

No. 12865

Supreme Court of Illinois

Orton

vs.

Turner

71641  7

124

Walter L. Burton

v3

Ambrose Turner,

124

1865

1859

State of Illinois }
Boone County }

Plaus before the Honorable Isaac
S. Wilson, Judge of the 13th Judicial
Circuit of the said State of Illinois,
And Presiding Judge of the Circuit
Court of said County of Boone, Begun
And held at the Court House in
Behreder, in and for said County of
Boone, on the ²⁷Twenty seventh day of
September A.D. 1858.

Present,

Hon. Isaac S. Wilson Judge,
V. S. Spolyn, States Attorney,
V. S. Fisdell, Sheriff

Attest, J. H. Whitney, Clerk.

Be it Remembered that ~~on~~
heretofore to wit; on the middle day
of August A.D. 1859

1.

Came Nathan S. Orton Defendant in the
Court below; and in his own proper person
filed his certain Papers on an appeal,
which are in words and figures following,
that is to say; &

"Ambrose Hunter

vs.

Nathan S. Chilton

Almon

\$

60.00.

Special Summons issued

on oath of Plaintiff issued against Defendant
Airt June 22^d 1858 and returnable on the
28th inst at One O'clock P.M.

Summons returned served on
the Defendant by reading June 22^d 1858.
So says Court Foster per, 50^{cts}"

2 "June 28th 1858 Cause called parties pres-
ent, Defendant in this cause that it is his
belief that he cannot have an impartial
trial before H.B. Hamlin before whom this
suit is brought. Wherefore the record and proceedings
in this cause are sent to O.W. Wright the near-
est Justice of the Peace

"State of Illinois { H.B. Hamlin "

Boone County { J. Fayette B. Hamlin a Justice
of the Peace in & for said County do hereby
certify that the foregoing is a just & true
copy of the proceedings had in the above entitled
cause & that the accompanying papers are
all the papers in this suit. Witness my hand
and seal this 28th day of June A.D. 1858

3.

H.B. Hamlin J.P. *[Signature]*

And that on the same day the said Appellant
Nathan S. Chilton filed in the said
Boone County Circuit Court, in continuation

of the foregoing sent before the said High
Justice of the Peace in and for said
Boone County, A transcript in the
words and figures following, to wit:-

" Transcript of Proceedings lately had before
O. H. Wright Esquire a Justice of the Peace in
& for the County of Boone in the State of Miss.
between Ambrose Turner Plaintiff & Nathan
S.orton Defendant. -"

" Ambrose Turner

vs.

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Nathan S.orton

Charge of Venue -

Action assumpsit for Contract

Special Summons

Plaintiff's demand \$ 60.00

1858 July 28th Recd of F. B. Hamlin Esq. a
Justice of the Peace the papers in the above
exhibited case. Same day cause continued
by the Court till July 10th at one O'clock
P.M." July 10th ^{1. O'clock P.M.} Suit called parties present
by counsel. Plaintiff claims on a written
Contract on file Dated January 21st 1858 &
Signed by Defendant - Damages fifty eight
Dollars & Eighty six cents. - Defendant Pleads
General issue - non performance of Contract -
declared on by Plaintiff -
& entire failure of consideration recompense
of Damages for failure to perform Contract - &
entire failure of consideration expressed
in the Contract &c. Plaintiff calls for a
venue to summon a jury - venue issued

5

to Const. Foster venire returned
served - Const just 52 c. following names
indorsed on the writ O.P. Benson, John
Sammy, J.G. Clark, J. Spewer, Richard
Sammy & Alouzo Hays - Jury Sworn -
Nathan S.orton, Whitman, Coffin & J.W.
Foster Sworn on part of Plaintiff - Miles Ray,
orton, Weed & Hoyt on the part of defense.

"The Jury find a verdict in favor of
Plaintiff in the sum of forty one dollars &
thirty six cents"

6 "Whereupon it is considered by the Court
that the Plaintiff have and recover of the
defendant the sum of forty one dollars &
thirty six cents for his damages and the
cost of suit herein taxed."

"State of Illinois

Boone County

} J. A. H. Wright a Justice of the
Peace in & for said County of do hereby cer-
tify ^{that} the foregoing ~~to be~~ a transcript is truly
copied from the files & books of my office.

