


No. 14243

Supreme Court of Illinois

Seafkas

vs.

Evy

71641  7

STATE OF ILLINOIS,
SUPREME COURT,

Third Grand Division.

~~14243~~

No. 259

1862

Debras
vs

Evry

14

State of Illinois vs } In the Supreme Court
April Term 1862.

Jacob Scaffas &
Albert Scaffas
Appellants
vs
John W. Evey
Appellee

Appeal from Woodford
County Circuit Court,

And the said appellants
come and say that in the record proceedings
and in the rendition of judgment in this
cause, manifest error hath intervened to the
injury of appellants and for assignment of
errors upon the record, show the following:

1. The Court, below admitted improper evidence
on part of appellee.
2. The Court, below excluded proper evidence
offered by appellants.
3. The Court, below gave improper instructions
on part of appellee.
4. The Court, below excluded proper instruc-
-tions asked by appellants below.
5. The Court, below erred in modifying
appellants instructions.
6. The verdict ~~was~~ ^{is} against the law.
7. The verdict, is against the weight of evidence.
8. The Court below erred in overruling the
motion for a new trial.
9. Other errors.

And the appellants pray the Court, here
that, said judgment, may be annulled, reversed,
set aside and wholly for naught, esteemed
By Grovelly for Appellants

Proceedings in Circuit Court of Woodford County
in the State of Illinois in the case of John A. Every vs

Proceedings in Circuit Court of Woodford County
in the State of Illinois in the case of John M. Every vs
Jacob Seafkas and Albert Seafkas To wit

John M. Every	}	Debt	\$ 152.00
vs		Damages	100.00
Jacob Seafkas			
Albert Seafkas	}		

The Clerk of the Woodford County
Circuit Court will issue Summons as above for the
above sum returnable to the next Term of this Court and
Direct to the Sheriff of Woodford County to Execute
Wend & Shape attys
for Plft

Filed April 15th 1861

James D. Perry Clerk
By P. Daly Deputy

State of Illinois }
Woodford County } SS

The People of the State of Illinois to
the Sheriff of said County, Greeting. We Command
You that you Summon Jacob Seafkas and Albert
Seafkas if they shall be found in your County personally
to be and appear before the Circuit Court of said Woodford
County on the first day of the next Term thereof to be holden
at the Court house in Metamora in said Woodford
County on the Second Monday of August 1861 to
answer unto John M. Every in a plea of Debt

Debit one hundred and fifty two dollar Damages one hundred Dollar And you have then and there this writ with an indorsement thereon. in what manner you shall have executed the same

Seal

Witness James D. Perry Clerk of our said Court and the Seal thereof at Metamora aforesaid this Fifteenth day of April A D 1861
James D. Perry Clerk

State of Illinois }
County } }

I have duly served the within by reading the same to the within named Albert Seafka's May 15th A D 1861 Jacob Seafka's not found in my County as I am therein commanded Aug 10/61

R. L. Idwell Sheriff

Filed in Circuit Court this 15 day April 1861

James D Perry Clerk

State of Illinois }
County of Woodford } ss

In The Circuit Court of Woodford County So the August Term 1861

Jacob Seafkas and Albert Seafkas were Summone to answer unto John M Every in a plea that they render to him the sum of one Hundred and Fifty Two Dollars lawful money of the united States

which they owe to and unjustly detain from him
 and therefore the said Plaintiff by Weed & Skape his
 attorneys complain for that whereas the said Defendants
 heretofore to wit on the 19th day of September A D
 1857 to wit at the County of Woodford aforesaid
 made their certain writing obligatory sealed with
 his seal and now to the Court have shown the date
 whereof at a certain day and year therein named
 to wit the day and year aforesaid in and by which
 said writing obligatory the said Defendants jointly
 and severally agreed to pay James R. Gish by the name
 & style of J. R. Gish or order the said sum of one
 Hundred and Fifty Two Dollars to be paid to the
 said J. R. Gish Twelve months after the date
 thereof for value received with interest thereon at the
 rate of Six per cent per annum and the said J. R. Gish
 afterwards to wit on the 1st day of January A D 1859
 under his hand and seal assigned and delivered said
 writing obligatory to one Henry J. Brantz who afterwards
 and on the 22nd day of March 1861 under his hand
 indorsed assigned and delivered the same to the said
 Plaintiff by means thereof and by force of the Statute
 in such case made and provided the said Defendants
 then and there jointly and severally become liable ^{to pay} to
 the said Plaintiff the said sum of money in the said
 writing obligatory specified according to the tenor and
 effect of the said writing obligatory and although
 the said sum of money in the said writing obligatory
 specified hath been long since due and payable

