

No. 8560

Supreme Court of Illinois

Wm. A. Campbell

vs.

Thomas B. Giblin

71641  7

No 9

Apr. 1857

William A. Campbell

vs

Thomas B. Giblin

Ernest Hamilton

8560

Affirmed

Know all men by these presents that WE
Wallace A. Campbell of Hamilton County
Illinois, and Alexander W. Richardson
of Franklin County Illinois, are here and finally
bound unto Thomas H. Giblin in the penal
sum of Two hundred Dollars lawful
Money, for payment whereof well and
truly to be made, WE bind our selves,
our heirs, &c. Jointly, Severally & firmly by
these presents. Witness our hands and
seals this first day of September A.D.
1856.

The condition of this obligation is
such that Whereas the said Thomas
H. Giblin, at the May Term A.D. 1856,
of the Hamilton Circuit Court, recovered
a Judgment against the said Wallace
A. Campbell for the sum of

Dollars, and Costs of Suit,
in a certain Action of Appeal from
the Judgment of a Justice of the Peace,
Upon which said Judgment, of the said
Circuit Court, the said Wallace A. Campbell
has laid out his Writ of Error to the
Supreme Court of the State of Illinois,
to be held at Mount Vernon in said
State, On the Second Monday of November
next, And which said Writ of Error is,

by the order of the Honorable O. C. Skinner,
One of the Associate Justices of said Court,
to be made a Supersedeas upon the said
Wallace A. Campbell entering into bond in
the penal sum of Two thousand dollars,
with Alexander W. Richardson as security.

And if the said Wallace A. Campbell
shall well and truly prosecute his said
Writ of error with effect, and shall well
and truly pay the amount of the judgments,
costs, interests and damages rendered
and which may be rendered against
him in case the said judgments shall be
affirmed in the Supreme Court, then the
above obligation to be void, otherwise to
be and remain in full force and virtue.

Wallace A. Campbell
by Rich. S. Richardson
attorney

Alexander W. Richardson
by Rich. S. Richardson
attorney

Taken & approved by order of
Justice Skinner, September 6th
A.D. 1856.

Noah Johnston Clerk

Wallace A Campbell plff

vs
Thomas Giblin defr

error to Hamilton

In the Supreme Court 1st Second Division
AD 1856

We Wallace A. Campbell and Alex^r. W. Richardson do hereby authorize Richard Nelson attorney at Law as our true and lawful attorney & agent in fact to subscribe our names and affix our Respective seals or Scraps to a Bond in the above Cause, which is now pending in the Supreme Court for 1st Second division at W^t Vernon Ill. for double the amount of the debt and Costs recovered by said Giblin against me the said Wallace A. Campbell at the last term of the Hamilton Circuit Court & which said Bond & the said Wallace A. Campbell authorize the said Nelson to execute sign seal and deliver to Clerk of Supreme Court for me & in my Name as principal & the said Alexander W. Richardson do authorize him the said Nelson execute sign seal and deliver for me as security for said Campbell in order to obtain a Super sedas in the above Cause, which 3^d Bond is to be taken by & delivered to the Clerk of the Supreme Court as aforesaid by our said attorney, Witness our hands & seals this day of July 1856 W. A. Campbell
Witnessed by R. Richardson A. W. Richardson

No 29

William A. H. H.

in 3

Thomas G. Giblin

Bound for

Superintendent

Dec 14 Aug 1856

A. Schuchman etc

Aug 29 9

Wallace A. Campbell

in { Emmet's manuscript

Thomas F. Giblin

Brace

Friday Sept. 6th 1856.

N. Johnston alk

Pleas held before the Honorable
Edmund Beecher Judge of the 3^d Judi-
cial Circuit in and for the State
of Illinois Comprising among
other Counties the County of Hamilton
said Pleas had at the May Term A D
1856 of said Circuit Court of Hamilton
County.

