

No. 14571

Supreme Court of Illinois

Wier

vs.

Stevenson

71641  7

David Le Stephens

W^r Meur Jr

This suit was brought into the Circuit Court of appeal from S. S. Gibbs a justice of the Peace.

On the trial in the Circuit Court the plaintiff introduced a witness J. G. Beattie to prove that he was a juror in the Court below, that three jurors as he understood were by consent selected - That he understood Defendant proposed to take the Steers for shooting of which action was commenced, at their value, that value was fixed by witnesses below at \$50. a paper was shown him which he said was the verdict below - In the introduction of which testimony defendant excepted.

Plaintiff also introduced S & Briggs to prove that he had bought from defendant a pair of Steers that had been shot, after the trial below. In the introduction of which testimony the defendant excepted.

Defendant proved by said Briggs that cattle were only worth \$30. That they had recovered from the effect of the shooting.

Also proved by Gilbert that defendant merely intimated to Jury after evidence had been heard and whilst arguing case to jury that he was willing to take cattle at their value, & that was the only thing like an agreement to take them.

The Court will perceive that the suit was commenced for \$50 whereas the judgement is for \$55. being \$5 more than was claimed.

The plaintiff asked the Court to instruct the jury that if they believe from the evidence that the jury believed under an agreement between plaintiff and defendant found a verdict for plaintiff and that defendant

afterwards took possession of the Cattle in controversy,
and converted them to his own use he is estopped
by law from disputing the amount of such verdict
in the Court which was given to which defendant
excepted -

Defendant asked Court to instruct Jury that he
can only find a verdict of damages either for trespass
or the value of the oxen according to the amounts
proven by witnesses, & that if no ~~value~~ damages or
value of Cattle are proved they must find for defendant
which was refused, and to which refusal defendant
excepted.

Filed June 3^d. 1851.

A. McKim, Detroit, Mich.

David C. Stephenson

vs & On appeal

William Weer Junr.

Costs made by defendant

Filg & papers from J ^r . 25	Issuag & filg sum ^s 40	.65	
Docketg suit 10	Entg atty 10	Entg appearance 05	.25
Entg mo for leave to amend transcript			.20
Order allowing said motion 20	Swearg witness 05		.25
Order allowing appeal 20	Takg & filg appeal bond 55		.75
Making fee bill 30	Copyng fee bill 20		.50
Making transcript of record 3108	words		3.22
Cert. & seal thereto			.35
Taking & filg aff ^s 15	Filg bill of exceptions 05		.20
Fees of Sheriff Ross			6.37
Servg sum ^s 50.	Travel 12 miles 60¢	Retg writ 10¢	1.20
Total am ^t . of costs made by defendt.			7.57

Same

vs & Same

Same

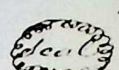
Costs made by plaintiff

Entg atty 10	Entg appearance 05	.15	
Entg m ^t to dismiss 20	Order overruling said m ^t 20	.40	
Order of consent to try cause by court		.20	
Taking & filg aff ^s 15	Order affirmg Judg ^t below 20	.35	
Swearg 2 witnesses 10	Entg Judg ^t 25	.35	
Docketg Judg ^t 20	Fee bill 30	Entg satisfg of Judg ^t 15	.65
Copyng fee bill		.20	2.30

Costs of Court below

J. S. Gilbert J ^r & 2.43 ³ / ₄	James Walker Cont. 75	3.18 ³ / ₄	
J ^r . Robinson & Jas. Walker - witnesses, 50¢ ea		1.00	4.18 ³ / ₄
Total am ^t . of plaintiffs costs			6.48 ³ / ₄

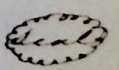
"defendant prays may be signed, sealed, and made a part
of the record -

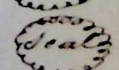
"J. M. Woodson, 

On which said bill of exceptions is the following endorsement,
"Filed May 9th 1851. A. M. Kern, Dubois clk."

