

13995

No. \_\_\_\_\_

# Supreme Court of Illinois

Tackaberry

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vs.

Godell

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Pleas

To a Term of the Circuit Court begun and held at the Court House in Pekin within and for the County of Tazewell and State of Illinois on the first Tuesday of the month of June A.D. 1861. Present Hon James Harriott Judge of the 21st Judicial Circuit of the State of Illinois composed of the Counties of Mason, Tazewell &c. Hugh Fullerton States Attorney, Chapman Williamson Sheriff and George H. Harlow Clerk.

Be it remembered that on the 3<sup>d</sup> day of April A.D. 1861. a precept was filed in the office of the Clerk of the Circuit Court of said County, in the words and figures following, to wit:—

Middleton Jackaberry guardian of David G. Bailey & Caroline Bailey } Of the June Term of  
Minor heirs of David Bailey deceased } the Tazewell County  
Circuit Court  
Lewis O. Goodell } A.D. 1861.

In Assumpsit

Damages \$200.00

The Hon Clerk of the Tazewell Circuit Court will please issue process in the above cause returnable to the next term of the Taz, et- et & oblige

B. S. Prettyman

atty for Plf

And now afterwards, to wit:— on the same day, a summons was issued from the office of the Clerk of



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that whereas the said defendant on the 2<sup>d</sup> day of April in  
the year of our Lord one thousand eight hundred and  
sixty one, was indebted unto the said Plaintiff in the  
sum of two hundred dollars for the use and occupation  
and the privilege of cutting and packing & putting up  
Ice, upon, and over the south east part of the South  
east fractional quarter of Section Twenty seven in  
Township twenty five north of range five west of the  
third principal meridian, with the appurtenances of  
the Plaintiff by the Defendant, and at his request,  
and by the sufferance and permission of the Plaintiff,  
for a long space of time then elapsed had held, used,  
occupied, possessed, and enjoyed.

And also in the  
further sum of two hundred dollars, for money found  
to be due from the defendant to the plaintiff on an account  
there stated between them, and the defendant afterwards  
on the 2<sup>d</sup> day of April 1861, in consideration of the promises  
respectively then promised to pay the said several sums  
of money respectively to the Plaintiff on request, yet he  
hath disregarded his promises, and hath not paid any  
of the said moneys or any part thereof to the damage of  
the said Plaintiff two hundred dollars, and thereupon  
he brings this suit &

B. S. Prettyman atty for Defr

And now afterwards, to wit: on the 7<sup>th</sup> day of June A.D.  
1861, a plea was filed in said cause, in the words and figures  
following, to wit:—

State of Illinois } In Circuit Court  
Tazewell County } To June Term A. D. 1861.

Middletown Jackaberry }  
guardian &c }  
vs }  
Lewis O. Goodell }

And now comes the said defendant  
by Roberts & Ireland his attorneys defends the wrong and  
injury when &c. and says that he did not undertake  
and promise in manner and form as the plaintiff  
hath above complained against him; And thus he  
prays may be inquired of by the Country &c  
Roberts & Ireland

And now afterwards, to wit: on the 17<sup>th</sup> day of June  
A.D. 1861. it being the 12<sup>th</sup> day of said Term of said  
Court, the following proceedings were had, to wit:—

12<sup>th</sup> day

Monday June 17, 1861.

Middletown Jackaberry guardian }  
of David G. Bailey & Caroline Bailey }  
minor heirs of David Bailey deceased } Assumpsit  
vs }  
Lewis O. Goodell }

Now on this day comes  
as well the Plaintiff by his Attorney Prettyman as the  
said defendant by his Attorneys Roberts & Ireland and a  
Jury being waived by consent this cause is tried by the  
Court, and the Court having heard the allegations and  
proofs of parties and argument of counsel thereon is of  
opinion that the Plaintiff hath sustained damages in  
the sum of One hundred and seventy five Dollars (\$75.)  
It is therefore ordered and adjudged by the Court that

the Plaintiff have and recover of the said defendant the damages aforesaid in manner and form found as aforesaid, likewise the costs and charges by him about his suit expended and that execution issue therefor

Thereupon the defendant filed his bill of exceptions and prayed an appeal which is granted by the Court with bond to be filed in 20 days in the sum of \$350- and by agreement of parties the Clerk to approve the bond

" State of Illinois } In Circuit Court  
" Tazewell County } June Term 1861.