according to the tenor and effect of the said writing obligatory
yet the said Plaintiff in fact saith that the said Defendants
(although often requested so to do) did not nor would
pay the said sum of one Hundred and Fifty Two
Dollars in the said writing obligatory specified or any
part thereof to the said Plaintiff in manner aforesaid or
otherwise howsoever but hath hitherto wholly neglected
and refused so to do whereby an action has accrued to the
said Plaintiff to demand and have of and from the said
Defendants the said sum of one Hundred & Fifty Two
Dollars in the said writing obligatory specified parcel
of the said sum afore demanded And Whereas also afterwards
to wit on the 1st day of April A D 1861 at the County
of Woodford aforesaid. the said Plaintiff at the special
instance and request of the said Defendants lent to the
said Defendants and the said Defendants then and there borrowed
of the said Plaintiff a large sum of money to wit the sum
of one Hundred and Fifty Two Dollars to be paid by the
said Defendants to the said Plaintiff when they the said
Defendants should be thereunto afterwards requested and
Whereas also the said Defendants afterwards to wit on the
day and year last aforesaid at the County of Woodford
aforesaid had and received a certain other sum of money
to wit the sum of one hundred and Fifty Two Dollars
like lawful money to and for the use of the said Plaintiff
and to be paid by the said Defendants to the said Plaintiff
when they the said Defendants should be hereunto
afterwards requested and by reason of the said last

5

Mentioned Sums of Money being and remaining wholly unpaid an action hath accrued to the said Plaintiff to demand and have of and from the said Defendants the said Sum of one Hundred and Fifty Two Dollars parcel of the said Sum above demanded Yet the said Defendants although often requested so to do hath not as yet paid the said Sum of one Hundred and Fifty Two Dollars above demanded or any part thereof to the said Plaintiff But they to do this hitherto wholly refused and still do refuse to the damage of the said Plaintiff of one Hundred Dollars and therefore he brings his suit &c
 Weed & Hoop p/ly

The following is a copy of the instrument described in the foregoing declaration the original of which will be offered in evidence upon the trial of said cause under each and every count of said Declaration to wit

" \$ 152 Twelve months after date I promise to pay to J. R. Gish
 " or order the lawful Sum of 152 Dollars or etc with
 " an interest of 6 per cent from date as writrep my hand &
 " Seal this the 19th day of Sept AD 1857
 " *Jacob Scofield*
 " *Albert Scofield*

Copy of indorsement on said instrument
 I assign the within note to Henry J. Grantz without recourse
 July 1st 1859
 James R. Gish

March 23rd 1861

" I assign the within note to John M. Emery without
" Recourse

W. S. Grantz "

Filed April 19th 1861

James D Perry clk

State of Illinois }
Woodford County }

In the Circuit Court of Woodford
County To August Term 1861

John M. Emery }
vs }
Jacob Seafkas & }
Albert Seafkas }

In debt

Plea No 1

and the said defendants, come & defend &c when & to
and for plea say they are not indebted to the Plaintiff
in manner and form as the said Plaintiff hath thereof com-
-plained against them and of this they put themselves upon
the Country by H. Grove
their attorney

Plaintiff doth, ^{the} like

Need & Shape of

2

And the said Albert Seafkas comes & defends for
Plea as to the first count in Plf declaration he did
not at any time or place make sign seal or execute

7 The said writing obligatory described and mentioned
in the first Count in Plaintiffs declaration and he
did not at any time or place authorize or empower
any person to make Execute Sign or Seal the same
for him of this he puts himself upon the country
A Seafkas

State of Illinois }
Woodford County } "

Albert Seafkas ^{being} Sworn on oath says
that the said Plea marked Number (2) is true in substance
in and fact A Seafkas