And afterwards, to-wit, on the third day of June A.D. 1851,
there was filed in the office of the Clerk aforesaid, an appeal
bond, which became part of the records of said Court, and which
said bond is in the words and figures following, to-wit:

"Know all men by these presents that we William Weer Junr.,
and Thomas P. Ross, are held and firmly bound unto David C.
Stephenson, in the penal sum of two hundred dollars, for the
payment of which well and truly to be made, we hereby bind our-
selves, our heirs, executors, and administrators, jointly, severally,
and firmly by these presents - signed, sealed, and dated at
Carlinville, this the third day of June Anno Domini one thou-
sand eight hundred and fifty one - The condition of the above
obligation is such, that whereas at the May Term, ^{ad.} 1851 of the Cir-
cuit Court of Macoupin County Illinois, to-wit, on the ninth
day of May A.D. 1851, David C. Stephenson, in a certain
action, on appeal in said Court then pending, did recover
a judgment against the said William Weer Junr., for the
sum of fifty five dollars debt, besides costs of suit, from which
judgment the said William Weer Junr., has appealed to the
Supreme Court of the State of Illinois - Now if the above
bounden William Weer Junr. shall well and truly pay the
judgments, costs, interest, and damages in case the judgment
of the said Circuit Court shall by the said Supreme Court be
affirmed, and shall duly prosecute his said appeal to effect,
then this obligation to be void, otherwise to be and remain in,
full force and effect,

"William Weer Jr. 

"Thos P. Ross 

On which said bond is the following endorsement, to-wit,

and Stephenson, and before 9 January 1857 - were the cattle in controversy -

Cross examined - "Cattle worth thirty dollars, being 'breachy' - would not give over thirty dollars for them - Cattle 'have recovered from the injuries, about which suit was brought - cannot state what their market value might be - " To which testimony defendant excepted and excepts - The defendant then introduced Samuel S. Gilbert as a witness, who testified as follows, to-wit, "cause was tried before him - understood Weer to intimate to jury, that he was willing to take the cattle at their value - statement was made after the evidence was heard - was made whilst arguing the cause to jury - heard no other agreement -"

Cross examined - "Weer admitted that he shot steers - Stephenson was present, understood Palmer as assenting to the proposition to take cattle - heard no objection by Weer to verdict, might have objected, and witness not hear him - " which was all the testimony in the cause - The plaintiff then moved for the following instruction, which was given by the Court, to-wit, "Plaintiff asks the Court to instruct the jury that 'if they believe from the evidence, that the jury below, under an agreement between plaintiff and defendant found a verdict for plaintiff, and that defendant afterwards took possession of the cattle in controversy, and converted them to his own use he is estopped in law from disputing the amount of such verdict in this court -" to the giving of which instruction defendant excepted and excepts - The defendant then ~~asked~~ asked the following instruction, to-wit: "Court will please instruct the jury that they can only find a verdict of damages, either for ~~damaged~~ trespass or the value of the oxen, according to the amounts proved by witnesses, and that if no damages or value of cattle is proved, they must find for defendant -" which was refused, to which refusal to give said instruction defendant excepted and excepts, all of which exceptions

"David C. Stephenson,

"et al On appeal

"William Weer Jr.

"Be it remembered that on the trial of this cause the
"plaintiff introduced John J Beattie as a witness, who testified
"as follows, that he was at trial before Justice Gilbert of cause above
"entitled - was there as a juror - three jurors by consent, as he,
"understood - were sworn as jurors - suit for damage done steers
"by shooting - understood that Weer proposed to take steers at
"value - value fixed by witnesses, at about fifty dollars - paper
"shown, which witness testified was the verdict in the case, and
"is in words and figures following to-wit,

"We the jury agree that defendant pay fifty dollars, and
"take the cattle, and five dollars damage, and costs of suit.

