

2^d. The 2^d Breach is badly assigned: Because there are no sufficient averments to sustain it. —

1 It is not averred that the \$2000 collected, was collected as taxes, legally laid, and shown by proper averments to have been legally laid, — and it is still more fatal that they are not shown to have been collected during the "Current year" for which Kampf was elected Collector. — It is not even averred when they were collected. —

3^d The 3^d & 4th breaches are undeni-
-ably bad for being too general. —

It may be added further, that in order to make the Bond declared on a good statutory Bond, (and no action can be sustained on it unless it is such — at least no action except in the name of Gray, the obligee) it is absolutely necessary that it should have been averred, (which it is not) that the bond was approved by the supervisor — for it does not become operative as a statutory bond till that is done,

Therefore: The Declaration ought to have been held bad, on the said demurrer, by which it was undeniably reached: and,

2^d The motion in arrest of Judgment ought to have been sustained for the same Cause,

3^d The motion for a new trial ought to have been sustained, because:

1. The Bond given in evidence was variant from the one declared on. —

1st. Because it purported to be the defendants' bond, which the one declared on did not:

2^d because it purported that Kampff was appointed Collector for the "Current year," which the one declared on did not: and

3^d Because it purported to have been approved by the Supervisor, (a material thing to make it a good Statutory Bond,) which the one declared on did not. —

The Supreme Court, 40.
Chapman et al. Affs in Error
vs.
Murdock, aff in Error

13 Points.

Chapman et al.) Appl. from Marshall =

102 to Almondock } Fil. read & read 20, Dr. 10, apper. 15, bill costs 25, .80
copy 25, + to Satopu. 25, 0.50
Leave to withdraw read .25

apper. 25, vis. to diff. 25, fil. Stipulu. 5, .55
appl. diff. 25, Co. procd. 25, Procdo 50, judr. 25, 1.25
Dr. judr. 25, Co. for ex. 25, bill of costs 25, copy 25, Satopu. 25, 1.25
4.60

Chapman's Note, of Chudock's
Bill of Costs —

Sup court

J. W. Chapman

vs

Charles L. Mundock

} Appeal

It is stipulated that in case
the court overrules the motion
to dismiss this appeal then that
founder in error on part of appellee
be considered as made & cause
submitted ^{by appellee} to court on either
argument

Samuel H. Hines
for Appellant

S. L. Dixon for
Appellee

20 ~~100~~ 40 13

John H. Chapman
et al vs

Chas. L. Murdock

Stipulation

Charles L. Murdock,
Supervisor &c.

vs.

Christian Kauff,
Charles D. Townsend,
John W. Chapman
Lewis B. Judson &
Erasmus D. Bradley

Townsend,
Chapman,
Judson, &

Bradley

Plaintiffs in Error,

vs.

Murdock,
Supervisor &c,
Defendant in Error.

Abstract,

The action is founded upon a Collectors Bond, ~~claiming~~
to have been executed by Kauff, as principal,
and Townsend, Bradley, Chapman & Judson as
securities for Kauff, as collector of town of Oswego.
and by which the said persons are held & firmly bound
unto Morris Gray Supervisor of the town of Oswego
& to his successor in office, in the sum of \$6,500 &
for the payment of which well & truly to be made,
+++++ they bind themselves &c. Date, Dec. 17, 1853.
and the Condition is, "That whereas Kauff has been
duly elected Collector &c, for the current year, & has
accepted the office, & is about taking upon himself the
discharge of its duties: Now if s^d Kauff ^{shall} as collector,
~~and afterwards~~ faithfully collect, account for & pay over all
taxes which he shall be legally required to collect,
& also shall with diligence & fidelity execute &
discharge all his duties as such collector, then to be
void &c. - otherwise not.

(12731-23)

Should appear the bond was approved.
The amount of the current year is material

The Declaration.

Brings Murdock on to the Record as Plaintiff, as follows:

" Charles L. Murdock who succeeded Morris Gray who was Supervisor of the town of Oswego, (Kendall Co &c) Complains of Kauff, &c. of a plea that they render to the said Murdock as such supervisor & successor of Gray, the sum of \$²⁰⁰ &c. and there is no other agreement in regard to the Plaintiff's title or right to sue.

The only agreement relating to the execution of the Bond is the following:

For that whereas, on, &c, at &c, + + + + + made & executed their certain writing obligatory shown to the Court &c, the date whereof is &c, and therein & thereby the said Kauff &c, acknowledged themselves to be held & firmly bound unto &c.

The only other agreements in the Declaration, are,

- 1 That the Bond is payable to Gray or his successor in office;
- 2 That Kauff entered upon & undertook the office of collector;

3^d That Kauff after the making of the Bond as such collector, by virtue of his office did proceed to collect from the inhabitants of Oswego the sum of \$2,000 which it was his duty to pay over, according to the form of the Statute.

The Pleas are:

- 1 That Kauff never paid the \$6.00 (penalty of the Bond)
- 2 That Kauff entirely neglected & refused to pay over the said \$2,000 or any part thereof:
- 3 That Kauff did not as collector faithfully account for collect & pay over all taxes which he was legally bound to collect.
- 4 That Kauff did not with diligence and fidelity execute and discharge all his duties as such collector.

The proceedings subsequent to the Declaration are,

1st A Demurrer by all the depts to the Declaration which was overruled.

2^d Pleas by Townsend alone

- 1 Nil Delict, To which Demurrer sustained,
- 2 Non est factum, Sine.

3 That Kauff never did by virtue of his office collect the \$2,000 or any part thereof, which it was his duty to pay over, &c. To which a demurrer was sustained.

3 Pleas by Chapman and Bradley:

1. Death of Kauff before suit,
2. That Kauff never collected re,
3. Denies that Kauff collected re, & denies that Kauff did not faithfully collect, account for and pay over all taxes which he was legally bound to collect.

To each of the foregoing
Pleas a demurrer was sustained.

The Protra is,

"That if we having been joined a jury
waited re. The Court find that Pffs
owe the Pff. \$6,800 and that Pff has sustained
damages in the sum of \$1,423. Therefore,
Judgment for \$6,800 debt, & \$1,423, damages
and Execution for damages & costs.

4 Motion for New Trial. — Overruled, & Exc.

5 Motion in arrest of Judgment, overruled, & Exc.

6 Bill of Exceptions — Which brings upon
the record, the bond
sued on, shows that its introduction in evidence
was objected to, & objection overruled, bond
read, & exceptions.

Points.

1st. The Declaration was reached by the Plaintiffs
Demurres to the Pleas of Chapman & Bradley,
and ought have been held bad on demurres

1st. For want of a sufficient Plaintiff:

(a) because his title or interest is not shown:

2^d For want of sufficient defendants:

(a) because it is not shown that they executed the Bond.

3^d For want of sufficient breaches:

2^d The defendants motion in arrest of Judgment
ought to have been sustained for the same reasons.

3^d The defendants motion for a new trial ought to
have been sustained, because

1. If the Bond offered & admitted in evidence,
purported to be the defendants bond, it was
different from the one declared on: &

2^d If the said Bond did not so purport, it was
foreign and irrelevant to the suit.

Chapman ¹⁰ et al
vs
Murdoch.

Abstract.