

No. 14541 $\frac{1}{2}$

*see also file
on side*

Supreme Court of Illinois

Board of Supervisors of
Kane County

vs.

Young et al

STATE OF ILLINOIS,

SUPREME COURT, 9

Third Grand Division.

No. 20.

*Sup of Court
Circuit
vs.*

Young

14541

1/2

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM, 1861, AT OTTAWA.

THE BOARD OF SUPERVISORS
OF KANE COUNTY,

vs.

DELOS W. YOUNG AND
ABNER HARD.

*Error to the Court of
Common Pleas of the
City of Aurora.*

ABSTRACT OF RECORD.

PAGE OF REC.

- Assumpsit in the common pleas of Aurora, by Young and Hard, against the Board of Supervisors of Kane county. The
- 4 declaration, filed Dec. 2d, 1859, contains an *indebitatus* count for drugs and medicines furnished and medical service done and bestowed by the plaintiff, in and about the attendance of two indigent persons, and also contains counts for work done, money lent, and money paid.
- 2 Summons issued November 21st, 1859; returned, executed,
- 3 November 29th, 1859, by reading and delivering copy to John Green, clerk of board of supervisors.
- 9 December 12th, 1859, (in term) rule on defendant to plead by 1st of January next.
- 7, 8 March term, 1860, defendant defaulted for want of plea;
- 9 assessment of damages by a jury, \$45; judgment that plaintiffs recover their damages and costs, and that the board of supervisors allows the same, and issue an order to plaintiffs.
- 10 Motion in arrest of judgment, overruled; defendants excepted.

POINTS MADE BY PLAINTIFF IN ERROR.

35-20-9
96

SUPREME COURT OF ILLINOIS :

APRIL TERM, 1861.

THE BOARD OF SUPERVISORS OF
KANE COUNTY,

vs.

DELOS W. YOUNG AND
ABNER HARD.

ABSTRACT AND POINTS.

DICKEY & WALLACE,

For Plaintiffs in Error.

Filed Apr 29-1861

L. Ireland
Clerk

Supreme Court of the State of Illinois,
THIRD GRAND DIVISION.

APRIL TERM, 1868.

DELOS W. YOUNG &
ABNER HARD
ats
The Board of Supervisors
of Kane County.

Error to the Court of Common Pleas of the City of Aurora.

BRIEF AND ARGUMENTS BY DEFENDANTS IN ERROR.

By the first section [Special Laws 1857, P. 392] it is enacted that the Court shall have *concurrent* jurisdiction within the City of Aurora, with the Circuit Court, in all civil and criminal cases except treason and murder. Then to know whether the Common Pleas has jurisdiction in this case, it is only necessary to enquire, had the Circuit Court the power to try the cause; If so, then the Common Pleas had a *concurrent* right; with the proviso, however, that service of process was obtained in the City, or the cause of action arose, and the plaintiff resided therein.

At common law, courts are divided into superior and inferior courts, or courts of record, and those not of record. 3 Blac. Com. 24; Beauben vs. Brinckerhoff, 2 Scam. 269; Vance et al vs. Funk et al, 2 Scam. 26. The Court of Common Pleas, while limited, territorially, yet has within its territorial limits *general jurisdiction* in all civil and criminal cases, except the instances of treason and murder. This Court has a Clerk and a seal, and its proceedings are according to the practice in the common law Courts and in the Courts of Equity

Then why shall it not be classified with what are known at common law as Superior Courts? It certainly has every ear mark by which a superior court at common law is distinguished from an inferior one. Then it, (the court) is entitled to those intendments or presumptions that belong to superior courts, in stating its jurisdiction, which is, that nothing shall be intended to be out of the jurisdiction of a superior Court, but that which specially appears to be so. This Court will presume (it not appearing specially to the contrary, from the record) that the process was served on the County Clerk in the city of Aurora, or that the cause of action arose in the city, and that the plaintiffs resided there—or indulge any other presumption which would have authorized the Court below to obtain jurisdiction of the defendant below, unless the same are rebutted by what appears on the record. See Beauben vs. Brinckerhoff, already cited on page 274.

The judgment, the Court will see by examining the record is in proper form—no execution is awarded. I therefore submit that the judgment below should be affirmed by this Honorable Court.

