

13377

No. _____

Supreme Court of Illinois

Phelps

vs.

Simmons

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 6.

Phelps
vs
Simmons

13317

STATE OF ILLINOIS, }
SUPREME COURT, } ss.

The People of the State of Illinois,
TO THE CLERK OF THE CIRCUIT COURT FOR THE COUNTY OF *Grundy* 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 *Grundy* County, before the Judge thereof, between *Benjamin F. Phelps*

plaintiff, and *William Simmons*

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

Defendant

as we are informed

by *his* 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 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.

John D. Barton
WITNESS, The Hon. ~~WALTER B. SCATES~~, Chief
Justice of our said Court, and the Seal thereof, at Ot-
tawa, this *21st* day of *December* in the Year
of Our Lord One Thousand Eight Hundred and Fifty-Seven

L. Leland
Clerk of the Supreme Court.
by *J. B. Rice* Deputy



~~#6~~
Benjamin T. Phelps
vs
William Simmons
Writ of Error

Filed December 21, 1857
S. Leland
Clerk



STATE OF ILLINOIS, }
SUPREME COURT, }

ss. The People of the State of Illinois,

TO THE SHERIFF OF THE COUNTY OF La Salle

GREETING:

BECAUSE, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Circuit Court of Grundy county, before the Judge thereof, between Benjamin F. Phelps plaintiff and William Simmons

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

Defendant

as we are informed by his complaint, 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 Benjamin F. Phelps

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 Monday in April next, to hear the records and proceedings aforesaid, and the errors assigned, if 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 Benjamin F. Phelps

notice, together with this writ.

WITNESS, The Hon. WALTER B. SCATES, Chief Justice of our said Court, and the Seal thereof at Ottawa, this 21st day of December in the Year of Our Lord One Thousand Eight Hundred and Fifty- Seven.

L. Leland
Clerk of the Supreme Court.
by J. D. H. Deputy



~~14~~
Benjamin T. Phelps
vs
William Simmons

Sci fa

Served by reading the
within Summons
to Benjamin T.
Phelps this 15th day of
Jan'y 1858

Zero - Start 60
1 mile 100
\$ 65

Ed Potomac Shp
for W & Brown & Co

Filed January 15, 1858
S. Leland
Clk



Grundy Circuit Court May Term 1852
State of Illinois
Grundy County

Shew before the
Honorable Hugh Henderson Judge of
the 11th Judicial of the State of Illinois
and Presiding Judge of the Circuit
Court of Grundy County in the State
aforesaid, at a Circuit Court begun
and held at the Court house in Mon-
rois in said Grundy County, on
Monday the tenth day of May, in
the year of our Lord one thousand
eight hundred and fifty two, and
of the independence of the United
States the seventy sixth

Present

Mr And Hugh Henderson Judge
J W Burrows States Attorney
Elijah Walker Sheriff
George W Kirsted Clerk

Be it remembered, that here-
tofore to wit, on the 9th day of October
A D 1851, there was filed in the
Clerks office of said Court, a
Transcript of the Record of proce-
dings of the La Salle County Circuit

Case (accompanied by the papers)
of a certain cause in said La Salle
Court, Entitled
"Benjamin Phelps }
vs } Exponent
William Simmons }

Remitted to
said Grand Jury Court by change
of venue; Those of which said
papers remaining on file, with
the said Transcript, are in the
words and figures following. To wit;

Copy of Transcript

"La Salle Circuit Court March Term AD 1848
State of Illinois }
La Salle County } et

Plaus before the Hon-
orable John S. Catron, one of the Justices
of the Supreme Court and Presiding
Judge of the Ninth Judicial Circuit
of said State of Illinois, at a Circuit
Court Commenced and held in & for
the County of La Salle aforesaid
on the thirty first day of March
AD 1848, the same being the sev-
-enty second year of the independence
of the United States of America

Præsent

The Hon John & Catron presiding judge
Lorenzo Leland Clerk
Barton & Cook States Attorney
Henry Hurlbut Sheriff

