

No. 13671

Supreme Court of Illinois

Gale

vs.

Root

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 25

Gale
75
Ross

1862

13670

A B S T R A C T .

W. SELDEN GALE, ET AL }
vs. } *Appeal from Knox.*
RILEY ROOT. }

The action below was assumpsit on a promissory note. Suit was commenced before L. C. Conger, Police Magistrate of the City of Galesburg, and taken to the Circuit Court by appeal.

2 Summons issued by L. C. Conger, Police Magistrate of the City of Galesburg, June 24th, 1859, returnable June 30th, 1859.

3 Demand endorsed on back of summons, \$406,45. Summons returned, served by constable.

4 Judgment rendered June 30th, 1859, by Police Magistrate, for \$407,03 and costs.

5 Defendant's appeal to Circuit Court and file appeal bond,
9 which is approved.

10 Appeal summons issued, which is returned by sheriff duly served.

12 Suit tried by Court, and judgment rendered for note, interest, and four per cent. damages, amounting to \$430,25.

13 Motion filed by defendants for a new trial, which is heard and overruled.

14 Defendants pray an appeal to Supreme Court, which is allowed.

The errors assigned are—

1st. The judgment is too large.

2d. In awarding damages for delay.

3d. In refusing the motion for a new trial.

POINTS. 1st. The judgment of the Police Magistrate is larger than the demand endorsed on the back of the summons. The demand is \$406 45. The judgment was for \$407 03.

The judgment of the Circuit Court cannot exceed the demand endorsed on the back of the summons, and the interest which accrued on the note since the entry of the judgment by the Police Magistrate. *Dowling vs. Stewart et al.* 3 Scam., 195. The judgment of the Circuit Court in this case, after deducting the damages which were allowed, does exceed the demand endorsed on the back of the summons and the interest which had accrued upon the note.

2d. The judgment of the Police Magistrate was too much, it being for more than the plaintiffs' demand, and therefore the Circuit Court should not have awarded damages against the defendants.

T. G. FROST,
Appellants' Attorney.

28671

Case no Root

Abstract Brief

Filed April 12, 1860

L. Leonard

Clark

ABSTRACT.

W. SELDEN GALE, ET AL

vs.

RILEY ROOT.

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T. G. FROST,
Appellants' Attorney.

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Lyals
vs

Root

Abstract & Brief

Filed April 19. 1860
Adelant
Clark

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T. G. FROST,
Appellants' Attorney.

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Gale vs Root

Abstract vs Brief

Filed Apr 19. 1860

H. Deland

Clerk

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T. G. FROST,
Appellants' Attorney.

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Gale vs Reed

Abstract Bait

Filed Apr 19, 1860

L. Deane
Clerk

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T. G. FROST,
Appellants' Attorney.

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Gale vs Root

Abstract of Books

Filed Apr 19, 1860

L. Leonard
Clerk

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T. G. FROST,
Appellants' Attorney.

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W. Selden Gale Adl

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Riley Root

Abstract Book

Filed April 12, 1860
L. Seland CLK

A B S T R A C T .

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T. G. FROST,
Appellants' Attorney.

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286 71

Gale vs Post.

Abstract. Sub.

Filled Apr 19, 1860
L. Delmonet
Clark

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T. G. FROST,
Appellants' Attorney.

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Lyall
vs

Root

Abstract
&

Brief

Filed April 18 1860

L Gilman
clerk

\$10: pd. by E. S. Gilman

A B S T R A C T .

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T. G. FROST,
Appellants' Attorney.

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Gale as root

Abstract J. Brit.

Filed Apr 19, 1860.

L. L. Mum

clerk

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T. G. FROST,
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Gale no Bert

Abstract + Book

Filed Apr 19. 1860

L. Leonard

Clk

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T. G. FROST,
Appellants' Attorney.