In witness Whereof I have hereunto
set my hand & seal this 30th day of July
1858. J. A. H. Wright J.P. [Signature]

9 And that on the same day the
said Appellant filed in the said Cir-
cuit Court of said Boone County, his appeal
Bond in this case, in the penal sum

of one hundred dollars, Dated 29th July
1858, duly executed by the said Appellant,
And J.P. Emerson his Security, And which
said ^{appeal} Bond is approved by said "O.H. Wright J.P."
And that thereupon Summons issued
to the said Appellee, And which said
Summons was returned duly served
by the Sheriff of said Boone County, on
the said Ambrose Turner Appellee;

8 And that afterwards, to wit, at the
Regular Term of this Court begun and
held at the Court House in Reidsville
in said Boone County on the 27th —

— day of September A.D. 1858 in
And for the said County of Boone,
on the 27th day of September A.D. 1858
being one of the days of the September
Term of said Circuit Court for 1858,

The following proceedings & Orders were
had & made, And entered of Record,
to wit:

"Ambrose Turner } Appeal from Justice Court.

vs.

Nathan S.orton }

And now on this 27th day
of September A.D. One thousand

And eight hundred And fifty eight,
Come the parties in this cause, And the
said Ambrose Turner Plaintiff And
Appellee by his Attorney W. Thompson

moves the Court to dismiss the Appeal
in this cause upon the ground and
for the reason that the Circuit Court
of Boone County has no jurisdiction in
this cause, the same being an appeal from
a ~~Justice~~ judgment rendered before a
Justice of the Peace in said Boone County,
after hearing the arguments of counsel
upon said motion the Court takes the
same under advisement."

And afterwards, writ =
"Ambrose Turner } Appeal

vs.
Nathan A.orton }
10 And now on this 29th
day of September A.D. 1858, being yet one
of the days of the said September Term
of this Court for 1858, comes the
Plaintiff and Appeller by W. Thompson
his Attorney, and the said Defendant,
Appellant, by M. W. Boyce his Attorney
also comes; and the Court upon the
motion of the Plaintiff by Thompson his At-
torney, heretofore made in this cause to
dismiss the appeal herein on the grounds
& for the reason that the Circuit Court of
Boone County has no Jurisdiction of this
Cause, the same being on appeal to this
Court from a Judgment rendered before a

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A Justice of the Peace in said Boone County, grants the said motion of the Plaintiff and orders the appeal in this cause dismissed, And that the Plaintiff have and recover his costs & charges in this suit expended & have execution therefor - To which decision And Ruling of the Court the said defendant And Appellant by his Attorney M. M. Boyce, then And there excepted, And Prays the same may be made matter of Record which is done in the words & figures following, to wit: "

" State of Illinois } Boone County Circuit Court
County of Boone } of the September Term A.D. 1858
 Ambrose Turner }

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vs. } Appeal
 Nathan J. Orton } Be it Remembered that
 on the twenty seventh day of September
 A.D. 1858, the same being one of the days of
 the September Term A.D. 1858 of the Boone
 County Circuit Court the above entitled
 cause having been brought on to be heard
 before the Court And without the intervention
 of a Jury The said Plaintiff by his counsel
 moves the Court to dismiss the appeal in
 this cause, upon the grounds And for
 the reason that the said Circuit Court
 of Boone County has no Jurisdiction in

This cause, the same being an appeal from a judgment rendered before a Justice of the Peace in said Boone County. After hearing the arguments of Counsel upon said motion & taking the same under advisement, the said Court on the twenty ninth day of September A.D. 1858, that being also yet one of the days of the September term of the Boone County Circuit Court, grants the said motion of the Plaintiff, and Orders and Adjudges the appeal in this cause dismissed: To which ruling and decision of the Court the said Defendant by his Counsel then and there excepted and says that ^{the} same may be made matter of Record in this cause, which is now, here, done.

14,

State of Illinois

County of Boone

} ss.

I, Daniel D. Whitney,
Clerk of the Circuit Court in and
for said County, do hereby certify that
the foregoing is a true transcript of
the Record of the Proceedings, Orders,
Judgment, Ruling, and Exceptions
in the above entitled cause.

Witness my hand, and the
Seal of said Court at Richwood
in said Boone County, this Eleventh day of
April A.D. 1859.

Daniel D. Whitney, Clerk.