"J. J. Beattie

"Harbird Weatherford,

"Geo Laycock,

"Heard no objection made by Weer, to verdict -

Cross examined

"Weer might have objected, without witness hearing it -
"Cannot state how the agreement was made - from what was
"said at the time, has an impression that there was such agreement
"to the introduction of which testimony, defendant excepted and
"excepts - The plaintiff also introduced as a witness Thomas
"P. Ross, who testified as follows, to-wit: "Remembers day of trial -
"has recollection of Palmer's calling at Weer's office, and telling
"Weer he might take the cattle - does not remember whether
"Weer assented or objected to proposition - to the introduction
"of which testimony, the defendant excepted and excepts. The
"plaintiff also introduced as a witness, Stephen E. Briggs, who
"testified as follows, to-wit: "bought a pair of cattle from Weer,
"at forty five dollars - from appearances, thinks they may
"have been shot, does not know that they had been, thinks
"he bought them in December, after the trial between Weer -

"David C. Stephenson,

"vs & on appeal

"William Weer Junr.

"Came the parties by their attorneys, and the said plaintiff
"moves the Court to dismiss this appeal. on motion of said
"defendant leave is granted to amend the transcript from the
"Justice of the Peace, and the motion to dismiss the appeal
"having now been heard, it is considered by the Court, that
"said motion be overruled.

And afterwards, to-wit, on the ninth day of May 1851,
being another of the days of said regular term of said Court,
then being held at &c as aforesaid, present &c as aforesaid, the
following order was in this behalf entered, and became part
of the records of said Court, to-wit:

"David C. Stephenson,

"vs & on appeal

"William Weer Junr.

"Came again the parties by their attorneys, and by
"consent the matters of law and of fact herein arising, are tried
"by the Court, and the evidence being heard, the Court finds the
"issue for the plaintiff, it is therefore considered by the Court, that
"the Judgment of the Court below be affirmed, for the sum of
"fifty five dollars, and that the said plaintiff recover of said
"defendant, the sum of fifty five dollars aforesaid, together
"with his costs in this, and in the Court below by him about his
"suit expended, and the said defendant, praying an appeal
"to the Supreme Court, it is ordered by the Court that said appeal
"be allowed on said defendant entering into bond, conditioned as
"the law directs, within thirty days from this date, with Thomas
"P. Ross as his security.

And afterwards, to-wit on the said ninth day of May
A.D. 1851, the following bill of exceptions was in this behalf
signed and sealed, and became part of the records of said
Court, to-wit:

On which said affidavit is the following endorsement, to-wit:
"Filed May 5th 1851- A McKim Dubois clk

And afterwards, to-wit, on the said fifth day of May 1851, there was also filed in the office of said Clerk, an affidavit, which became part of the records of said Court, and which said affidavit is in the words and figures following to-wit:

"State of Illinois- Macoupin County ss

"William Weer Jr. being duly sworn says, that the
"application by him in the case of D. Stephenson & said
"affiant, was almost contemporaneous with the selling of the cattle
"mentioned in the affidavit of J. M. Palmer, and that there was
"no regular agreement entered into between the parties to this suit
"in the trial thereof before the Justice, save in the manner following-
"which said affiant protests against being called an agreement-
"said affiant in his argument to the jury, after the evidence had
"been heard, remarked that rather than be compelled to pay
"a large sum in mere damages for the trespass by him committed,
"he would prefer paying the value of the cattle & taking them as
"his own- whether Mr. Palmer expressed any satisfaction or
"concurrence in the same, said affiant cannot admit or deny, he
"however distinctly remembers that Mr. Palmer in his argument to
"the jury, insisted very strongly, and at great length upon having
"vindictive damages -

"Subscribed and sworn to before me "William Weer Jr.

"this 5th day of May 1851 -

A McKim Dubois clk Macoupin Ct. Ct.

On which said affidavit, is the following endorsement to-wit:

"Filed May 5th 1851- A McKim Dubois clk

And afterwards, to-wit, on the said fifth day of May A.D. 1851, being one of the days of said regular term of said Circuit Court, then being held at so, as aforesaid, present to, as aforesaid, the following order was in this behalf entered and became part of the records of said Court, to-wit:

On which said appeal bond, is the following endorsement, to-wit:
"Filed Jan'y 15th 1851, A. McKim Dubois clk."