25 — 286 71

Gale no Root

Abstract Birch

Filed Apr. 19, 1860

A. L. Linn

Clerk

Supreme Court of Illinois Third division
April Term 1860

Walden Gale et al
vs
Riley Roub. } Appeal from Rex

And now come the appellants by Deland & de
Land their alleg & say that in the record &
proceedings in this case there is manifest
error in this to wit

1st The judgments of the Court below was
too large

2^d The Court erred in awarding damages
for del ar

3^d The Court erred in overruling the
motion for a new trial

Appellants therefore pray a reversal of
the judgments

Deland & de Land
for Appellants

Copy of errors
Filed April 20. 1860
of Deland & de Land
elect

State of Illinois }
Snoot County } ss

Now before the Honorable John
S. Thompson Judge of the South Judicial
circuit in the State of Illinois, at a court
begun and held at the Court House in the
City of Knoxville in said county & State. On the
fourth Monday of the month of September AD 1859
it being the 26th day of said month in
said year

Now Hae John S. Thompson Judge
J. H. Stewart States Attorney
A. Thomas Sheriff
Lee Arms Clerk

Riley Root
vs
W. Selden Gale et al } Appeal

Be it remembered that
at the above term of said court this suit
was pending therein on an appeal from the
docket of L. C. Conyer Police Magistrate of the
City of Galistery in said county. The following
is a copy of the summons issued by said Police
Magistrate in said cause to wit

State of Illinois Knox County City of Galistery ss.
The People of the State of Illinois to the Marshall
of said city or any constable of said county
meeting

2 We command you to summon W. Selden
Gale David H. Frisbie & Josiah Gale. to appear
before me at my office in Galistery on the
30th day of June 1859 at 10 o'clock A.M.

to answer the complaint of Poley Root for a failure to pay him a certain demand not exceeding \$500, and they make due return as the Law directs

Given under my hand and seal this 26th day of June AD 1859

L. C. Conyer *(Seal)*
Police Magistrate

On Back of Demand

Poley Root

W. Selden Gale, Debit to wit

Demand \$406.65

Cost 56

Service 75

Mileage 15

The officer's return on said summons is as follows

Served by reading to W. Selden Gale, D. H. Frisbie & Josiah Gale June 27/59

L. C. Conyer Court

Copy of Transcript in said case State of Minn. Snow County City of Galveston } ss

Before L. C. Conyer Police

Magistrate. Note dated June 13th 1857 due two years from date for \$362.50 with use at six per cent Interest on same to June 30th 1859 = \$44.53 = \$407.03

Poley Root

W. Selden Gale Debit H. Frisbie & Josiah Gale

Summons Issued June 24th 1859

Returnable June 30th 1859 10^o o'clock A.M.

Summons returned served by reading W. S. Gale

Demand \$407.03 H. Frisbie & Josiah Gale

Now on this 30th day of June 1859 suit called, and defendants not appearing in defence, and action being on note. Therefore it is

considered by the court that Plaintiffs have
and receive judgment of said defendant
Court per 181 in the sum of four Hundred and seven
and fifty Dollars and also for costs of
5 \$ 2,71 Suit & Bond for appeal filed per Depts July 19
1859 G. H. Gale Security

State of Illinois Knox County City of Galveston, ss
I L. C. Leary a Police Magistrate within & for
Knox County Illinois hereby certify that the foregoing
transcript is correctly copied from my docket
& that all papers of said cause are herewith
transmitted Witness my hand and seal
this 29th day of July 1859.
L. C. Leary
Police Magistrate

Copy of note attached to said Transcript
\$362.50 Galveston June 13th 1859

6 Two years after date we promise to pay Benja-
min Lombard or order Three Hundred and
sixty two Five Dollars with six per cent interest
value red at the Marine Bank Chicago
W. Seldan Gale
D. H. Frisbie
Josiah Gale

Enclosed as follows "Without recourse, Benj Lombard"
"Pay Reby Root" Timothy Mosher

The Bond returned into & paid in said cause is as
follows

Know all men by these presents that we
W. Seldan Gale D. H. Frisbie Josiah Gale &
George W. Gale are held and firmly bound

7
unto Riley Root in the several sum of Eight
Hundred & Twenty dollars Lawful money
of the United States for the payment of which
will and truly to be made, We do bind our
selves our heirs and administrators jointly
severally and jointly by these presents, With our
hands and seals this nineteenth day of
July A D 1857 The condition of the above
obligation is such, that whereas the said
Riley Root did on the thirtieth day of
June A D 1857 before Lauren C. Conger a Justice
of the peace for the city of Galveston in
the county of Knox recover a judgement
8 against the above bounden W. Selden Gale,
Josiah Gale & David H. Fribie for the
sum of Four Hundred & some & few dollars
Debt, and one & 40/100 dollars costs from which
judgement the said W. Selden Gale Josiah Gale
and David H. Fribie have taken an appeal to
the Circuit Court of the County of River View
and State of Illinois. Now if the said W. Selden
Gale Josiah Gale & David H. Fribie shall
present their appeal with effect and shall
9 pay whatever judgement may be rendered
by the court upon dismissal or trial of said
appeal, then the above obligation to be void
else to remain in full force and effect until

W. Selden Gale (Seal)
David H. Fribie (Seal)
Josiah Gale (Seal)
Geo. W. Gale (Seal)

This Bond approved by me this 19th day of
July 1859. L. C. Conger, Esq.
Police Magistrate.