R. G. MONTONY,

Att'y for Def't in Error.

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J. W. H. Green
whol dpts in error
sh

Board of Supervisors
of Kane County

Proof of payment
by dpts in error

Filed May 7, 1863
J. L. Ladd
Clerk

Supreme Court of the State of Illinois,
THIRD GRAND DIVISION.

APRIL TERM, 1868.

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ABNER HARD
ats
The Board of Supervisors
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Att'y for Def't in Error.

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Jules M. Greeny
A depth in error
-atto

Broad aptid perian
of Kane County

Bring & argument
by depth in error

Julius May 7, 1863
J. L. L. L.
cm

Supreme Court of the State of Illinois,
THIRD GRAND DIVISION.

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R. G. MONTONY,

Att'y for Def't in Error.

Edw. W. Greene
 and Sept. 1883

at

Board of Supervision
 of Kane County

Being a report
 by Alfred W. Greene

Livermore, May 7, 1883
 J. L. Greene
 CWR

delivered the opinion of the Court:

Mr. Justice Walker, ~~¶~~ ~~¶~~ The question which this record presents, is whether or under the legislation of this state, the Common Pleas Court of Aurora, has jurisdiction to try a cause, in which Kane County is the defendant. By the 18th section of the Chapter entitled "Counties and County Courts," (R.S., 132) it is enacted, that "All actions local and transitory, against any County, may be commenced and prosecuted to final judgment and execution, in the Circuit Court of the County against which the action is brought". In the case of Randolph County vs Ralls, 18 Ills., 29, it is held, that this ~~proceeding~~ provision is imperative, and the suit must be brought in Circuit Court of the County sued. The word may in that section, is construed to mean must, in accordance to former decisions of this Court, where Statutes have used the word may in an imperative sense.

But even, if the act creating the

Court of Common Pleas, is suf-
 - ficiently comprehensive, to ~~have~~
 embrace jurisdiction, to try a
 suit against the County, no ~~pro~~
~~process~~ ^{express} power is conferred, to serve
 its process beyond the limits of the
 City. The first section of the act
 creating this Court, (Sess Laws 1857
 p 392) declares, that there shall
 be established in the City of Annapolis
 an inferior Court, of civil and crim-
 - inial jurisdiction. It is declared to
 be a Court of record, and ~~with~~ ^{with} con-
 - current jurisdiction, within the city
 with the Circuit Court, is given
 in all cases, except in cases of Treas-
 - on and murder. The fourth section
 - on provides, that process of the Court
 shall be tested in the name of the
 Clerk, and be issued and executed
 in the same manner as process
 from the Circuit Court of same
 County.

The concurrent jurisdiction of this Court
 with the Circuit Court, is only excep-
 tive, within the city limits. The process of
 the Circuit Court is confined to the
 County except in a few specified cas-
 - es. And in suits against a County, it

can in no case run beyond the limits of the county, to obtain service on the defendant. It would therefore appear to be clear, that, that the commission had no power to send to process, against the county, beyond the city for service.

But it is contended, that the presumption will be indulged, for the purpose of sustaining the jurisdiction of the court, that the county clerk was served within the city. If this were conceded, would the service be in accordance with the requirements of the statute. The 18 section of the act already referred to, provides, that the summons shall be served, by leaving a copy, with the clerk, either during the sitting of the commissioners' court, or so, that a term of that court shall intervene, between the service and the return day of the writ. And it requires ten days, between the service and return day of the writ.

The service is constructive upon the county. It is through the clerk, that the county authorities receive notice of the pendency of the suit, and as he is required to keep his office

at a designated place for the trans-
 action of ~~so~~ public business, it must
 seem, that this service should be
 made at his office. It is designed
 that all public business connected
 with the county shall be transac-
 -ted at the office of the clerk, or
 where the board of supervisors hold
 their sessions. The service of a
 summons against the county is
 not an exception. It is then, that he
 performs ~~transacts~~ his official duties, and his
 official acts bear date. It might oc-
 -cur, that the clerk in leaving the
 state, and passing through the city
 could be served, and he might be ab-
 -sente for months, and the county
 receive no notice of the service on
 the clerk, in time to make defence.
 We ~~But if~~ ~~this~~ think the service on
 the clerk should be made at his of-
 -fice.