State of Illinois } The people of the State
Hamilton County } of Illinois to any
Constable of said County greeting; You
are hereby Commaneded to summon
W. A. Campbell to appear before me at
my office on the 30th day of this instant
at 3 O'clock P M to answer the Complaint
of Thomas F. Giblin for a failure to pay
him a certain demand not ex-
ceeding one hundred dollars and
thereof make return as the law direct
given under my hand and seal
this October 15th 1855

Wm. Choiser J.P.
Wallace A Campbell Dr
to Thomas F. Giblin
to Plastering rooms and furnish-
ing her over attendance \$50.00
300 two days work in drop 4.00
ing brick Wall
1855 -

1855 - J. W. Giblin Dr
to Wallace A Campbell
to merchandise \$18.55
" board & lodging 10.00

To Cash (2) 2.00
 " damage sustained by not
 finishing house according
 to contract 2 rooms below 50.00
 & 2 rooms above stairs
 in Cof Labor & material } \$80.55

Thos. J. Giblin }
 " } Appeal
 Wallace Campbell }

This affiant Wallace
 A. Campbell being first duly sworn
 according to law deposes and says
 that Thos. J. Giblin plaintiff in the above
 cause before this magistrate and who
 is the appellant in this Court has since
 the appeal was taken to this Court
 by this affiant, absconded left this
 state & gone to parts unknown to
 the affiant. This affiant further
 states that the said Giblin has no
 valid claim against him nor has
 he any right whatever to recover any
 thing against him & he fears that
 unless the said Giblin who has no
 property whatever or effects within
 the jurisdiction of this Court be made
 to security for costs this affiant
 and the officers of this Court will
 lose all their costs incurred
 in this suit either by this affiant
 or said Giblin. Wherefore he prays a

(3)
rule in the plaintiff to give security
for Costs
Subscribed & sworn to {
this 29th day of Aug 1855 } W. A. Campbell
J. Sherman Clerk }

Thos. J. Giblin {
" " { Appeal
Wallace & Campbell }

This day came the
parties and the defendant by Nelson
his Attorney appeared the court for
a rule upon the plaintiff to give se-
curity for Costs. which motion was
"overruled by the court"

Know all men by these presents
that W. A. Campbell, & A. H. Dickinson are held
and being "bound unto Thomas
J. Giblin in the penal sum of fifty
thousand dollars. Careful men
of the United States for the payment
of which well and truly to be made
we bind ourselves our heirs ad-
ministrators jointly severally and
jointly by these presents With our
hands and Seals this 31st day
of October A D 1855. The condition of
the above obligation is such that
whereas the said Thos. J. Giblin died
on the 29th day of October A D 1855 be-
fore William Chaisson a justice of the
peace for the County of Hamilton re-

covered a judgment against the above
 named W. A. Campbell for the sum of sev-
 teen dollars & seventy eight cents debt
 and nine dollars and eighty seven
 cents costs, from which judgment the
 said Wallace A. Campbell has taken
 an appeal to the circuit court of Hamil-
 ton County and State of Illinois
 And if the said Wallace A. Campbell
 shall prosecute his appeal with effect
 and shall pay whatever judgment may
 be rendered by the Court upon dismissal
 at or trial of said appeal the above
 obligation to be void otherwise to remain
 in full force and effect

W. A. Campbell &
 A. W. Richardson &

Thos. F. Giblin }
 Wallace A. Campbell } Appeal

came again the
 parties by their attorneys and upon
 being joined, this cause is sub-
 mitted to the Court for trial, &
 after hearing the proofs, It is con-
 sidered by the Court that the judge-
 ment of the Justice of the peace is af-
 firmed with costs, whereupon the said
 defendant by Nelson his attorney
 excepts to the opinion of the Court, and
 bill of exceptions to be signed, and the next

Sum of this edict in vacation
which Bill of exceptions is in the
words & figures following to wit