"Tuesday April 4 1848"

Benjamin F Phelps }
vs } Exponent
William Simmons }

This day the defend-
ant, by Glover & Cook & Hoes his
attorneys entered his appear-
ance in this cause, and there-
upon, by Agreement of parties
a rule is entered against
the defendant to plead to
the Plaintiffs declaration
in twenty days"

"LaSalle Circuit Court March Term 1849"

Tuesday April 3^d 1849

Præsent the Honl Theophilus
L Sicker presiding judge of said
Court

"Benjamin F Phelps }
vs } Exponent
William Simmons } This day, by

agreement of the parties herein,
it is ordered that this cause
be continued until the next
Term of this Court.

"LaSalle Circuit Court November Term 1849"

Saturday Nov 17th 1849

"Benjamin T Phelps
vs
William Simmons

Ex parte

On Motion of
Glover and Leach Attorneys for
Defendant and on filing their affidavit
it is ordered that this cause be
continued at Defendants
costs to be taxed

"LaSalle County Circuit Court April Term 1851"

Tuesday April 29th 1851

"Benjamin T Phelps
vs
William Simmons

Ex parte

This day appeared
the plaintiff by Leland his att-
-orney, and on his motion it
is ordered that a change of
venue be had herein to Grundy

County, the Judge of this Court
having been of Counsel for the
plaintiff in the subject mat-
ter of this Cause

State of Illinois
La Salle County

I Philo Ludley
Clark of the Circuit Court in
and for said County, do hereby
certify that the foregoing is a
true, full and complete copy
of all the Orders of Court
that the accompanying papers
marked from A to N in-
clusive are all the papers
that appear on file in my
office in said Cause

In testimony whereof I have
hereunto set my hand and
affixed the Seal of said Court
at my office in Ottawa, this
5th day, of June A.D. 1850

P Ludley Clerk

Accompanying paper marked "C"

"Benjamin T Phelps & LaSalle Co. ex.
vs Court

William Simmons } Effectment

William Simmons

bring duly sworn, on oath to wit
that J R Conway is a non-
resident of the State of Illinois
but resides in St Louis Missou-
-ri

Wm Simmons

Subscribed & sworn to
before me this 24th day
of May A D 1849
P Lindley Clerk

Accompanying paper marked "E"

"Cross interrogatories to be pro-
pounded to J R Conway whose
deposition is about to be taken in
the case of Bray & Phelps vs
William Simmons pending
in the LaSalle Circuit Court

" 1st Has there ever a survey made
of the Island containing forty

five. Now Acres according to the survey of George E Walker & which is situated in Section twenty two, Township thirty three, North of Range two East of the third P. M., prior to the one made by said Walker, which was accepted in your office and carried upon the Plats or Maps of your office

2^d "Please state, if you know or can tell from the Records in your office whether any plat or Map of said Island other than the plat or Map of Walker's Survey, has been transmitted from your Office to the Land office of the district in which said Island is situated"

3^d "Is there any plat or Map in your office purporting to have been made prior to the twenty third day of June in the year of our Lord one thousand eight hundred and thirty five upon which said Island is delineated"

Accompanying paper marked "F"

" Benjamin T Phelps ^{vs} ~~LaSalle County~~
Circuit Court
William Simmons ^{vs} Expectant
" To Benjamin T Phelps

You will
take notice that on the 4th day of
June next, at 9 o'clock A.M.,
I shall attend at the office of
the Clerk of the Circuit Court
of said County to see and a-
ddress *patetatur* directed
to J Harborton Skinner
Esqr of the City of St Louis in
the State of Missouri, to take
the deposition of J R Conway
of the City of St Louis Missouri
in answer to the following
interrogatories - said deposition
to be read in evidence on the
trial of the above entitled suit
when and where you may file
cross interrogatories if you
see proper

Glover Abbott
Deft's atty

Accompanying paper marked "J"

Benjamin Phelps } LaSalle County Circuit
vs } Court To July Term
William Simmons } 1849
Exetment

"It is agreed by the parties hereto that the depositions on file in the Clerk's office in this case be opened by the Clerk for the inspection of the parties and that such opening shall have the same effect as if ordered by the order of the Court in term time, Each party waiving any exception that might be taken to such opening."