Sworn to & Subscribed before
me this 14 day of August 1861

James D Perry Clerk

3 Another defendant Albert Seafkas for further Plea as
to the said first Count in Plaintiffs Declaration says
that the said Plaintiff ought not to have or maintain
his said action as to said first Count because he says
that heretofore to wit on the 30th day of April A.D 1859
at the County of Woodford & State of Illinois Before
Robert S. Caspell a Justice of the Peace in for
the County of Woodford aforesaid the defendant
impleaded one Henry J. Grantz in an action on
a certain promissory note executed by said Henry J.
Grantz and the said Henry J. Grantz upon the
trial of said cause exhibited before said Justice
of the Peace & the jury who tried said cause

8 The identical writing obligatory mentioned in said first count to Plaintiffs Declaration mentioned and offered the writing obligatory in offset to the note & demand of the defendant against said Henry J. Grantz. And the defendant by the consideration and judgment of said Robert S. Caspell Justice of the Peace recovered judgment against said Henry J. Grantz for the sum of Sixty Six dollars & cost whereof the said Henry J. Grantz was convicted as by the record docket & proceedings thereof in the office of said Justice fully appears which said judgment is in full force and unreversed and is not in any wise appealed from. and this the defendant is ready to verify by the record. And the defendant avers that said Justice at the time of the rendition of said judgment had full jurisdiction of said cause and of the Parties & said writing obligatory in said first count described was then fully due & was then assigned by the Payee thereof to the said Henry J. Grantz wherefore deft prays just whether said Plffs ought to have or maintain his action as to said first count
At Grove his
aty,

Filed August 14th 1861

James D. Perry Clerk

John M. Carney
vs Debt
Albert Seafkas &
Jacob Seafkas

In the Circuit Court of Woodford
County Illinois To the August
Term A. D. 1861

1 Reuer

9

And the said Plaintiff for replication to the said plea of the said Albert Seafkas by him secondly above pleaded Plaintiff by leave says precludi non because he says that there is no such record of the said supposed recovery and judgment remaining in the office of the ^{said Robert G. Copell Justice of the} Peace of Woodford County aforesaid as he hath in his said plea alleged and this he prays may be inquired of by the Court

Weed & Shope Plf

and deft doth the like

Grove for deft

2. reuer

And for a further replication to the said Plea of the said Defendants by him secondly above Pleaded Plaintiff by leave says precludi non because he says that the said Robert G. Copell Justice of the Peace of Woodford County aforesaid had not at the time when the jurisdiction of the Subject matter alleged in said Plea and no right or power to adjudicate upon the matters of defence then existing to said Suit between the said Albert Seafkas and the said Henry J. Grantz as the said Defendants hath in his said plea alleged and this the said Plaintiff prays may be inquired of by the Country

Weed & Shope for Plaintiff

& Deft doth the like

Grove atty
for deft

Filed August 20th 1861

James D. Perry Clerk
By J. C. Myers depty

In the Circuit of
Woodford County Illinois
To the August Term A D 1867

John M. Every
vs Debt

Jacob Seafkas &
Albert Seafkas

And the said Plaintiff as to the
said plea of the said Albert Seafkas by him secondly
herem pleaded and of which he hath put himself
upon the Country Comes and does the Like

Wm & Shape
for Plaintiffs

Verdict

We the jury in the above joined find for the Plaintiff
the Sum of One Hundred and fifty two Dollars debt
and thirty five $\frac{97}{100}$ Dollars damages

Wm. H. Moreland

Filed August 29th 1861

James D Perry Clerk

United States of America }
State of Illinois } ss
Woodford County } c

At a Regular Term of the Circuit
Court of the twenty third Judicial Circuit of the
State of Illinois began and held at the town of

81

Metamora within and for the County of Woodford
on the twelveth day of August in the year of our Lord
one thousand eight hundred and sixty one

Present the Honorable Samuel L Richmond Judge

James D. Perry Clerk

Reuben L. Sidwell Sheriff

Attest James D. Perry Clerk

Friday August 30th 1861

Court Met pursuant to adjournment

Present Same as heretofore

John M. Every

vs

Jacob ^{La}phar & Albert Sofkas

} Debt No 234

This day came the parties

by their attorneys and this cause came on to be heard on
the Defendants motion to set aside the verdict rendered
on the 16th day of the term and for a new trial. And
the Court being fully advised in the premise do order
and adjudge that Defendants Motion for new trial be
overruled. It is therefore ordered by the Court that the
Plaintiff John M. Every have and recover of and from
the Defendant