In the Supreme Court of the State of
Illinois - for the third Grand Division
Term AD 1859

And now comes the said Nathan S.
Orton Plaintiff in Error by M. M. Boyce his
attorney and says that in the record of the said
judgment & proceedings there is manifest and material
error appearing of Record in this

That the Court sustain-
ed the motion to dismiss the appeal in the Court below

That the Court below had no lawful or
rightful authority to dismiss the appeal in the Court
below and render a judgment in favor of the said Ambrose
Turner and against the said Nathan S. Orton for the sum of
four & 20/100 dollars costs - and that the same is void for want of
authority

Wherefore for divers other errors appearing
of Record in said proceedings & judgment said Plaintiff
in Error prays that the same be reversed &c

M. M. Boyce Atty
for Plff in Error

In Supreme Court Illinois
Nathan S.orton Plff in Error
vs
Amos Turner Defnd in Error

Assignment of Error

Transcript &
assg of Error

Boone

Filed Mar
 Filed May 3, 1859
 L. Leland
 CLK

W. C. D. # 300.

D. W. M. H. M. H. M. H.

Know all men by these presents That we Nathan
S. Orton as Principal and Jonathan Philbrick
as security of the County of Boone in the State of Illi-
nois are held and firmly bound unto Ambrose Turn-
er in the penal sum of two hundred dollars for the
payment of which well and truly to be made unto the
said Ambrose Turner his executors administrators and
assigns we do bind ourselves our heirs executors and
administrators jointly and severally and firmly by these
presents.

Signed sealed and dated the 28th day of February AD
1859

The Condition of the above obligation is such that
Whereas at the term of the Circuit Court began and
held in & for the County of Boone & State of Illinois on the
27th day of September AD 1858 The said Court
Sitting as a Court of law, ordered and adjudged a certain
Appeal from a judgment rendered before a justice of the peace
then lately filed in said Court by Nathan S. Orton
Appellant against Ambrose Turner Appellee to be dis-
missed at the costs of the Appellant and upon such dismissal
it rendered a judgment for costs against the said Nathan
S. Orton for \$5.10 — in favor of the said Ambrose Turner
And the said Nathan S. Orton having sued out a writ
of Error from the Supreme Court of said State of Illinois
to remove the proceedings & judgment in said cause to
said Supreme Court for review and the same being prayed
to be made a Supersedeas. Now therefore if the said

Nathan, S. Orton shall duly prosecute said writ of error
and pay the judgments costs interest and damages in case the
said order & judgment of the said Circuit Court shall be aff-
irmed then the above Bond to be void otherwise to remain
in full force
Signed Sealed and delivered } Nathan Orton
in presence of } Jonathan Philbrick
M. B. Boyce

State of Illinois } ss
County of Bond } Nathan S. Orton and Jonathan Philbrick
of said County & State being duly and severally sworn
State respectively that they are the persons named in and who
executed & delivered the foregoing Bond. That they are
severally & respectively worth at least six hundred dollars
over and above all their liabilities and the property real and
personal exempt to them by virtue of the laws of this State
Subscribed and sworn to before }
and this 28th day of February 1859 } Jonathan Philbrick
M. B. Boyce, J. P.

State of Illinois }
Doubt County } J. D. Whitney Clerk of the Circuit Court
in and for said County, hereby certify that I consider
the foregoing Bond as entirely sufficient: witness my
hand and seal of office at Redwood in
said County this 2nd March A.D. 1859
J. D. Whitney, Clerk.

In the Supreme Court, Illinois
Third Grand Division

Nathan, J. Cotton Rantaffen Esqr

Amos ¹⁵ Turner Esqr

Dona
Jan

Filed March 2, 1878
L. Leland
Clerk

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

To the Sheriff of the County of

Boone

Greeting :

Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the *Bicent* Court of *Boone* County, before the Judge thereof, between *Nathan S. Orton*

plaintiff, and *Ambrose Turner*

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

plaintiff

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 Ottawa, 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

Ambrose Turner

that *he* be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, to hear the records and proceedings aforesaid, and the errors assigned, if *he* - shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said *Ambrose Turner*

notice, together with this writ.

Witness, The Hon. JOHN D. CATON, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this *Seventh* day of *March* in the Year of Our Lord One Thousand Eight Hundred and Fifty-*nine*.

Leland

Clerk of the Supreme Court.

J. B. Rice Deputy

120 1738
Nathan S. Orton

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Ambrose Turner

Sci fa

State of Illinois } ss.
Boone County }

I have served
the within by reading
the same to the within
named Ambrose
Turner this 14th day
March A.D. 1859

Wm. J. Jernison
Sherriff of
Boone County
Ills

Hus

Service	50	
Mileage	40	
ret	10	
	<u>100</u>	\$1.00

Filed March 26. 1859
S. Leland
clerk

IN THE SUPREME COURT

OF THE STATE OF ILLINOIS.

