

13133

No. _____

Supreme Court of Illinois

Lee

vs.

Bair^N~~x~~

71641  7

STATE OF ILLIN

SUPREME COURT

Third Grand Division

No. 78.

1860

Lee
vs
Bain

12133

STATE OF ILLINOIS, } ss. The People of the State of Illinois,
SUPREME COURT,

To the Clerk of the Circuit Court for the County of Cook 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 Cook County, before the Judge thereof, between Edward Bain

plaintiff, and Charles Lee

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

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 plea aforesaid, with all things touching the same, under your seal, so that we may have the same before our justices aforesaid at Ottawa, in the County of La Salle, on the first Tuesday after the third Monday in April 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. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 18th day of December in the Year of Our Lord one thousand eight hundred and fifty-nine

L. Leland

Clerk of the Supreme Court.
J. B. Rice Deputy

⁷⁶
Charles Lee

27

Edward Bain

Writ of Error

This writ of error
is made a supersedeas
and as such is to be obey-
ed by all concerned

L. Leland Clerk
by J. B. Rice Deputy

Filed Dec. 18. 1837

L. Leland
Clerk

Know all men by these presents that we Charles Lee and
Amos H Lewis of the County of Bureau and State of Illinois
are held and firmly bound unto Edward Bain
in the penal sum of ~~Three hundred dollars~~
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 fifteenth day of December
A.D. 1859.

The Condition of the above obligation is such that
Whereas the said Edward Bain did on the fourth term day of
A.D. 1858 of the Circuit Court in and for the County
and State aforesaid recover a Judgment against the above
bounden Charles Lee for the sum of
Twenty one ⁶⁰ dollars damages and

costs - from which said Judgment
the said Charles Lee has prayed for and obtained a writ
of Error to the Supreme Court of said State

Now if the said Charles Lee shall duly prosecute his
said Suit in Error 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

Signed sealed & delivered

in presence of
Scri Lewis

Charles Lee Seal
Amos H Lewis Seal

76

Charles Lee
Edward Bain
Bond

Filed Dec. 18, 1859
L. Leland
Clerk

STATE OF ILLINOIS, }
SUPREME COURT,

ss. The People of the State of Illinois,

To the Clerk of the Circuit Court for the County of Bureau 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 Bureau County, before the Judge thereof, between Edward Bain

plaintiff, and Charles Lee

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

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 Ottawa, in the County of La Salle, on the first Tuesday after the third Monday in April 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. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 18th day of December in the Year of Our Lord our thousand eight hundred and fifty-nine.

L. Leland

Clerk of the Supreme Court.

J. B. Rice Deputy

Charles Lee
78
Edward Bain

Writ of Error

This writ of Error is made
a supersedeas and as
such is to be obeyed
by all concerned.

L. Deland
Clerk
by J. B. Rice Deputy

Filed December 18. 1887

L. Deland
Clerk

1.
State of Illinois }
Bureau County }

Be it remembered that on the
26th day of March A.D. 1858 came into the Office
of the Clerk ^{of the Circuit Court} of said Bureau County & State
aforesaid Charles Lee and filed his transcript
of proceedings lately had before William M. Martin
a Justice of the Peace of said County & State
which transcript is fully enumerated in the bill
of Exceptions filed herin and hereinafter described.
Also on the same day to wit on the 26th day of
March A.D. 1858 the said defendant Charles Lee
filed his bond for appeal to the Circuit Court
of said County which said bond is in the words
and figures following to wit.

I most solemnly by these presents that
we Charles Lee and Amos H. Lewis are held
and firmly bound unto Edward Bain in the pe-
nal sum of One hundred and twenty five dollars
lawful money of the United States for the payment
of which well and truly to be made we bind our-
selves our heirs and administrators jointly sever-
ally and firmly by these presents witness our hands
& seals this 25th day of March, 1858.
The condition of the above obligation is
such that whereas the said Edward Bain did
on the Fifth day of March 1858 before Mr. Martin
a Justice of the Peace for the County of Bureau
recover a judgment against the above bounden
Charles Lee for the sum of Sixty dollars and ⁵⁰/₁₀₀
cents debt and One dollar and ⁵⁰/₁₀₀ cents costs from which
judgment the said Charles Lee has taken an
appeal to Circuit Court of the County aforesaid
and State of Illinois it is now at the said Charles
Lee shall prosecute his appeal with effect

2

and shall pay whatever judgment may be rendered by the Court upon dismissal or trial of said appeal then the above obligation to be void otherwise to remain in full force and Effect

Approved before me at my
Office this 25th day of
March 1858

Mr. Martin J. P.