Albert Sofkas the

Said Sum of \$ 152 One Hundred and fifty Two
dollars Debt and the Sum of \$ 35 ⁹⁷/₁₀₀ Thirty five and ⁹⁷/₁₀₀
dollars his damages being the Debt and damages rendered
by the Said jury also his cost and charges by him in
his behalf expended and that he have execution

12

therefor — The Defendant Albert Seafkas prays an appeal which is allowed upon his entering into bond in four hundred dollars conditioned according to law with security to be approved by the Clerk by agreement Bond to be filed in thirty days Bill of Exceptions to be filed and signed during the next term of this Court

Monday August 19th 1861

Court met pursuant to adjournment
Present same as heretofore

John M. Every

vs

Jacob Seafkas & Albert Seafkas

} Debt No 234

Albert Seafkas

On this day came the Plaintiff by Weed & Shope his attorneys and the Defendant by Groner & Caspell his attorneys. And the Court grants leave to the Plaintiff to file two replications to the Defendant's Second plea

Thursday August 29th 1861

Court met pursuant to adjournment
Present same as heretofore

John M. Every

vs

Jacob Seafkas & Albert Seafkas

} Debt No 234

This day came the Plaintiff

John M. Every by Weed & Shope his attorneys
 and also the Defendant Albert Seafkas
 by Grone and Caspell his attorneys and issue being joined
 comes a jury to try said issue to wit Isaac J. Marsh W. A.
 Meeker William H. Davenport D. C. Robinson Benj. D. Perry
 S. H. Shreve J. W. Jordan Wm. H. Moreland David
 Watson John W. Bassett F. S. Briggs and James Shirley
 who being first duly sworn to well and truly try said
 issue and having heard the proof and allegations of the
 Parties and the argument of Counsel retire under the charge
 of an officer to consider of their Verdict and again come
 into Court and say "We the jury in the issue joined
 find for the Plaintiff the Sum of one hundred and
 fifty two dollars debt and thirty five $\frac{97}{100}$ dollars damages
 " And now comes the Defendant "

Albert Seafkas by Grone and Caspell his attorneys
 and moves the Court to set aside the verdict and
 for a New trial

Friday August 30th 1861

Court met pursuant to adjournment
 Present Same as heretofore

John M. Every
 vs
 Jacob Seafkas & Albert Seafkas } Debt No 234

This day came the parties
 by their attorney and this cause came on to be heard on
 the Defendants motion to set aside the verdict

14

rendered on the 16th day of the term and for a new trial
And the court being fully advised in the premises doth
order and adjudge that Defendants Motion for new
trial be overruled - It is therefore ordered by the court
that the Plaintiff John M. Emery have and recover of and from the
Defendant Albert Seafkas the said sum of \$ 152
one Hundred and fifty two dollar Debt and the sum of \$ 35⁹⁴/₁₀₀
Thirty five and ⁹⁴/₁₀₀ dollars his damages being the Debt and dam-
ages rendered by the said jury also his cost and charges by him
in this behalf expended and that he have execution therefor
The Defendant Albert Seafkas prays an appeal which is al-
lowed upon his entering into bond in Four hundred dollars
conditioned according to law with Security to be approved
by the clerk by agreement Bond to be filed in sixty days
Bill of Exceptions to be filed and signed during the next
term of this court

In the Circuit Court of
Woodford County Illinois
To the August Term A D 1861

John M Emery }
vs Debt }
Jacob Seafkas }
Albert Seafkas }

Be it remembered that on this 29th
day of August A D 1861 this cause coming on to be