Giblin 3
" 3 Appeal
Wallace & Campbell

Be it remembered
that on the trial of the above styled
Cause, that it was proved on the part
of the plaintiff that he plastered two
rooms of defendant's house for
the defend^{ant} Wallace & Campbell
the dimensions of which was as fol
lows, that is to say, two lower
rooms of a two story house
one room had 3 coats and
the other two, the rooms contained
about 120 square yards each
and the work was worth about
ten cents the square yard
board included, that the work
was done as good as work is
commonly done, in the Coun
try with the kind of materials, that
the defendant ~~and~~ Campbell
furnished the materials, It was
further proved on the part of the
defendant that the plaintiff before
he commenced work ~~took~~ one
Patten a witness sworn on the part
of defendant that he was going
to plaster defendant's house

and that he was going to plaster the whole house and wanted to cement the cellar, but that defendant could not get the materials to do that. It was also proved by defendant that there were two rooms above stairs and two below & that while the rooms below were finished by plaintiff, that plaintiff went away before the rooms up stairs were finished and refused to plaster them. It is also proved by defendant that in a conversation about the plastering of defendant's house which was for and brought out by plaintiff attorney that defendant complained that plaintiff had left and quit plastering before the job was finished, and that he had been damaged thereby in consequence of the loss of materials, and it was also proved by defendant that on the day the plaintiff left defendant begged of him to stay, complained of the damage he would sustain if he left and requested him to finish the work & he refused to do so. It was also proved by plaintiff by one Henry Iron one of his witnesses that while plaintiff was at work on the house of defendant he went there to borrow him and looked about him but could not find any, but neither defendant or his wife were at home

and it was ⁽⁸⁾also proved by the said Pat-
ter defendant writing that when de-
fendant left there was mortar mixed
up in a box and there was lime
poured in a hole in the ground
close by it. and said Green also
testified that he knew defendant
had enough lime to do the
whole job from Shawmectors &
that he hould a load for him-
self and that defendant
had been selling lime -

It was also proved by plff that
those women up stairs were not
ready to put on the plaster - that part
of the room was ready but a part
was not and would take a day
or so to fix the wall which was not
part of the plffs business - It was al-
so proved that the defendant did
the lathing furnished what materi-
als were used and tended the plff
and that he defendant did tend
the plff and had lather there
which was all the evidence in the
Case -

Before the Commencement of the
trial the defendant moved the Court
to rule the plaintiff to give security for
costs on the following affidavit
To wit. (See Page 2^d) which motion
was by the Court overruled, to which
Jedg^{ts} of the Court defendant

excepted as the time - The Court upon
the above state of facts ordered that the
Judgment before Justice of the peace in
the Court below be affirmed with
costs, whereupon the defendant mo-
ved for a new trial & in arrest of
Judgment for the following rea-
sons

- 1st because the Judgment of Court is
contrary to Law
- 2^d because it is Contrary to evidence
- 3^d because it is Contrary to Law & Evi-
dence

Which motions by the Judgment of the
Court was overruled and Judgment
entered accordingly to which Justy.
and orders of Court overruling said
motions left by his Counsel then &
then excepted and propp his exceptions
to be allowed, signed sealed and
made part of record which is done
at Chambers house pro tunc by a
consent of parties p^liff & defendant
made by their Counsel in open Court
at Newcastles before the adjournment
of Court

Edwin Beech Q^c
Judy Cir. Court

State of Illinois } Set J. S. Shornatter
Harristown county }
Clerk of the Circuit Court in and for
said County do hereby certify that

(10)

The foregoing record is a full and perfect copy of the proceedings had in said Cause as appears from the records of my office

In Testimony Whereof
I have hereunto set my
hand and the seal of
said Court at W. Lunenburg
this 3rd day of June 1856

J. Shonraker Clk

And the said Wallace & Campbell
by Michael S. Nelson his attorney Comes
and says that in the record & process
aforesaid there is manifest error and
that in the recitation of the Judgment
aforesaid the said Circuit Court of
Hampden County erred in this that
the Judgment aforesaid was rendered in favor
of the said ^{Thomas W. Gilpin} ~~plaintiff~~ whereas the said
Circuit Court ought to have rendered
Judgment in favor of the said Wallace &
Campbell

and for assigning errors appearing
on the record aforesaid the said Wallace
by his said attorney says that the said Circuit
Court erred in not ^{Gilpin} ~~making~~ the ~~plaintiff~~ to give
Security for Costs on the affidavit of the said
Wallace & Campbell, or Dismissing the
Suit commenced by ^{Gilpin} in the Court below
in Case of his refusal to give Security for Costs

2nd The Court erred in affirming the Judgment
of the Justice in the Court below, ~~and~~ ^{in not}
~~except to have~~ rendering Judgment if
at all for some amount or dismissing
the appeal with a procedendo to the
Justice

3 The Court erred in not rendering
a Judgment in favor of the said
Wallace, A. Campbell on the
evidence as given on the trial in
the Circuit Court.