But if this is not so, the law
 requires, a term of the county court,
 which is superseded by the Board of
 supervisors, to intervene between the
 service and the trial. In this case the
 Sheriff returns, that he served the sum-
 -mons, on the 29th day of November

1859, and on the 12th day of Decem-
 ber following a rule was taken to
 plead. At the March term ¹⁸⁶⁰ of the Court
 a judgment by default was entered.
 Thus it will be seen that a regular
~~meeting of the board~~
~~term of the Court did not intervene~~
 did not occur after the service and
 before the judgment. The law has
 only provided for one regular meeting
 of the board of Supervisors in ^{each} ~~year~~
 year, and that is on the second mon-
 day of September. (Scates Comp. 337. sec 2)
 The legislature in regulating the ser-
 vice on the County, intended, that
 the County authorities should have
 actual notice, of the pendency of the
 suit, and intended, that they should
 have it while in session for the
 transaction of business. Not being
 personally served, and the clerk not
 being required, to notify them indi-
 vidually, the presumption would be,
 that they had no such notice as the
 law required them to have. If a meet-
 ing fixed by law, had intervened, the
 presumption would be that the Board
 had notice. This record fails to show,
 that there was a special meeting of
 the board after the service and before

judgment, and we will not presume that there was. If there was no other error in the record the judgment must ~~stand~~ be reversed for this. The judgment of the court below is reversed and the cause remanded ~~for further proceedings~~.
~~In this opinion the whole court concurred.~~
Judgment reversed.

Supervisors of
Frank County

20 - vs 9

Young & Hard

Opinion by

Walton

1872

Recorded

Page 691

Compared

United States of America
State of Illinois. Name
County. City of Aurora } ss.

Pleas
before the Honorable
Benjamin F. Parks

The Judge of the Court of Common
Pleas of the City of Aurora. at a
regular Term of said The Court of
Common Pleas of the City of Aurora
begun and held at the Court Room
in the City of Aurora in said County
and State on the Second Monday (the
12th day) of March in the year of our Lord
One Thousand Eight hundred and Sixty

Present The Honorable Benjamin F. Parks

Judge of said Court
C. S. Laslyn, State's attorney

" C. S. Allen Sheriff of Kane County

" Attest

James S. Parr

Clerk

The Court opened by proclamation

Be it remembered that heretofore laid
on the 21st day of November A.D. 1830 there issued
out of the office of the Clerk of the Court of

Common Pleas of the City of Aurora.
 a certain Peoples writ of Summons
 which said writ is in the words & figures
 following To wit:

State of Illinois
 County of Kane } ss. The People of the
 City of Aurora } State of Illinois to the
 Sheriff of said County. Greeting:
 We Command You that you sum-
 -mon The Board of Supervisors of
 Kane County if to be found in your
 county, personally to be and appear before
 the Court of Common Pleas of the City of
 Aurora, in said County, on the first day
 of the next Term thereof, to be holden at
 the Court House, in the City of Aurora
 in said County, on the Second Monday
 of December next, to answer unto Delos
 W. Young & Abner Ward, in a plea of
 Assumpsit to the damage of the said
 plaintiffs as they say in the sum of One
 hundred Dollars.

And have you there and there
 this writ, with our endorsement
 thereon, in what manner you shall
 have executed the same.

Seal

Witness James S. Barr, Clerk
of our said Court, and the seal thereof
at Aurora aforesaid, this 21st day
of November 1839
J. S. Barr Clerk

on the back of said last mentioned writ
appear endorsement, which are in the
words & figures following to wit:

"Filed Dec 1st 1839 J. S. Barr Clerk"

"Executed this writ November 29th 1839 by
reading the same to John Green county
Clerk of Kane County & clerk of the Board
of Supervisors of said Kane County and
at the same time I delivered to John Green
a true copy of this writ

Otham J. Allen
Sherriff of Kane County

And afterwards to wit on the 2^d day of
December 1839 there was filed in the
office of the Clerk of said Court a certain
declaration which is in the words &
figures following to wit:

State of Illinois }
Kane County }
and City of Aurora. to the Court of
Common Pleas thereof. 2d December Term A.D. 1839