heard - by a jury The Plaintiff to maintain the issues on
 his part called John Woods who being duly sworn
 testified that he was acquainted with the parties to this suit
 that he was at Gish's sale. Sometime in September 1857
 that he saw the Defendants at that sale - after the sale
 was over I was waiting to give my note I saw fake
 sign a note but then left the room to obtain security on
 his note and soon returned with his father Albert
Seafkas - who was offered as security - The old man then
 took the pen and sat down in the chair to sign his
 name it was then quite dark and the old man could
 not see very well Gish then suggested that fake
 sign the old mans name for him fake then said
 something to the old man in German which I did
 not understand - the old man said "yaw yaw" and
 passed the pen to fake. fake then signed the old mans name
 to the note and passed it over to Gish the note was for
 one hundred and fifty two dollars - & on his cross
 examination this witness testified, I have been sworn
 upon this subject before at Cassell's office it was at a
 trial when Seafkas sued Grantz and Grantz offered that note
 as a set-off I swore at that trial that I was there at the
 day of sale when the parties were about to execute the
 notes when security was required fake offered his
 father as security his father attempted to sign
 the note but did not sign - and Gish then suggested
 an idea that fake sign his fathers name fake then
 spoke to his father in German what he said to him

26

I could not understand but he immediately passed the pen from his hand to fake, fake signed his Gathers name to the note spoke to his Gathers again in the German language and the old man said "yaw" "yau" I live five miles from Gishes I know all the parties the old man did sign a note at that sale - not this note I don't know who he signed for don't know what the amount of it was nor nor what it was given for - the old man signed his name to the other note in the German language - I don't know whether the old man can read English or not - I next saw the note at Capell's office I then examined the note I have not seen the note since that trial until now I was not clerk of the sale - I was waiting to give my note. John Hoffinger being sworn testified that he was at Gish's sale - that he was waiting to give his note when he saw two ^{men} come up to the table where they were executing the notes I did not then know who they were I was told that they were old man Seafkas and his son I saw the old man take the pen and sit down to the table but he did not seem to be able to write Gish then suggested to the young man that he should sign his Gathers name to the note for him the young man then spoke something to the old man in the German language what he said I could not understand the old man said "yaw yaw" and then passed the pen over to the young man and he signed the the old mans name to the note the

17 note was then passed over to Gish on his cross examination his witness testified that he could not understand German and he did not know whether or not the old man could read or understand English I never saw these men before that day I think the defendant Albert Seafkas is the person I saw at the sale. that day and the same person who attempted to sign the note I do not know how much the note was for nor what it was given for

The Plaintiff then offered in evidence and read to the jury an instrument in writing in the words and figures following to wit

\$ 152 Twelve months after date I promise to pay to J. R. Gish or order the lawful sum of 152 Dollars 00 00 with an interest of 6 per cent from date as witness my hand & Seal this the 19th day of Sept. A. D. 1857

Jacob Seafkas

Seal

Albert Seafkas Seal

(On which are the following endorsements to wit)
I assign the within note to Henry J. Grantz without recourse Jan 1st 1859

James R. Gish

March 22nd 1861

I assign the within Note to John M. Eney without recourse
H. J. Grantz

To the introduction of which said instrument in writing the Defendant by his counsel then and there objected ^{but} the court overruled the objection and allowed said note to be read to the jury To which said decision of the Court in overruling said objection the said Defendant by his counsel then and there excepted

The Plaintiff then called Abiah Minor who being sworn testified as follows I am acquainted with the parties I had a conversation with Defendant Albert Seafkas in his yard at his house sometime in 1858 I went there to serve a summons on him The old man commenced fretting and telling me of his ~~troubles~~ he spoke to his son in the German language and the son told me what the old man said in the English language The conversation was carried on ~~with~~ the old man through his son I could not understand and what the old man said only as his son interpreted it

The Defendant by his counsel objected to his stating the conversation on the ground that the testimony would only be hearsay as to the defendant's admission & that the interpreter should be called to state what the defendant did say & on the ground that the witness did not propose to swear what the deft actually said but as to what the son understood him to say but the court overruled the objection and permitted the witness to state the conversation to which said ruling of the Court the said Defendant by his counsel then and there excepted - The witness

19

then testified that the old man wanted to know of me what to do said his son had run off and he wanted to know how to get red of Bail - he said he was bail for his son he did not say which son I advised him to go and get the horse for I thought he would have the debt to pay he said he had tried to get the horse but that his son had taken the horse away with him I never had any other conversation with him on this subject Gish's name was mentioned in connection with some note I do not recollect any other name I do not recollect that his sons name was mentioned I did not hear any amount mentioned He did not say which son he was Bail for he only said that the son he had gone bail for had run away - It was some time in 1858 I cannot tell exactly when that this conversation I can understand some German words I cannot speak German The old man does not speak English All I know as to what the debt said is what the boy told me he said - The Plaintiff here rested.