" Middleton Jackaberry }  
" <sup>vs</sup> Lewis O. Goodell } Bill of Exceptions

" Be it remembered that upon  
" the trial of this cause the plaintiff called Daniel  
" M. Bailey as a witness who being duly sworn, said  
" that he knew the parties, that defendant Goodell in  
" the winter of 1860 and 1861, agreed with plaintiff to  
" pay plaintiff as guardian of David G. Bailey and  
" Caroline Bailey for the privilege of getting ice off  
" the land described in plaintiff's declaration, and  
" allowing his boats upon the same, one hundred and  
" seventy five dollars, and that said defendant did  
" use and occupy said land for that purpose, and  
" that plaintiff put him in possession of the same  
" said defendant agreed that he would pay said  
" plaintiff one hundred and seventy five dollars for  
" the use and occupation as above stated, one half  
" by April 1<sup>st</sup> 1861, and the balance when he sold his  
" ice which he sold before the commencement of  
" this suit, said contract was made by said Jackaberry

" as the guardian of David G. Bailey and Caroline  
" Bailey minor heirs of David Bailey deceased, said  
" Jackaberry was then and is now their guardian  
" and said David G. Bailey and Caroline Bailey minor  
" heirs of David Bailey deceased, are the owners of the  
" land described in the declaration, the foregoing  
" was all the evidence given in the cause. Thereupon  
" the defendant moved to dismiss said cause because  
" the action should have been brought in the name  
" of David G. Bailey and Caroline by said plaintiff  
" as their guardian, which motion the Court overruled  
" and rendered judgment in favor of plaintiff  
" against defendant for one hundred and seventy five  
" dollars, to the overruling of which motion and the  
" rendering of which judgment the defendant at  
" the time excepted, and now prays this his bill of  
" exceptions to be signed and sealed which is done  
James Harriatt Esq

State of Illinois }  
Tazewell County } ss.

I George H. Harlow Clerk of the  
Circuit Court within and for said County, do  
hereby certify that the foregoing is a full true and  
complete record of the proceedings had in said  
cause as fully as the same appears of record in my  
office

Witness George H. Harlow Clerk and the  
seal of said Court hereto affixed at Pekin  
this 9th day of August A.D. 1861.  
George H. Harlow Clerk  
per A. P. Griswold deputy



State of Illinois } In 3<sup>d</sup> Grand Division  
Supreme Court } April Term 1862

Middletown Tackelmy }  
Guardian ad }  
                                  <sup>ints</sup> } Assignment of  
Lewis Goodell } Error,

And now comes the said plaintiff  
in error Lewis Goodell and says  
that in the record and proceedings aforesaid  
manifest error hath intervened in this Court.

1<sup>st</sup> The Circuit Court erred in not dismissing  
said suit.

2<sup>d</sup> Said Court erred in rendering judgment  
for the plaintiff

3<sup>d</sup> The evidence is not sufficient to  
support the finding of the Court

4<sup>th</sup> Judgment should have been  
for Defendant below, for which  
said error said Goodell prays said  
Judgment to be reversed

JAMES R. KELLY  
atty for plaintiff  
in error

The defendant leased the premises of the plff  
in the same form & character in which the plff  
brings the action & the Dept cannot now say  
that the plff had no right to lease in that way. He  
cannot dispute the title of his land lord to sue  
any more than he can his right to lease. D.C.

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Fee \$2.00 paid