


No. 14201

Supreme Court of Illinois

People

vs.

Baugh.

71641  7

The people on the relation of

David Steward

D. Baugh

Motion for Mandamus

In the Supreme Court

David Steward being first duly sworn according to Law deposes and swears that a suit was commenced ~~against~~ ^{against} him before John H. Watson an acting Justice of the Peace in and for ~~Washington~~ ^{Jefferson} County, Illinois, on the 11th day of July 1854, in the name of one Daniel Pettingill Guardian of John Sigor for the use of George Inrsa, for the recovery of a pretended balance alleged to be due to him on a promissory note under seal, made by him in favor of said Pettingill, as guardian for the minor heir of John Sigor for the sum of fifty-one dollars, or thereabouts. — That said Pettingill was in fact dead long before the commencement of said suit before said Justice but from the indisposition of his family this affiant was not able to attend before said Justice on the day set for the trial of said cause before said Justice, and judgment was rendered against him by default. — That this affiant appealed from said Judgment to the Circuit Court of Jefferson County, of which said Circuit Court one Downing Baugh was then presiding Judge. — That on the trial of said cause, this affiant by his counsel R. S. Nelson, offered to prove the death of said Pettingill before the commencement of said suit before the said Justice of the Peace, by Ewen Stead who was actually sworn as a witness on behalf of this affiant for the purpose of testifying to that fact and which this

affiant could actually have proved
by said Green Stuart, had he been
allowed to testify - but the court refused
to allow said Green Stuart to testify -
That this affiant's counsel then tendered
to the said D. Bangh as Judge of said
Court a bill of exceptions to the ruling
of said court, in refusing to allow said
Green Stuart to testify - but the court
refused to ~~allow~~ sign said bill of
exceptions. That this affiant's counsel
then handed said bill of exceptions to
the court, and requested him to examine
the same, and if there was anything
wrong ⁱⁿ it to correct it, and that he said
Nelson would be satisfied with it - which
the court agreed to, and took said bill
of exceptions from this affiant's counsel.
- That at the same term of court, this
affiant's counsel, in term time, and
whilst the court was in session, asked
the court if he had examined said bill of
exceptions and signed the same, to which
the court replied that he had not, and would
not be tricked in any such way - That this
affiant's counsel then asked the court to
give him said bill of exceptions, to
which the court replied to said Nelson if
he wanted said bill of exceptions he would
have to hunt it up - That said Nelson
then drew up another bill of exceptions which
he read to this affiant for the purpose of en-
abling this affiant to answer to the same, in

People } Mandamus
Bangh } Stuats officioru

Daniel Pettigill Griordan &c,
for the use of George Sins

as
David Stewart - Appeal

Returned In Superior Circuit Court,
Sept. Term A.D. 1854 -

This affiant, ~~W. Green~~ Stewart being
first duly sworn according to law
deposes and says that he was present
at the trial of the above entitled cause,
and the defendants offered to prove
by him that the plaintiff, Pettigill
was dead before the commencement of
this suit before John H. Watson, Justice
of the Peace, who originally tried said cause,
and this affiant was actually sworn as
a witness on behalf of said defendants for
the purpose of testifying to that fact, but
the court refused to allow this affiant to
testify in said cause - and further
this deponent saith, that
off^r David Stewart

Sworn to and subscribed
before me, this 13th day of
November, A.D. 1853 -

Witness my hand and seal, in
office, in said town, the day and date
above written John S. Bryan
Clerk Cir. Court.