Abner Hard and Delos
W. Young Partners in trade
under the firm name style^d
description of Hard and Young
vs
The Board of Supervisors
of the County of Kane

Abner Hard and Delos W. Young partners
in trade, as aforesaid, and plaintiffs in
this suit by Day & Grow their attorneys
complain of the Board of Supervisors of
the County of Kane defendants in this
suit, in a plea of trespass on the case
upon promises. For that whereas
the said defendants heretofore to wit:
on the tenth day of July A.D. 1839 at
Aurora to wit: at the City of Aurora
in the County of Kane, and State of
Illinois, were indebted to the said plain-
- tiffs partners in trade as aforesaid,
in the sum of One hundred dollars

for divers drugs and medicines before
that time, found administered and
provided by the said plaintiffs to and
for the said defendants and for divers
visits, attendances, and journeys, and
other medical aid, before that time
found, provided and done and
performed by the said plaintiffs
to and for the said defendants and
at their like special instances and
request, in and about the doctoring
taking care of and attending a cer-
-tain sick and indigent man, then
and there languishing under divers
sicknesses and maladies, and in and
about the doctoring, taking care of and
attending a certain sick child of a
certain other indigent man. then
and there found and then and there
languishing under divers sicknesses
& maladies and in about & the healing
and curing and nursing, of the said sick
and indigent man, and the said sick
child of the said other indigent man
of their divers disorders sicknesses & maladies
with which they were then and there and
during that time, and before & afterwards
afflicted,

And for divers other services, before that time, found, done, and performed to and for the said defendants, and at their request, in and about the doctoring, taking care of, and attending the said indigent man, and the said child of the said other indigent man, and curing them, and nursing them, of and in, their said sicknesses, disorders and maladies.

And for divers other medical work, labor and services, and drugs and medicines before that time, found and provided therefor and done and performed by the said Plaintiffs to and for the said defendants, and at their like special instance and request, in and about the healing doctoring, and attending the said indigent man, and the said child of the other said indigent man, and doctoring and nursing them, of their said maladies and sicknesses and disorders.

And for that whereas the said defendant on the same day and Year aforesaid, and at the same place aforesaid, were indebted to the plaintiffs, in Five hundred dollars for the price and value of work and labor and and services then and there done and performed and materials for the same provided by the

plaintiffs for the defendants at their request.

And in Five hundred dollars for money then and there lent by the plaintiffs to the defendants at their request

And in two hundred dollars for money then and there paid by the plaintiffs for the use of the defendants at their request.

And whereas the defendants afterwards, to-wit: on the day and year last aforesaid in the county aforesaid, in consideration of the premises respectively, promised to pay the said several moneys respectively to the plaintiffs on request. Yet they have disregarded their promises and have not paid any of the said moneys, or any part thereof to the plaintiffs although often requested so to do. to their damage of Five hundred dollars & therefore they sue &c

By Day & Grow his attorneys

And afterwards to-wit: on the 12th day of March A.D. 1860. the same being, one of the days of the March Term A.D. 1860. of said Court the following among other proceedings were had and entered of record in said Court.

Delos W. Young & Abner Ward

24
The Board of Supervisors of Kane County

Assessors
They

day come the Plaintiffs by Day & so on
 their attorney. and it appearing to the
 Court that the defendants were duly
 summoned to appear herein more than ten
 days previous to the first day of the present
 Term of this Court by service of sum. only
 by reading and copy upon John Greene
 County Clerk and Clerk of the Board of Supervisors
 of Kane County, and the Defendants being
 three times solemnly called in open Court
 come not nor any one for them but herein
 wholly make default which is ordered by
 the Court to be taken and entered of Record
 and that Plaintiffs have judgment for
 their damages herein by default. and that
 a Jury come to enquire of the Plaintiffs
 damages and report to the Court.

Thereupon come a Jury of good and
 lawful men To wit:

C. A. Bradley. Lyman Baldwin. Hiram Gordon
 E. W. Waterman. George Hoppes. James Gould
 Dow Shibley. Martin Woodruff. J. M. Fitzworth
 J. W. Tripps. J. W. Baker. Lyndon Huntton
 who being severally called. elected and
 sworn to ascertain the Plaintiffs damages herein
 also come and having heard the evidence
 adduced return their inquest into
 Court and for a verdict upon their oaths

say. We the Jury assess the Plaintiffs damages herein at Forty five Dollars.