Charles Lee
Amos H. Lewis

Copy of Note

\$5833-
100

On or before the first of January
next I promise to pay Edward Bain or bearer
the sum of Fifty Eight dollars and thirty five
Cts for value received with Six per cent Interest
from date

Charles Lee

Was before the Hon. Martin Ballou Judge
of the twenty third Judicial Circuit of the Circuit
Court of the State of Illinois at the April term
of the said Circuit Court begun and held at
the Court House in Quincy in the County of
Bureau On Monday the fifth day of April in
the Year of our Lord One thousand Eight hundred
and Fifty Eight

Present Hon. Martin Ballou Judge
Edward M. Fisher Clerk
L. H. Waldron Sheriff
George W. Stepp States atty

Edward Bain
vs
Charles Lee

appeal docket on the 3rd day of said term

3

Now comes the Plaintiff by Taylor his attorney and the defendant having failed to file his affidavit of merits herein in compliance with a rule of this Court it is considered by the Court that this appeal be dismissed and that a proce-
edendo be awarded to the Justice from whose docket the said appeal was taken. It is ^{also} further considered by the Court that the said Plaintiff have and recover of the said defendant the sum of five dollars his damages for delay herein to-
gether with all his costs and charges in and about his suit in this behalf in this Court expended and that he have execution therefor.

Also on the 24th day of April A.D. 1858 the said defendant filed his bill of exceptions herein. In the words and figures following to wit:

Stat. of Ind. 1858, ch. 11, sec. 1, art. 1 of said County
Bureau County of the Op. term thereof A.D. 1858

Edmond Bain

vs

Charles Lee

} appeal No. 376.

Be it remembered that this cause came into said Circuit Court by defendants appeal from a Justice of the Peace and was pending in said Court at said April Term A.D. 1858 and was numbered on the docket of said Court 376. That the following is a copy of the transcript of said cause from the docket of the Justice of the Peace to wit:

Edmond Bain } February 26th 1858 suit on a

vs } note executed by defendant to

Charles Lee

Debt \$6.05

State of Ohio, ss. J. M. Martin a Justice
 of the Peace in and for
 said County, do hereby certify the foregoing to be a correct
 transcript of my docket in the above entitled
 case. Given under my hand this 25th day of
 March 1858

That said cause was docketed by the Clerk for the last day of said term, which day was ~~a~~ the 24th day of April A.D. 1858, according to a prior order of the Court* that on the calling of the docket by the Court on the 3rd day of said term to wit. on the 7th day of April A.D. 1858 for the purpose of taking defaults in cause this cause was called in its order and the defendant by Mr. Kendall his attorney appeared in the cause and said he would be ready for trial of the cause when the same should be reached on the day the same was set on the docket the Plaintiff by his attorney said the suit was upon a note and demanded that

* as follows to wit.
To the Hon^{ble}. Wm. E. Hallister Judge &c
We the undersigned members of the Bureau Bar
respectfully request your Honor that you hereafter
direct the Clerk to appoint the Criminal caudles for
the first day and 10 civil caudles for each succeeding day
of the term subject to taking default at any time in case
there is no appearance
Nov. 19th 1876
Signed by us above hereafter M. E. Winter
The Justice of the Peace Master William
Day Jan 4th 1876. J. B. Lee Esq.

F-82

The Cause should be tried immediately or that the defendant be required forthwith to show by affidavit a meritorious defense according to a rule of said Court as follows to wit

Bureau Circuit Court April Term 1858

At a meeting of the members of the Princeton Bar held on the Fifteenth day of March A.D. 1858 at which Joseph S. Taylor was elected President and G. Gilbert Gibbons Secretary it was unanimously Resolved that we recommend to Honorable Martin Ballou Judge of the Bureau County Circuit Court to adopt at the next April Term the following rule for the said Court

In all dockets suits brought upon notes bills of Exchange, single bills and accounts to which no attorney's names shall be entered, and the defendant by the usual answer or motion, and in all suits of the same nature that shall hereinafter be instituted in and against this Court Judgment shall be entered for the Plaintiff or Plaintiffs upon the first calling of the docket unless the defendant or defendants his or their attorney shall give satisfactory Evidence to the Court by affidavit that he or they have a meritorious defense to the whole or a part of the plaintiffs claim

J. S. Taylor President

G. Gilbert Gibbons Secretary

I Martin Ballou Judge of the Bureau County Circuit Court do hereby make known the above a rule of said Court and hereby direct the Clerk thereof to

enter the same as such on the rule Book
March 11th 1858
M. Ballou Judge Cl.