Bbedock Dfts city
E S Land for plff.

Accompanying paper marked "J"

Benjamin T Phelps } LaSalle County Circuit
vs } Court
William Simmons } Nov Term 1849
Exetment
JO Glover being duly

sworn on oath Saiter that he is
attorney for the defendant in
the above entitled suit, and
that he cannot safely and
with due regard to the rights
of his client try this suit in
the absence of his client -
that said defendant left this
county about five or six weeks
since to be gone for about
two weeks, that he has been
informed by the family of
said Simmons who reside
in this county and verily
believes the statement to be
true, that the family of said
Simmons has sent telegraphic
-ic dispatches to the various
places where said Simmons
expected to stop and cannot
be heard of - That said family
of said Simmons fear that
he is dead, that he has been
gone about three or four
weeks longer than he inter-
-ded to have been - That said
Simmons is acquainted with
the land in controversy and

the surrounding County much
better than it is possible for
his Counsel to be and Affiant
believes that his presence
is necessary to a fair trial
of said suit that it does
is associated with this affi-
-ant in the trial of this cause
that this Affiant has been
informed & believes it to be
true that said Hoes is sick
and unable to attend Court

Sworn before me
this 13th Nov 1849
R Luddy Ck

J O Glover

Proceedings in the Grand
Jurisdiction Court
May Term 1852

Benjamin Phelps & Effortment
vs
William Simmons & LaSalle

This day comes the
plaintiff by Leland his attorney
and the defendant by Glover & Cook

also comes and by their agree-
ment a jury is waived &
this cause submitted to
the Court for trial - And
the Court after hearing the
testimony and arguments
of Counsel do take the de-
cision herein under advise-
ment until the next Term
of this Court, saving to either
party the right to except,
appeal or in any legal
manner remove this suit
to the Supreme Court

March Term 1853

Hugh Handerson Judge presiding
Tuesday March 29th 1853

Benjamin P Phelps & Expectant
vs
William Sumner & Anne from de Sales

On this day comes
the plaintiff by Leland & Dickery
his Attorneys and the defend-
ant by Glover his Attorney
also comes and the Court
upon the trial herein at the

Nearly Term 1852 of this Court
having had the matters be-
tween the parties hereto un-
der advisement, do now
consider and order that
judgment be entered for
the plaintiff, and thereupon
the said defendant by
his said attorney moves
the Court for a new trial
without reference to the
Statute

Wednesday March 30th 1853

"Benjamin T. Phelps } expectant
vs } venue from
William Simmons } La Salle

This day again came
the parties hereto by their re-
spective attorneys, and the
motion heretofore entered by
the defendant for a new
trial, is overruled by the
Court, to which the defend-
ant excepts - And now
the defendant prays the
Court for an appeal to

the Supreme Court, which
is granted upon condition
of his giving bond of two
hundred dollars with W
Brown, Alonzo Edwards
and James Clark as
security, in the office of the
Clerk of this Court on or
before the tenth day of
May next

State of Illinois
Grundy County

I William A
Trusted Clerk of the Cir-
cuit Court within & for
said County in the State
aforesaid, do hereby certify
the foregoing to be a full
true and correct copy
of all the papers remain-
ing on file together with
Record of the proceedings
of said Court in the above
entitled Cause as the
same appear on file
& of record in my said
office

In Witness Whereof
I have hereunto set my
hand and official Seal
at Harris this 16th day
of December A.D. 1857

J^{per} A. Kiersted
Clerk

~~11~~ 6
Benjamin F. Phelps

vs 6

William Simmons

Transcript

Filed December 21, 1887

S. Deland

Clerk

by J. B. Rice Deputy