Therefore it is considered by the Court that Plaintiffs have and recover of the Defendants their damages of Forty five dollars in form aforesaid assessed and also their costs and charges by them about this suit expended, and that the Board of Supervisors of Kane County allow the same and give an order to Plaintiffs Delos W. Young & Abner Hard in due form of Law.

And heretofore Court on the 12th day of December A D 1839, the same being one of the days of the December Term 1839. of said Court the following among other proceedings were had & entered of Record in said Court Court:

38 Delos W. Young & Abner Hard)
Plaintiffs)
The Board of Supervisors)
of Kane County)
39

This day
came the Plaintiffs
by Day & now their attorney and the
Defendants by Wheaton their attorney
also came and on Plaintiffs motion, It
is ordered that Defendants plead

herein by the first day of January next.

And afterwards took on the 15th day of March A D 1860 the same being one of the days of the March Term A D 1860 of said Court the following among other proceedings were had and entered of Record in said Court to wit:

Deloss W. Young & Abner Hard

25

The Board of Supervisors
of the County of Kane

Applicant

This day came the Defendants by A M Herrington their attorney and enter their motion for an arrest of the judgment in this cause and the Court being fully advised overrules said motion, to which decision of the Court the Defendants at the time excepted

State of Illinois }
Kane County } ss. I James G. Barr
City of Aurora } Clerk of The Court of
Common Pleas of the City of Aurora
in said City & County & State, do hereby
certify that the above and foregoing
Transcript containing a true & correct
copy of 1st the Summons, 2^d the declar-
-ation, 3^d the Judgment of the Court
& 4th all orders of the Court entered
of Record in a cause lately pending
in The Court of Common Pleas of
The City of Aurora wherein Silas
W. Young & Abner Ward were
Plaintiffs and The Board of Supervisors
of Kane County, Defendants as appears
from the records & file in my Office
Witness my name & the seal
of said Court at the City of Aurora
aforesaid this 16th day of April
A.D. 1860
James G. Barr
Clerk

Com Elias Aurora
Delos W. Young
Abner Ward

4

The Board of
Supervisors of the
County of Ham

12.59

State of Illinois, ss.

Supreme Court, Third Division.

The Board of Supervisors of Kane County,	}	Error to the Court of Common Pleas of the City of Aurora.
vs.		
Delos W. Young and Abner Hard.		

Afterwards, to wit, at the April Term, A. D. 1860, of the Supreme Court aforesaid, comes the said plaintiff in error, by Dickey & Wallace, its attorneys, and says, that in the record and proceedings and in the rendering of the judgment aforesaid, it is manifestly erred, in this, to wit:

1st. The court below gave judgment in the said cause, when by the law of the land the said court had no jurisdiction of the cause aforesaid.

2nd. The court below erred in giving judgment in form aforesaid for the plaintiffs below.

And this the said plaintiff in error is

ready to verify; wherefore it prays that
the judgment aforesaid may be reversed,
and altogether for naught holden.

Herrington Dickey & Wallace,
for plaintiff in error.

State of Illinois vs
Supreme Court Third Grand Division

Orlos W Green
Abner Hard

vs

The Board of Supervisors
of the County of Kane

Error to the Court
of Common Pleas
of the City of
Clearwater.

And the said defendants Orlos W
Green & Abner Hard appeared to
verb at the April Term AD 1861
by Montoy & Sons their attorneys
come & ~~defend~~ say that there
are not in said record & proceedings
and in the rendering of said judgment
any such errors as are as-
signed by the said plaintiffs
in error, above, and the said
defendants in error pray that the
judgment & all the matters aforesaid

may therefore be affirmed in all
things -

Montague & Lewis
Attorneys for said
dependents

~~44~~ ~~41~~ ~~7~~ 26
Board of Supervisors
of Kane County,
vs.

Delos W. Young
& Abner Hard.

Transcript of Record
and
Assignment of Errors.