And afterwards, to-wit, on the fifth day of May A.D. 1851, being one of the days of a regular term of said Circuit Court, then being held at &c, as aforesaid, present &c, as aforesaid, the following affidavit was filed in the office of the Clerk of said Court, and became part of the records of said Court, to-wit:

"David C. Stephenson,

"at & In Macoupin Circuit Court, On appeal,

"William Weer Jun

"John M. Palmer being sworn, says on oath that on the day
"of the trial of this cause, before Saml. S. Gilbert Esq. the parties hereto
"mutually agreed that Harbird Weatherford, John J. Beattie, and
"George Laycock should act as a jury and try this cause, and that
"defendant distinctly admitted himself guilty of the trespass of
"which the plaintiff complained, and it was then agreed that
"said persons above named should find the value of the yoke of
"oxen, which plaintiff alleged defendant had injured, and which
"injury constituted the aforesaid trespass, and that said defendant
"would take possession of the said oxen, which should become his
"property upon such finding, and pay the amount so found as aforesaid,
"and that said jury found the value of such oxen to be fifty dollars, and
"furthermore that the defendant should pay to the said plaintiff the
"additional sum of ~~ten~~ five dollars for his care and trouble and the
"loss of the labor of said oxen while thus injured by defendant as
"aforesaid, and that said defendant was present and distinctly con
"sented that the said verdict or award should be put into form, and
"as affiant believes made no objection to the amount thereof, and
"as affiant has been informed and believes that after said judgment
"said defendant took possession of said yoke of oxen, and has sold them
"and converted them to his own use & further saith not.

Subscribed and sworn to before me this

John M. Palmer

5th day of May 1851.

"A. McKim Dubois clk Macoupin Ct. Ct.

On which, said transcript, is the following endorsement, to-wit:
"Filed January 15th 1851, A M Kerr, Dubois Clk,

"For Value received, I transfer, assign and set over to John
"Lewis, all my right, title, and interest, of, in, and to, the judgment
"within mentioned, and referred to, and without recourse on me,
"Given under my hand and seal this fifth day of February A.D. 1851.

David C. Stephenson (Seal)

And afterwards, to-wit, on the said fifteenth day of January
A.D. 1851, there was also filed in the office of said Clerk, an appeal
bond, which became part of the records of said Court; which said
appeal bond is in the words and figures following, to-wit:

"Know all men by these presents, that we William Weer Jr. and,
"Thomas P. Ross, are held and firmly bound unto David C.
"Stephenson, in the penal sum of one hundred and sixteen,
"dollars, for the payment of which, well and truly to be made, we,
"and each of us, bind ourselves, our heirs, executors, and administrators,
"jointly and severally, firmly with these presents, Sealed with our
"seals, and dated at Carlinville, this 9th day of January Anno Domini
"one thousand eight hundred and fifty one. The condition of
"the above obligation is such, that whereas, on the 31st day of December
"A.D. 1850, David C. Stephenson, recovered a judgment against
"William Weer Jr. before S. S. Gilbert, a Justice of the Peace, within
"and for the County of Macoupin in a suit brought by the said David
"C. Stephenson, against the said William Weer Jr. for the sum of,
"fifty five dollars, and costs of suit, from which judgment the said
"William Weer Jr. appealed to the Circuit Court of Macoupin County,
"Now, if the said William Weer Jr. will pay and satisfy whatever
"Judgment may be rendered by the Circuit Court, upon the dismissal,
"or trial of the appeal, then this obligation to be void, otherwise to
"remain in full force and effect.

"Signed, sealed, and delivered, in the
"presence of, and approved by,
"S. S. Gilbert J.P.

"William Weer Jr.

Thos P. Ross



Circuit Court, which said transcript is in the words and figures following, to-wit:

"David Stephenson,

"vs {

"William Weer Jr.