Upon the filing of said appeal in the office
the clerk of the circuit court of said county
of Knox on the first day of August A.D. 1859
a summons was issued out of said clerk's
office as follows to wit

10
State of Tennessee,
Knox County, ss. The People of the State of
Tennessee to the Sheriff of said County greeting
We command you to summon Riley
Root if he be found in your County, to be
and appear before the Judge of our Circuit
Court for the county of Knox, on the fourth
Monday in the month of September next to
answer to an appeal obtained by W.
Selden Gale David H. Fristie & Jonah Gale
from a judgment rendered against
them & in favor of said Root before
L. C. Conger Police Magistrate of said County
on the 30th day of June 1859, for the sum
of Four Hundred & Seven Dollars and three cents
and costs of suit. And have you there and
there this writ

11
Witness Cephas Arms Clerk of said
Court, at Knoxville this 2^d day of August
A.D. 1859 the seal of said Court being hereunto
affixed. C. Arms Clerk

A Mort as Securities, in the sum of Eight
Hundred Dollars. Bond and Bill of ex-
ceptions to be filed in Thirty days

On the 19th day of November AD 1857. the Depon-
ants filed their Bond in said case with the
Clerk of said Court as follows

15
Know all men by these presents
that we W Selden Gale David H Frobie & Josiah
Gale as Principals and George W Gale and Silvanus
W Ferris as Sureties are held and jointly
bound unto Rely Root in the penal sum
of Eight ~~One~~ Thousand Dollars Lawful Money of
the United States for the payment of which well &
truly to be made we bind ourselves our heirs &
Administrators jointly severally & firmly by these
presents. Witness our hands and seals
this 18th day of November AD 1857

16
The condition of the above obligation is
such that whereas the said Rely Root did
on the 2nd Sunday first day of October AD 1857
by the consideration and judgment of the
Circuit Court of the County of Knox and State
of Illinois receive a judgment against
the above bounden W Selden Gale David H.
Frobie and Josiah Gale for the sum of Four
hundred and Twenty dollars & Twenty five
cents damages and Dollars
and cents costs from which judgment
the said W Selden Gale David H Frobie Josiah
Gale have taken an appeal to the Supreme
Court of the third Grand division of the State

of Illinois. And if the above bounden W Selden
Gale David H Fribie & Josiah Gale shall
duly prosecute said appeal and pay the
judgments costs interest and damages in
case the said judgment shall be af-
firmed then the above obligation to be
void otherwise to remain in full force and
effect.

17

W Selden Gale
David H Fribie
Josiah Gale
Geo W Gale
Selvanus W Ferris

[Handwritten signatures]

I Appure the security to the above Bond
Nov 19. 1859.

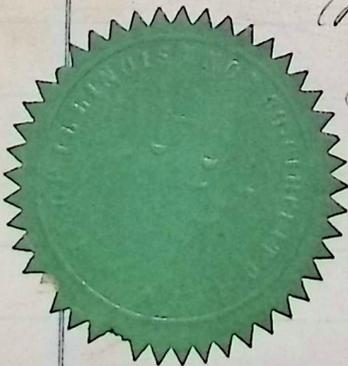
A C Mason

Atty for Refg-

Execution issued on said judgment April 17. AD 1860

State of Illinois,
Knox County, ss

I Ephas Arms Clerk of the
Circuit Court within and for the County of
Knox and State aforesaid do certify that the
foregoing is a full and complete copy of the
judgment in the above case together with all
the papers filed therein in said Court. as
appears of Record & on file in my office
Witness Ephas Arms Clerk of said
Court and the seal thereof hereby
affixed at my office in Knoxville
this 18th day of April AD 1860
E Arms Clerk



W Selden Gale vs Mrs
 20
 2006 20 71
 Riley Row A
 Row A

Filed April 19. 1860
 L. Selman
 Clerk