Filed May 24. 1860
L. Deland
Clerk

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- 2 Summons issued November 21st, 1859; returned, executed,
- 3 November 29th, 1859, by reading and delivering copy to John Green, clerk of board of supervisors.
- 9 December 12th, 1859, (in term) rule on defendant to plead by 1st of January next.
- 7, 8 March term, 1860, defendant defaulted for want of plea;
- 9 assessment of damages by a jury, \$45; judgment that plaintiffs recover their damages and costs, and that the board of supervisors allows the same, and issue an order to plaintiffs.
- 10 Motion in arrest of judgment, overruled; defendants excepted.

POINTS MADE BY PLAINTIFF IN ERROR.

1. The court of common pleas of the city of Aurora had no jurisdiction of the cause. Rev. Stat., 132, sec. 18, "All actions, local or transitory, against any county, may be commenced and prosecuted to final judgment and execution in the *circuit court* of the county against which the action is brought." *Randolph county vs. Ralls*, 18 Ill., 29. Word *may* construed to mean *must*. See cases there cited.

2. The common pleas had no authority to render judgment *quod recuperet* against the board, but *only* to order that the board allow the amount of damages and costs, and issue a warrant therefor.

Rev. Stat., 133, sec. 20.

Herrington

DICKEY & WALLACE,
For plaintiffs in Error.

The court had not jurisdiction
of the cause. The summons
having been sent beyond
the city limits to serve and
send without the said
limits &c

3.5
96

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Error to the Court of Common Pleas of the City of Aurora.

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By the first section. [Special Laws 1857, P. 392] it is enacted that the Court shall have *concurrent* jurisdiction within the City of Aurora, with the Circuit Court, in all civil and criminal cases except treason and murder. Then to know whether the Common Pleas has jurisdiction in this case, it is only necessary to enquire, had the Circuit Court the power to try the cause; If so, then the Common Pleas had a *concurrent* right; with the proviso, however, that service of process was obtained in the City, or the cause of action arose, and the plaintiff resided therein.

At common law, courts are divided into superior and inferior courts, or courts of record, and those not of record. 3 Blac. Com. 24; Beauben vs. Brinckerhoff, 2 Scam. 269; Vance et al vs. Funk et al, 2 Scam. 26. The Court of Common Pleas, while limited, territorially, yet has within its territorial limits *general jurisdiction* in all civil and criminal cases, except the instances of treason and murder. This Court has a Clerk and a seal, and its proceedings are according to the practice in the common law Courts and in the Courts of Equity

Then why shall it not be classified with what are known at common law as Superior Courts? It certainly has every ear mark by which a superior court at common law is distinguished from an inferior one. Then it, (the court) is entitled to those intendments or presumptions that belong to superior courts, in stating its jurisdiction, which is, that nothing shall be intended to be out of the jurisdiction of a superior Court, but that which specially appears to be so. This Court will presume (it not appearing specially to the contrary, from the record) that the process was served on the County Clerk in the city of Aurora, or that the cause of action arose in the city, and that the plaintiffs resided there—or indulge any other presumption which would have authorized the Court below to obtain jurisdiction of the defendant below, unless the same are rebutted by what appears on the record. See Beauben vs. Brinckerhoff, already cited on page 274.

The judgment, the Court will see by examining the record is in proper form—no execution is awarded. I therefore submit that the judgment below should be affirmed by this Honorable Court.

R. G. MONTONY,

Att'y for Def't in Error.

Dr Geo W. Greene
and left in error
at

Board of Supervisors
of Kane County

Ref & argument
by left in error

Filed May 7, 1863

J. L. Carter
clerk

Supreme Court of the State of Illinois,
THIRD GRAND DIVISION.

APRIL TERM, 1868.

DELOS W. YOUNG &
ABNER HARD
nts
The Board of Supervisors
of Kane County.

Error to the Court of Common Pleas of the City of Aurora.

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20
Bills W. (Greening)
also left in error
also

Board of Supervisors
of Kern County

Receipts argument
by left in error

Filed May 7, 1863
Leland
CNR

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM, 1861, AT OTTAWA.

THE BOARD OF SUPERVISORS
OF KANE COUNTY,

vs.

DELOS W. YOUNG AND
ABNER HARD.

*Error to the Court of
Common Pleas of the
City of Aurora.*

ABSTRACT OF RECORD.

PAGE OF REC.