6

The defendant said he was not then ready for trial and was not prepared to show by affidavit that defendant had a meritorious ^{defense}. Thereupon the Court ordered the defendant to be called and the defendant being again called answered to the cause but refused to go into immediate trial for reasons before stated by him and defendant also refused to file an affidavit that he has a meritorious defense to the whole or any part of said demand and thereupon the Court dismissed the appeal for non compliance of said Rule of Court requiring such affidavit to be filed and ordered a procedendo to the Justice of the Peace and to the order of the Court in the premises in entering a default of the defendant and dismissing the appeal and ordering procedendo &c. the defendant by his attorney then and there expected and prays the Court to sign and seal this his bill of exceptions which is done.

Wm. Barron Judge Seal

2d. Circuit Ill.

State of Illinois

Bureau County Ill. I Edmund Mc Fisher Clerk of the Circuit Court within and for said County in the State of said Ill. do hereby certify the foregoing to be a true full & perfect transcript of the ~~the~~ Record in the above Cause as of Record & on the files in my office

Given under my hand & the seal of said Court at Princeton in said County this 5th day of December
AD 1859 E. Mc Fisher

Clud

And now comes Charles Lee and says, that in the record and proceedings aforesaid, and in the rendition of the Judgment aforesaid there is manifest error in this to wit:

- 1st The court erred in dismissing the appeal in this cause.
- 2^d The court erred in rendering the judgment aforesaid in manner and form aforesaid.
- Glover & Cook atty's
for Plffs in error.

Set a superseding name
March 200 1874 Lewis's Swath
J D Barton

And now comes the said
dip in error &amp;amp;amp;amp;
the errors assigned
above &amp;amp;amp; the same
are well taken &amp;amp;
that said ~~error~~ judgment
be reversed & the cause
remanded.

Yonglo Padolov &
Phillips
for Deep River Enon

76
Edmond Barn^{no 2}
vs
Charles Lee

1860

Filed Dec. 18th 1859
L. Leland
Clerk

Know all Men by these presents that we Charles Lee and Amos H Lewis of the County of Bureau and State of Illinois are held and firmly bound unto Edward Bain in the penal sum of Three hundred dollars 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 Fifteenth day of December AD 1859.

The condition of the above obligation is such that Whereas the said Edward Bain did at the April Term day of

AD 1858 in the Circuit Court in and for the County and State aforesaid recover a judgment against the above bounden Charles Lee for the sum of five money eight $\frac{25}{100}$ damages and cost.

Costs. - from which said judgment the said Charles Lee has prayed for and obtained a writ of Error to the Supreme ^{Court} of said State

Now if the said Charles Lee shall duly prosecute his said suit in Error 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 -

Signed Sealed & delivered
in presence of
Sami Lewis

Charles Lee Seal
Amos H Lewis Seal

78

Charles Lee

by

Edward Bain

Bond

Filed Dec. 18, 1859
L. Leland
clerk

1
State of Illinois }
Bureau County }

Be it remembered that on the 26th day of March A.D. 1838 came into the Office of the Clerk of the Circuit Court in and for the County of Bureau and State of Illinois Charles Lee and filed his transcript of proceedings lately had before Wm. Martin a Justice of the Peace for said County and State and will be fully enumerated in the bill of exceptions filed herein and hereinafter described

Also on the same day to wit on the 26th day of March A.D. 1838 the said defendant filed his bond for appeal herein which is in the words and figures following to wit

Know all men by these presents that we Charles Lee and Amos H. Lewis are held and firmly bound unto Edward Bain in the penal sum of One hundred & Eighty nine dollars lawful money of the United States for the payment of which well and truly to be made we bind ourselves our heirs & administrators jointly severally and firmly by these presents witness our hands and seals this 25th day of March 1838 The condition of the above obligation is such that whereas the said Edward Bain did on the Fifth day of March 1838 before Wm. Martin a Justice of the Peace for the County of Bureau recover a judgment against the above bounden Charles Lee for the sum of Ninety three dollars & 44/100 debt and One dollar and 8/100 costs from which judgment the said Charles Lee has taken an appeal to the Circuit Court of the County of Bureau aforesaid & State of Illinois Now if the said Charles

2

Lee shall prosecute his appeal with Effect and shall pay whatever judgment may be rendered by the Court upon the dismissal or trial of said appeal then the above obligation to be void otherwise to remain in full force and Effect

Approved by me at my Office this 25th day of March 1858

Wm. Martin J. P.

Charles Lee *Secy*
Amos H. Lewis *Secy*

Copy of Note

On or before the first day of Oct next I promise to pay Edward Bain or bearer the sum of Eighty nine dollars for value Received with six per cent Interest from date
Charles Lee

Copy rendered on this note
 Wm. Martin J. P.