The Defendant to maintain the issues on his part then called Edward Pipp who being duly sworn testified that he was present at a trial between Seafus and Henry J. Grantz at Cassell's office and was one of the jurors who tried the cause Grantz then at the time of the trial presented a note as a set off

against Seafkas claim Seafkas denied the execution of the note I was on the jury at that trial I don't know what the note offered in evidence here is the same one that Grantz had at that trial I don't recollect what the amount of that note was Grantz offered a note in evidence as a set off we decided that Seafkas did not execute the note

R J Cassell being sworn testified that he was the justice of the Peace before whom the case of Albert Seafkas vs Henry J. Grantz was tried and that the note sued on in this case was the same note which Grantz offered as a set off in the suit of Seafkas against Grantz; Grantz then owned the note - Seafkas denied the execution of the note under oath The witness was here shown a book which he identified as his docket Defendant then offered in evidence - the record in the docket of said Cassell of the proceeding had before said Cassell in the case of Albert Seafkas vs Henry J. Grantz which record is in the words and figures following to wit

Albert Seafkas	}	Assumpsit on Note for
vs		
Henry J. Grantz	}	\$ 66.00

Now on this the 30 day of April A D 1859 the parties appeared and by agreement waived Service of process and the defendant called a jury and proceeded to trial

21 after hearing the Evidence and argument the jury
Returned the following verdict we of the jury find
for the Plaintiff and assess his damages at sixty
Six Dollars

Edward Phipp
Daniel Stoddard
Wm Chapman
O. W. Minor
Sinus Carpenter
M. Newton

It is therefore considered by the Court that the
Plaintiff have judgment for Sixty Six dollars & Cost

R. G. Caspell J P
Execution issued June 10th 1859 to Court W Caspell
Execution Returned Endorsed Received twenty dollars
alias Ex issued August 15 1859 Ex Returned January 24th
1860 Endorsed Satisfied in full by W Caspell Court

State of Illinois }
Woodford County } I hereby certify that the above
is a true Transcript of this cause as
taken from my docket this 9 day of April 1862
R. G. Caspell J P

Filed April 10th 1862

James D Perry Clerk
By J. C. Myers Deputy

The note was offered in evidence to the jury & Grantz claimed a verdict & judgment for the balance on the note after deducting the amount of the note Seafkas sued Grantz on. Some three months after the trial Lush came & took the note away he said he wanted it to follow the other signer Jacob Seafkas & I let him have it. Defendant then called Wilson who being sworn testified that he was a son in law of defendant Albert Seafkas. The old man could neither speak or understand the English language in 1857. The old man does not now understand much English he cannot read or write English.

Engelbert Seafkas being sworn testified as follows I know minor when I see him I have no recollection of being present at any conversation between him and my father. The old man does not understand English he uses the German letters very much like the English. The old man has four sons three are present in court & Jacob the other is absent.

Frank Seafkas being sworn testified as follows I know minor I do not recollect any such conversation as he has stated between himself and my father. The old man does not understand English. Jake ran away in March 1858 I bought some hogs at Lushes sale amounting to ninety dollars the old man went my security.

I heard the old man say he would not go for
 bail. He said fake had already swindled him
 out of five Hundred Dollars. The old man signed
 my note he could not see very well he did not
 have his glasses with him we left very soon after
 the old man had signed my note I did not see the
 old man sign fake's note when he signed mine.
 It was admitted that the youngest of the old man's
 sons a lad of some six or seven years of age was
 not the person with whom minor had the conversation

This was all the evidence in the case. The court at
 the instance of the Plaintiff then instructed the jury
 as follows to wit

^{1st} The jury are instructed that if they believe from the
 evidence that the Defendant Albert Seafus signed ~~the~~
 the note offered in evidence or authorized any one
 to sign said note for him then they will find for
 the Plaintiff the amount due and unpaid thereon
 unless they shall further believe from the evidence that
 said note has been in some way paid or satisfied
 or properly adjudicated upon in the suit before
 Justice Caspell and if Justice Caspell had no
 jurisdiction of the subject matter of the trial before
 him then and in that event Justice Caspell could
 not adjudicate upon said note