- Assumpsit in the common pleas of Aurora, by Young and Hard, against the Board of Supervisors of Kane county. The
- 4 declaration, filed Dec. 2d, 1859, contains an *indebitatus* count for drugs and medicines furnished and medical service done and bestowed by the plaintiff, in and about the attendance of two indigent persons, and also contains counts for work done, money lent, and money paid.
- 2 Summons issued November 21st, 1859; returned, executed,
- 3 November 29th, 1859, by reading and delivering copy to John Green, clerk of board of supervisors.
- 9 December 12th, 1859, (in term) rule on defendant to plead by 1st of January next.
- 8 March term, 1860, defendant defaulted for want of plea;
- 9 assessment of damages by a jury, \$45; judgment that plaintiffs recover their damages and costs, and that the board of supervisors allows the same, and issue an order to plaintiffs.
- 10 Motion in arrest of judgment, overruled; defendants excepted.

POINTS MADE BY PLAINTIFF IN ERROR.

1. The court of common pleas of the city of Aurora had no jurisdiction of the cause. Rev. Stat., 132, sec. 18, "All actions, local or transitory, against any county, may be commenced and prosecuted to final judgment and execution in the *circuit court* of the county against which the action is brought." *Randolph county vs. Ralls*, 18 Ill., 29. Word *may* construed to mean *must*. See cases there cited.

2. The common pleas had no authority to render judgment *quod recuperet* against the board, but *only* to order that the board allow the amount of damages and costs, and issue a warrant therefor.

Rev. Stat., 133, sec. 20.

Hemington

DICKEY & WALLACE,
For plaintiffs in Error.

The court had not jurisdiction
the process having been sent
out of the city to be served

35-20-9
96

SUPREME COURT OF ILLINOIS :

APRIL TERM, 1861.

THE BOARD OF SUPERVISORS OF
KANE COUNTY,

vs.

DELOS W. YOUNG AND
ABNER HARD.

ABSTRACT AND POINTS.

DICKEY & WALLACE,

For Plaintiffs in Error.

Filed Apr. 29th 1861

L. Leland

Olsonk

STATE OF ILLINOIS,
SUPREME COURT.

} ss. The People of the State of Illinois,

To the Sheriff of Kane County, GREETING:

Because, In the record and proceedings, and also, in the rendition of the judgment of a plea which was in the Court of ^{City of Aurora} Common Pleas of the County of Kane, before the Judge thereof, between Deos. M. Young & Abner Heard

plaintiffs, and The Board of supervisors of Kane County

defendant, it is said that manifest error hath intervened, to the injury of the said Board of supervisors of Kane County

as we are informed by the complaint of said Board of Supervisors - the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law: Therefore, We Command You, That by good and lawful men of your County, you give notice to the said Deos. M. Young and Abner Heard

that they be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, to hear the record and proceedings aforesaid, and the errors assigned, if they 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 Deos. M. Young and Abner Heard

notice, together with this writ.

Witness, The Hon. John T. Galen, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 24th day of February in the year of our Lord One Thousand Eight Hundred and Sixty-two

S. Silance

Clerk of the Supreme Court.

This writ returned not served
Deles M. Young and Abner Hard
not found in my County

Demarcus Clark

April 18th 1862

Sheriff of Kane County

Return, 10

728

20

Kane
Deles M. Young &
Abner Hard

No. 46-35 vs.

The Board of Supervisors
of Kane County

SCIRE FACIAS.

Filed April 24..... A. D. 1862

E. Selmdick Clerk.

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM, 1861, AT OTTAWA.

THE BOARD OF SUPERVISORS
OF KANE COUNTY,

vs.

DELOS W. YOUNG AND
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Rev. Stat., 133, sec. 20.

Hemington

DICKEY & WALLACE,
For plaintiffs in Error.

The court had not jurisdiction
the summons having been
sent beyond the city limits
for service

25-24
96~

SUPREME COURT OF ILLINOIS :

APRIL TERM, 1861.

**THE BOARD OF SUPERVISORS OF
KANE COUNTY,**

, vs.

**DELOS W. YOUNG AND
ABNER HARD.**

ABSTRACT AND POINTS.

DICKEY & WALLACE,

For Plaintiffs in Error.

Filed Apr. 29-1861

L. Leland.

clerk