4th That the 5th Court erred in not affirming
the Judgment in Court below.

5th The said Court erred in not
granting the said Wallace & Campbell
a new trial as shown for by him
in the said Circuit Court, finding Judgment
for Siblin, and so the said Wallace
& Campbell by his attorney affirmed
says that in the rendition of the Judgment
affirmed for the reasons aforesaid
the said Circuit Court of Hamilton
County. Manifestly erred and for
these and many other errors in
the record & process aforesaid
appears to be that Wallace prays
that the 5th Judgment may be reversed
& held for nothing.

Wallace & Campbell
pleading error by
the Court his attorney

Joinder in error -
James H. Hays
for deft.

State of Maine

~~To the Clerk~~

Let the writ of error issue upon the foregoing record. Not however to operate on supersedeas.

At Chambers this 10 day of July 1836

To the Clerk of Supreme Court of
First Grand Division

Ole Skinner
Judge of the
Sup Court

Let a supersedeas issue upon the
foregoing record upon aff in
error filing bond in the sum of
two hundred dollars
with Alexander W Richardson
Security

To the Clerk of Supreme Court of
First Grand Division

(Aug 8th 1836)

Ole Skinner
Judge of the
Sup Court

1854

Wallace of Cambridge

is 1/2 over to Ham

Thomas. J. Coburn

Filed 14. Aug. 1856

N. Johnston Clerk

Prepared \$5.00, by

R. J. Nelson Esq

Referee

SUPREME COURT OF ILLINOIS.

FIRST GRAND DIVISION.

NOVEMBER TERM, A. D. 1857.

Wallace A. Campbell, Plaintiff in Error }
 vs. } Error to Hamilton.
 Thomas F. Giblin, Defendant in Error.

ABSTRACT OF PLAINTIFF'S CASE.

Record Page.

3. A judgment was rendered before a Justice of the Peace in favor of the defendant in error, against the plaintiff in error, for \$16,78 upon which judgment plaintiff in error appealed to the Circuit Court of Hamilton County.
4. The suit was commenced by the defendant in error, who was a plasterer by trade, for work and labor done; and the cause tried at the May term 1856 of said Circuit Court before the Honorable Edwin Beecher, by consent without a jury. The defendant in court below plead set off, a failure to perform. on the part of plaintiff in court below, and damage to defendant below by reason of non performance.
5. A motion was made by the plaintiff in error in the Circuit Court at the appearance term for a rule on the defendant in error to give security for costs, for the reasons stated in affidavit contained in bill exceptions, but the main ground of the motion was that since the judgment was rendered before the justice, the defendant in error ran off or absconded from this State. The Court overruled the motion. And on this point principally the plaintiff in error relies.
6. The plaintiff in error also relies upon the other grounds of defense, but especially non-performance of the contract, by plaintiff in the court below. The evidence in the court below is set out at length in the bill of exceptions, and the plaintiff in error upon the two foregoing grounds seeks to reverse the judgement of the Hamilton Circuit Court, which affirmed the judgement of the Justice.
- 7.

NELSON & JOHNSON Attys.,
 for Plaintiff in Error.