Pleas before the Hon. Martin Ballou Judge of the twenty third Judicial Circuit of the Circuit Court of the State of Illinois at the April Term of the said Circuit Court begun and held at the Court house in Princeton in the County of Bureau on Monday the Fifth day of April in the Year of our Lord One thousand Eight hundred and Fifty Eight

Present Hon. Martin Ballou Judge
Edward M. Fisher Clerk
J. H. Waldron Sheriff
George W. Stipp States atty

Edward Bain
vs
Charles Lee

} appeal to wit on the 3rd day of said term

3

Now comes the Plaintiff by Taylor his attorney and the defendant having failed to file his affidavit of merits herein in compliance with a rule of this Court It is considered by the Court that this appeal be dismissed and that a procedendo be awarded to the Justice from whose docket the said appeal was taken. It is ^{also} further considered by the Court that the said Plaintiff have and recover of the said defendant the sum of five dollars his damages for delay herein together with all his costs and charges in and about his suit in this behalf expended and that he have execution therefor

Also on the 24th day of April A.D. 1858 the said defendant filed his bill of exceptions herein in the words and figures following to wit
 State of Illinois } In the Circuit Court of the
 Bureau County } ss. April Term A.D. 1858

Edward Bain }
 vs } appeal No. 377
 Charles Lee }

Be it remembered that this cause came into said Circuit Court by defendant's appeal from a Justice of the Peace and was pending in said Circuit Court at said April Term A.D. 1858 and was numbered on the docket of said Court 377 That the following is a copy of the transcript of said Cause from the docket of the Justice of the Peace to wit

Edward Bain } February 26th 1858 suit on a
 vs } note executed by defendant
 Charles Lee } to Plaintiff for \$89 dated
 Debt \$98.44 } May 13/57 and Oct. 1/57 six per

5

The Clerk on the docket the Plaintiff said the suit was upon a note and demanded that the cause should be tried immediately or that the defendant be required forthwith to show by affidavit a meritorious defense according to a rule of the Court as follows to wit

Bureau Circuit Court April Term 1858

At a meeting of the members of the Princeton Bar held on the fifteenth day of March A.D. 1858 at which Joseph S. Taylor was Elected President and G. Gillet Gibbons Secretary it was unanimously Resolved that we recommend to the Honorable Martin Ballou Judge of the Bureau County Circuit Court to adopt at the next April Term the following rule of Practice for the said Court to wit

" In all docketed suits brought upon notes bills of
 " Exchange single bills and accounts to which no
 " attorney's names shall be entered for defendant by
 " the sixteenth day of March and in all suits of
 " the same nature that shall hereafter be insti-
 " tuted in, or appealed to this Court Judgment shall
 " be entered for the plaintiff or plaintiffs upon
 " the first calling of the docket unless the defen-
 " dant or defendants his or their attorney shall
 " give satisfactory evidence to the Court by Affi-
 " davit that he or they have a meritorious defense
 " to a whole or a part of the plaintiff's claim

J. S. Taylor President

G. Gillet Gibbons Secretary

I Martin Ballou Judge of the Bureau County Circuit Court do hereby make the above a rule of said and hereby direct the Clerk thereof to enter the same as such on the Rule Book

March 16th 1858

M. Ballou Judge

6
The defendant said he was not then ready for trial and was not prepared to show by affidavit that he had a meritorious defense and thereupon the ~~the~~ Court ordered the defendant to be called and the defendant being called again answered to the cause but refused to go into immediate trial for the reasons before stated by him and refused to make or file an affidavit that he had a meritorious defense in the cause & thereupon the Court dismissed the appeal for non compliance of said rule of Court last mentioned and ordered a procedendo to the Justice of the Peace, and to the orders of the Court in the premises in entering a default of the defendant and dismissing the appeal and ordering a procedendo to the Justice of the Peace the defendant by his attorney then & there excepted and prays the Court to sign and seal this his bill of exceptions which is done

M. Ballou Judge Leat
23^d Judicial Circuit Ill.

State of Illinois }
Barren County } 23^d. I Edward M. Fisher Clerk
of the Circuit Court in and for said County in the State aforesaid do hereby certify that the foregoing is a full true and perfect transcript of the Record as the same appears on file & of Record in my Office. Given under my hand and seal of said Court at my Office in Princeton in said County this 5th day of December A.D. 1859
Edward M. Fisher clk

And now comes Charles Lee and says
that in the record and proceedings
aforesaid and in the rendition of the
Judgment aforesaid there is manifest
error in this & wit

1st The Court erred in dismissing the
appeal in this cause

2 The Court erred in rendering the
Judgment aforesaid in manner
& form aforesaid

Wm. H. Paddock atty
for p'tys. in Error

Let a supersedeas issue Bond
\$3000 A Mas H. Lewis Surety
J. D. Croton

And now comes the said depts.
in Error and confesses the errors
above assigned & says the same
are well taken

Taylor Paddock & P'tys

78
D. & B.
vs
Charles Lee

Filed Dec. 18, 1837
L. Leland
Clerk