Given August 29th 1861

James D. Perry Clerk

Given

2^c

The jury are further instructed that one man may authorize another to sign a note or other paper for him by parol whether the person authorizing such signing could write or not and if the jury believe from the evidence that the note offered in evidence was signed with such authority then the Defendant Albert Seafkas is bound by such signing

Filed August 29th 1861

James D. Perry Clerk

3

The jury are instructed that if they believe from the evidence that R^d Cassell had no jurisdiction of the subject matter of the set off offered in the suit pending before him wherein Henry J. Grantz was Plaintiff ^{and} Albert Seafkas was Defendant then said Cassell had no power to hear and adjudicate upon the note then offered in evidence & such adjudication by said Cassell in that Court was void

Filed August 29th 1861

James D. Perry Clerk

14

The Court instructs the jury that a Justice of the Peace of Woodford County has not jurisdiction of any demand exceeding one hundred Dollars and it makes no difference whether the claim presented for adjudication is presented by the Defendant or Plaintiff provided the balance found on such trial in favor of either party exceeded one hundred Dollars

Giner

The jury are instructed that although they may believe from the evidence that at a trial before R. S. Caspell a justice of the Peace of Woodford County, the note offered in evidence in this suit was presented as a set-off in a suit then pending between one Henry J. Grantz and Albert Seafkas and that said Caspell entertained said set-off and rendered judgment against said Henry J. Grantz, yet they are further instructed that such adjudication by said Caspell can not affect the right of the Plaintiff to recover in this action - provided the balance found due the defendant after deducting from the note the amount due on plaintiff note (in the suit before said justice) exceeded one Hundred Dollars

Filed August 29th 1861
James D. Perry Clerk

5th

Giner

The jury are further instructed that if they believe from the evidence that the amount due on the note offered in evidence exceeded the sum of one Hundred Dollars after deducting the amount claimed by Seafkas from Grantz that then said R. S. Caspell had no jurisdiction of the subject matter of said note and no power to render judgment thereon

Filed August 29th 1861
James D. Perry Clerk

To the giving of said instruction and each of them the said Defendant by his counsel then and there excepted and objected

The Defendant then asked the Court to instruct the jury as follows to wit

1st If the jury believe from the evidence that the defendant sued Henry J. Grantz before R. S. Caspell a Justice of the Peace on a note for sixty six dollars on the 30 day of April 1859 and that a trial was had before said Justice and a jury between the defendant & Grantz and if the jury further believe from the evidence that on said trial Grantz exhibited & put the note in controversy in evidence to the jury as an off set ^{the} on trial & claimed to be allowed the amount thereof and the jury in that trial refused to allow the amt then and that ~~sum~~ the Plaintiff cannot recover in this action on the note if the jury further believe that Grantz at the time of the trial was the owner of the note & that since said trial the note has been assigned to the Plff

Given

provided the jury further believe from the evidence that the balance due on the note ~~sued on hereafter~~ after deducting therefrom the amount due on the note sued on before Caspell) that is due at the time of such trial) did not exceed one Hundred Dollars

The words enclosed in brackets above are the words added as a modification of the instruction by the Court given

Filed August 29th 1861

James D Perry Clerk

The jury are instructed that the burthen of Proof is on the Plaintiff to prove that the defendant either made the note or ~~authorized~~ ^{authorized} some

27

Linen

other person to execute the note for him

If the name of the defendant was signed by some other person the authority of such person to sign the defendant name must be proved before the Plaintiff can recover

Linen

If the jury believe from the evidence that the defendant at the time the note is claimed to have been executed did not understand the English language and could not converse in the English language and could not read writing in English the Plaintiff before he can recover must prove that the defendant knew the contents of the note the amt thereof to whom payable and that the deft knowingly authorized Jacob Seal Kas or some other person to sign the defendant's name to the note

Filed August 29th 1861

James D. Perry Clerk

It is for the jury to determine from all the evidence as to the amount that Grantz claimed to be due on the note in controversy at the time of the trial before Capell Grantz had the right to waive the interest on the note so as to bring the suit within the jurisdiction of the justice

Linen

Filed August 29th 1861

James D. Perry Clerk

28

It makes no difference what the amount in controversy is before a Justice of the Peace such Justice would have jurisdiction to try it provided the balance claimed to be due did and not exceed 100 \$