No 9

William H. Campbell

Wm. H. Collier

James H. Hamilton

Richard

John Nov. 21. 1857

J. L. Lister

Office

NOVEMBER TERM, V. D. 1857
FIRST GRAND DIVISION
SUPREME COURT OF ILLINOIS

Wallace et Campbell - plff

vs
Thomas F. Giblin Def

In the Supreme Court 1st Grand
Division November Term A D 1856

This affiant W. S. Nelson being
duly sworn according to Law deposes and
says that Alexander W. Richardson who is
tindred as security in the above Cause
by the plff in error is worth at least
double the amount of the debt & Costs
recovered by deft in error against the plff
in the Court below & is in fact good for
\$500 after paying all his debts & allowing him
the benefit of the Law exempting personal
property from Execution & also deducting
\$1000 worth of real Estate & is what this
affiant would call perfectly solvent
& good for his Contracts, or any bond
that he will make, or agree to pay.

Subscribed & sworn to

before me this 16th day of

July 1856

Richard A. Nelson

Attest, Johnston

Clerk Supr. Court

1st Grand Division

Illinois

9 Aug 29

William C. Campbell

7

Thomas F. Seelin

off. of testimony
of security

Filed 14. Aug. 1886

N. Johnston CLK

In the Supreme Court November term A.D. 1856

Wallace A. Campbell ^{vs} p^lff in error
Error to Hamilton

Thomas F. Giblin ^{vs} defendant in error
Abstract of p^lffs Case

Page 3. a Judgment was rendered before a Jus-
tice of the peace in favor of the defendant
in error against the plaintiff in error
4. for \$16.78^{cts} from which Judgment p^lff
in error appealed to the Circuit Court
of Hamilton Co.

" " The suit was commenced
by the defendant in Error who was a plaster
er by trade for work and labor done
and the Cause tried at the May term 1856
of said Circuit Court before the Honorable
Edwin Beecher by Consent, without a
jury. The defendant ^{in Court below} pleaded set off,
a failure to perform on the part of plaintiff
in Court below, and Damage to defend below
by reason of non performance.

" " A Motion was made by the
p^lff in error in the Circuit ^{Court} at the appearance
term for a rule on the defendant in error
to give security for Costs for the reasons stated
in affidavit contained in Bill exceptions, And
the Main Ground of the Motion was that
since the Judgment was rendered before

5. the justice the defendant in error ran off or absconded from this state. The Court overruled the motion saying that the law on ~~himself~~ was wrong. & that, ~~which was right~~, was for this Court to decide. and on this point principally the plaintiff in error brought the case into this Court by writ of Error

6. The plaintiff in error also relies upon the other grounds of defence, but especially non-performance of the Contract, by plaintiff in the Court below. The evidence in the Court below is set out at length in the Bill of exceptions ~~therein~~ and the plaintiff in error upon the two foregoing grounds seeks to reverse the judgment of the Circuit Court of Hamilton Circuit Court, which affirmed the judgment of the Justice,

Nelson & Johnson / a
plaintiff in error

Filed Nov. 16. 1857

Wm. H. Hamilton

Ernest Hamilton

Attorney

Thomas W. Fitch
defendant in error

Wallace J. Campbell
plaintiff in error

SUPREME COURT OF ILLINOIS.
FIRST GRAND DIVISION.
NOVEMBER TERM, A. D. 1857.

Wallace A. Campbell, Plaintiff in Error }
vs. } Error to Hamilton.
Thomas F. Giblin, Defendant in Error.

ABSTRACT OF PLAINTIFF'S CASE.

Record Page.

3. A judgment was rendered before a Justice of the Peace in favor of the defendant in error, against the plaintiff in error, for \$16.78 upon which judgment plaintiff in error appealed to the Circuit Court of Hamilton County.
4. The suit was commenced by the defendant in error, who was a plasterer by trade, for work and labor done; and the cause tried at the May term 1856 of said Circuit Court before the Honorable Edwin Beecher, by consent without a jury. The defendant in court below, lead set off, a failure to perform, on the part of plaintiff in court below, and damage to defendant below by reason of non performance.
5. A motion was made by the plaintiff in error in the Circuit Court at the appearance term for a rule on the defendant in error to give security for costs, for the reasons stated in affidavit contained in bill exceptions, but the main ground of the motion was that since the judgment was rendered before the justice, the defendant in error ran off or absconded from this State. The Court overruled the motion. And on this point principally the plaintiff in error brought the case into this court by writ of error.
6. The plaintiff in error also relies upon the other grounds of defense, but especially non-performance of the contract, by plaintiff in the court below. The evidence in the court below is set out at length in the bill of exceptions, and the plaintiff in error upon the two foregoing grounds seeks to reverse the judgement of the Hamilton Circuit Court, which affirmed the judgement of the Justice.
- 7.