"Demand \$50.00

"Docketing .12½

"Summons .18¾

"Sua .18¾

"Swearing 3 Jurymen .18¾

" do 2 witnesses .12½

" 5 do .31¼

" 1 do 6¼

"Judgment .25

"Costs of appeal 1.00

Summons issued December 24th

and returnable December 31st

1850, at 10 O'clock A.M.

Spas for John M. Robinson,

Benjamin Long, John

Orennan, and W.P. Williamson,

Witnesses who claim,

J. Robinson,

James Walker

"At the hour set for trial came the parties, and a Jury
"consisting of three men was called, to-wit, John J. Beattie, George
"Laycock and Hartird Weatherford, and the Jury having heard
"the evidence, and having retired to consider of their verdict, re-
"turned the following into Court, viz the Jury agree that defend-
"ant pay fifty dollars, and take the cattle, and five dollars
"damages and costs of suit.

" J. J. Beattie

" Hartird Weatherford

" George Laycock

"By consent, judgment is rendered in the following form, that
"the plaintiff of the defendant the sum of fifty five dollars and
"costs of suit -

S. S. Gilbert J. P.

"State of Illinois Macoupin County

"I hereby certify, that the foregoing transcript and
"papers, contain a full and perfect statement of the proceedings
"before me in the above entitled cause.

"Witness my name this Jan'y 19th 1851.

S. S. Gilbert J. P.

State of Illinois - Macoupin County

Pleas held before the Circuit Court of Macoupin County
aforesaid, at the Court house in the town of Carlinville, present
the Honorable David M. Woodson, presiding Judge of the
first Judicial Circuit of said State, said County of Macou-
pin being one of the Counties comprised in said first Judicial
Circuit -

Be it remembered, that heretofore, to-wit; on the fif-
teenth day of January A.D. 1851, there was filed in the office
of the Clerk of said Court, a summons, which became part
of the records of said Court, and which said summons is
in the words and figures following, to-wit:

"State of Illinois - Macoupin County

"The People of the State of Illinois, To any Constable
of said County - Greeting;

"You are hereby commanded to summon William
Weer Junr. to appear before me, at my office in Carlinville
on the 31st day of December A.D. 1850, at 10 O'clock A.M.
to answer the complaint of David C. Stephenson in a cer-
tain action of trespass on personal property, damages not
exceeding one hundred dollars, and hereof make return
to me, as the law directs -

"Given under my hand and seal this 24th day of December
A.D. 1850 -

S. J. Gilbert J. P. 

On which said summons, are the following endorsements, to-wit:
David C. Stephenson,

vs & Sum.

Demand \$50.00

William Weer Junr.

Costs .50 "

Served by reading on the within, on the 24th day of Decr. 1850

Serving 25th

James Walker Const

Filed Jan'y 15th 1851.

A. M. Shin. Pub. Clk

And afterwards, to-wit, on the said fifteenth day
of January A.D. 1851, there was also filed in the office of the said
Clerk, a transcript, which became part of the records of said

State of Illinois - Macoupin County

I the Subscriber, Clerk of the Circuit Court,
in and for said County of Macoupin, do certify that the
foregoing transcript contains a full, true, and perfect
copy and exemplification of the records and proceedings
in the above entitled cause, as will more fully appear, refer-
ence being had to the records and files of my office -

In testimony whereof, I have hereunto
subscribed my name and affixed the

this 9th day of December 1851.

A. McMillin, Dubois Clerk

D. C. Stephens)
v)
Wm. H.)

Appeal)
Assigned from

Dependent assigns for error -

1st - That the judgment is void & null, more
than is claimed.

2nd - Court erred in admitting evidence of what had
taken place in trial below - & after trial below -

3rd - Court erred in instructing the Jury & in refusing
instruction

4th - The verdict was against evidence, & law.

W. J. Ferguson

And the Appellee by Palmer his attorney comes and
says there is no such error in the said judgment and
proceedings of the Macoupin Circuit Court as the said
Appellant asserts above thereof, alleged to

John M. Palmer

Att'y for Appellee

William H. H. for
M. J. Apple
David C. Stevenson

2001 \$5.90

Filed Dec 10th 1851

W. J. H. H.