Given

Filed August 29th 1861

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to the grain of said instructions and each of them the said Plaintiff by his Counsel then and there excepted and objected

But the Court refused to give said instructions Numbered:

and modified instructions

1st

Numbered one by adding the following words Provided the jury further believe from the evidence that the balance due on the note sued on ~~is~~ ^{here after} ~~the~~ deducting therefrom the amount due on the note sued on before Caspell (that is due at the time of such trial) did not exceed one Hundred Dollars

So which decision of the Court in refusing said instructions as asked & in modifying said instructions the deft at the time then & there objected & excepted

And thereupon the jury found the issues for the Plaintiff and assessed his debt against the Defendant at one Hundred and Fifty Two Dollars and damages at Thirty Two Dollars and Ninety Seven cents and thereupon the said Defendant by his Counsel in open Court then and there entered a motion to set aside said verdict and for a new trial herein - which said motion is in the words and figures following to wit

[Evey vs Seafkas} In Circuit Court Woodford Co
August term 1861

The deft enters a motion a motion to set aside verdict & for a new trial in this cause & for reasons shown the following

- 1st The Court admitted improper evidence on part of Plff
- 2 The Court rejected proper evidence offered by deft
- 3 The Court gave improper instructions on part of the Plaintiff
- 4 The Court refused proper instructions asked by Deft
- 5 The Court modified instructions offered by deft
- 6 The verdict is against law
- 7 The verdict is against the weight of evidence
- 8 The verdict should have been for the Deft
- 9 Other reasons

Filed August 30th 1861

James D Perry Clerk
By J. C. Myers Depty

But the Court overruled said motion and rendered judgment upon the verdict of the jury so all which decisions of the Court in overruling said motion for a new trial and in rendering judgment upon said verdict the said Defendant then and there excepted And now in as much as the matters and things herein set forth

do not appear of Record and to the end that the
 Same may become a part of the record. herein the
 Said Defendant by his Counsel prays that his Bill
 of Exceptions may be signed and sealed by the Court
 which is done accordingly - this 21st day of Dec
 1861

S. L. Richmond Seal
 Judge

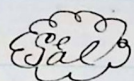
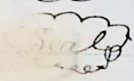
Filed December 21st 1861

James D. Perry Clerk

Bond

Know all men by these presents we Albert Seafkas
 and Robert S. Capell of the County of Woodford and
 State of Illinois are held and firmly bound unto John M
 Evey also of the same County and State in the penal sum of
 four hundred dollar current money of the United States
 for the payment of which well and truly to be made we bind
 ourselves our heirs executors and administrators jointly
 severally and firmly by these presents Witness our hands
 and Seals this Seventeenth day of September A D 1861
 The condition of the above obligation is such that whereas
 the said John M Evey did on the 29th day August A D
 1861 in the Circuit Court in and for the County and State
 aforesaid recover a judgment against the above bounden
 Albert Seafkas for the sum of one hundred and fifty



two Dollars Debt and Thirty five dollars and ninety seven cents damages from which said judgment of the said Circuit Court the said Albert Siefkas has prayed for and obtained an appeal to the Supreme Court of said State Now if the said Albert Siefkas shall duly prosecute his said appeal with effect and shall moreover pay the amount of the judgment costs interest and damages rendered and to be rendered against him in case the said judgment shall be affirmed in the said Supreme Court then the above obligation to be void otherwise to remain in full force and virtue

Taken and entered into before me A Siefkas 
and approved by me at my office R. S. Capell 
in Metamora this Seventeenth day of
September A D 1861

James D. Perry Clerk Circuit Court

Filed September 17th 1861

James D. Perry Clerk

State of Illinois 
Woodford County ^{ss} I, James D. Perry Clerk of the
Circuit Court in and for said County in the State aforesaid, do hereby certify that the foregoing pages numbered one to thirty two inclusive, contain a true and correct copy from the records and papers filed in the within entitled cause in my Office —
In testimony whereof I have hereunto



set my hand and seal of said Court at
Metamora this twelfth day of April
A D 1862

James D. Perry Sec. Clerk

\$ 8.50 Paid by Defts atty

259
Albert Seafkas
John M. Ewy
Reed & Erors

Filed Apr. 20. 1862
L. Ireland
Clk.