NELSON & JOHNSON Attys.,
for Plaintiff in Error.

No 9

Wallace & Campbell

vs

Wm. H. Gibson

Ex parte Drummond

Abstract

Filed Nov. 24. 1857.

Wm. Johnston Clerk

Office

Wallace a Campbell, pless in error

vs
Thomas, W. Giblin } error to Hamilton
defunct in error

The clerk will please issue
a Scire facias with Certificate of Supersedeas
to Sheriff of Hamilton County, requiring him
to Summon Thomas, W. Giblin deft in
error and plaintiff in the Court below
at suit of Wallace, A. Campbell
pless in error and deft in Court below
returnable &c

Richard, S. Nelson
for pless in error

At New York August 30th 1856

To Clerk of Supreme Court

STATE OF ILLINOIS
SUPREME COURT,

{ SS.

THE PEOPLE OF THE STATE OF ILLINOIS;

WRIT OF ERROR.

To the Clerk of the Circuit Court for the county of *Hamilton*

GREETING,

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of *Hamilton* county, before the Judge thereof, between

Thomas S. Giblin

plaintiff, and

William S. Campbell

defendant it is said manifest error hath intervened, to the injury of the aforesaid

William

A. Campbell

as we are informed by *his*

complaint, and we being willing that error, should be corrected if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly without delay, send to our Justices of the Supreme Court, the record and proceedings of the plaint, aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at

Mount Vernon, in the county of Jefferson, on the *Second Monday in November*

next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law:

Witness, the Hon. WALTER B. SCATES Chief Justice of our said court, and the seal thereof, at Mount Vernon this

Sixth day of *September*

in the year of Our Lord One Thousand Eight Hundred

and Fifty-*Six*

Walter B. Scates

Clerk Supreme Court.



9 Ar 29

W. A. Campbell

by

Thos. F. Giblin

Mrs of Enn

Issued & filed 6 Sept,
1856

A. Schuster clk

"This Mtd of Enn is made a representation, and
is to be taken accordingly"
of Schuster clk

STATE OF ILLINOIS, }
SUPREME COURT. } ss.

THE PEOPLE OF THE STATE OF ILLINOIS,

To the Sheriff of *Hamilton* County,

Because in the record and proceedings, and also in the rendition of the judgment, of a plea which was in the Circuit Court of *Hamilton* County, before the judge thereof, between *Thomas J. Gillin*

Plaintiff, and *Wallace A. Campbell*

defendant, it is said that manifest error hath intervened to the injury of said *Wallace A. Campbell* as we are informed by *his* complaint, the record and proceedings of which said judgment, we have caused to be brought into our Supreme Court of the State of Illinois, at Mt. Vernon, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said *Thomas J. Gillin*

that *he* be and appear before the Justices of our said Supreme Court, on the first day of the next term of said Court, to be holden at Mount Vernon, in said State, on the Second Monday in November next, to hear the records and proceedings aforesaid, and the errors assigned, if *he* shall think fit; and further to do and receive what the said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said *Thomas J. Gillin* notice, together with this writ.

Walter B. Scato

Witness, the Hon. ~~Samuel H. Treat~~, Chief Justice of our said Court, and the seal thereof, at Mount Vernon, this *sixth* day of *September* in the year of our Lord, one thousand eight hundred and fifty-*six*.

Noah J. Hunter

Clerk of Supreme Court.

The Mt of error, if not filed in this cause,
 is made to operate as a Supersedeas, and
 as such, is to be obeyed by all concerned.

A. Johnston clk

2999

W. A. Campbell

as } for

Thomas G. Gillin

Sherriff Lee

Returning Mail - 10

John A. Nichols Mt. 26. c

in my County this 17th day of November 1856

J. Nelson this Mail not received not found