Green Stenok
Affidavit

Daniel Pettigold / guardian of the heirs
of John Seay for the use
of Green Seay

David Stewart

appeal
September term 1854
Superior Circuit Court

Be it remembered that on the trial
of the above styled Cause which was an appeal
from a Justice of the Peace, ^{the plaintiff} ~~the plaintiff~~ introduced
as evidence on his behalf a promissory note ~~and~~
made by the defendant payable to Daniel
Pettigold, here insert Copy of note, which was
all the evidence offered by ~~the plaintiff~~ ^{the beneficial plaintiff}

The defendant then offered to
prove by Greene Stewart a witness who
was introduced & sworn as a witness on his
behalf - that Daniel Pettigold in whose name
said suit was brought ^{to which said note was made payable} was dead for some
considerable time before the suit was commenced
before the Justice of the Peace in the Court below
and was not in fact in existence at the time
said suit was commenced - but the said
Court refused to allow said Greene Stewart
to testify or to allow the defendant to prove
the fact of Pettigold's death before the commence-
ment of said suit before the Justice of the Peace
to which ruling of the Court the defendant at
the time assented which was all the evidence offered
by the defendant or introduced by him on his trial
whereupon the Court rendered judgment for the
plaintiff for \$14 or thereabouts & Costs. ~~and judgment of this Court the defendant by his counsel~~
~~at the time assented & for the defendant~~
whereupon moved for a new trial because

Daniel Pettigold / guardian of the heirs
of John Seay for the use
of Green Seay

David Stewart

appeal
September term 1854
Superior Circuit Court

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of the above styled Cause which was an appeal
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as evidence on his behalf a promissory note ~~and~~
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to testify or to allow the defendant to prove
the fact of Pettigold's death before the commence-
ment of said suit before the Justice of the Peace
to which ruling of the Court the defendant at
the time assented which was all the evidence offered
by the defendant or introduced by him on said trial
whereupon the Court rendered judgment for the
plaintiff for \$14 or thereabouts & Costs. ~~and judgment of this Court the defendant by his counsel~~
~~at the time assented & for~~ the defendant
thereupon moved for a new trial because

the defendant was contrary to Law which
was overruled. to which Judgment of the Court
the defendant also excepts & prays that his Bill
of exceptions may be signed sealed & made part of
the record

Plaintiff
vs
Defendant

Bill of exceptions

Richard S. Nelson, being first duly sworn according to law, deposes and says that the annexed bill of exceptions is the same bill of exceptions referred to by the said David Stuart as the second bill of exceptions presented by this officious to said Bough as Judge of the Jefferson Circuit Court - at the September term A.D. 1854, in term time, and whilst the said court was in session, and which he the said Bough refused to sign - and seal, as stated by said Stuart in his said affidavit - and this officious truly believes that the said bill of exceptions is a correct statement of the evidence, and the ruling of the Court on ~~said~~ the trial of said cause and further this deponent soth not.

Shown to and subscribed by R. S. Nelson
before me this 14th day of
November A.D. 1855 -

Attest Chas

People et. rev
no
of 2000 to 3

Motion for Mandamus

Daniel Pettingill }
guardian of }
John Segor }
vs } Motion for Mandamus
David Stewart }

To Hon. Downing Baugh
atty for Plaintiff

Take notice that on the
first day of the next term of the Supreme
Court to be held at Mt Vernon for the First
Grand Division of Illinois I will move
said Court for a writ of mandamus against
you to compel you to sign a bill of exceptions
in a certain cause tried before you while
Judge of the 12th Judicial Circuit of Illinois
previously, at the September term ¹⁸⁵⁴ 1853-4
of the Jefferson Circuit Court, wherein ^{Daniel} ~~David~~
Pettingill, guardian of John Segor for the
use of George Sussa was plaintiff and
David Stewart was defendant in which
said cause judgment was rendered against
said David Stewart for \$14 or thereabouts.

At David Stewart
by R. Nelson atty-

52
Notice to Baugh

Executed the within
notice by reading
to Downing Baugh
Oct 3rd 1855

Serving 50
returning 10
60

John M. Allen Safford

1853

Filed October 3, 1853
J. J. Fogg, clerk

14201

Dismissed
1855

See Bill made out
at Court House

Filed 16 Nov. 1855
A. Schmitt clk