APRIL TERM, 1859.

NATHAN S. ORTON, Plaintiff in Error,

vs.

AMBROSE TURNER, Defendant in Error.

Error to Boone.

ABSTRACT OF RECORD.

1 This suit was commenced before F. B. Hamlin, Justice of the
2 Peace, of Boone County, 22d June, 1858, change of venue to O.
3 H. Wright, J. P. Trial 10th July, 1858. Judgment against
4 Orton, \$41.36. Appeal bond filed 29th July, 1858, to Circuit
Court of Boone County.

5 At the September Term of the Circuit Court of Boone County,
6 Sept. 27, 1858, Plaintiff (below) moves to dismiss appeal for want
of jurisdiction in said Circuit Court, upon the ground that, by the
act of the Legislature, approved Feb. 18, 1857, (1 Scates Stat. 316)
exclusive jurisdiction of Appeals in Boone County is vested in the
County Court of Boone County.

7 On the 29th September, 1858, the Circuit Court sustains said
8 motion, and dismisses the appeal, to which defendant below
excepted.

ASSIGNMENTS OF ERROR.

1st. That the Circuit Court erred in dismissing said appeal, and
refusing to take jurisdiction thereof.

2d. That the Act of 1857, (1 Scates Stat. 316) so far as the
same may be construed to give exclusive jurisdiction to said
County Courts, is contrary to Sec. 8, Art. 5, of the Constitution.

M. M. BOYCE, for
Plaintiff in Error.

Nathan, S. Orton

Abstract

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Ambrose Sumner

Assignee

In Supreme Court

Filed May 3^d 1857

L. Leland

Clerk

Nathan, S. Orton, Plaintiff in Error
vs
Ambrose Turner, Defendant in Error

In the Supreme Court
of the State of Illinois for
the third Grand Division
Term 1858

Error to the Boone Circuit Court
In the Boone Circuit Court

Nathan, S. Orton Plaintiff
vs
Ambrose Turner Appellee

At the September Term 1858

Appeal from a judgment before
a Justice of the Peace in said Boone County

Appeal dismissed upon motion of Appellee &
Judgment for costs ordered by the Court

Costs taxed at \$5.10

To the Clerk of the Supreme Court of the State of
Illinois for the third Grand Division, Ser.

You will
please issue the foregoing writ to the Clerk of the Circuit
Court of Boone County, commanding him to send
up the full record of the above entitled cause in the Boone
County Circuit, for review in the Supreme Court of Illinois
at the next term thereof to be holden at Ottawa in the
third Grand Division

March 2^d 1858

Wm. H. Joyce Attorney
for Plaintiff in Error

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In the Supreme Court of the
State of New York

Nathan S. Porter, Plaintiff in Error
vs
Ambrose Turner Defendant in Error
"

Filed March 2, 1859
L. Deland
clerk

IN THE SUPREME COURT

OF THE STATE OF ILLINOIS.

APRIL TERM, 1859.

NATHAN S. ORTON, Plaintiff in Error, }
vs. }
AMBROSE TURNER, Defendant in Error. }
EXCLUSIVE JURISDICTION TO THIS
COURT TO BOONE.

ABSTRACT OF RECORD.

This suit was commenced before F. B. Hamlin, Justice of the Peace, of Boone County, 22d June, 1858, change of venue to O. H. Wright, J. P. Trial 10th July, 1858. Judgment against Orton, \$41.36. Appeal bond filed 29th July, 1858, to Circuit Court of Boone County.

At the September Term of the Circuit Court of Boone County, Sept. 27, 1858, Plaintiff (below) moves to dismiss appeal for want of jurisdiction in said Circuit Court, upon the ground that, by the act of the Legislature, approved Feb. 18, 1857, (1 Scates Stat. 316) exclusive jurisdiction of Appeals in Boone County is vested in the County Court of Boone County.

On the 29th September, 1858, the Circuit Court sustains said motion, and dismisses the appeal, to which defendant below excepted.

ASSIGNMENTS OF ERROR.

1st. That the Circuit Court erred in dismissing said appeal, and refusing to take jurisdiction thereof.

2d. That the Act of 1857, (1 Scates Stat. 316) so far as the same may be construed to give exclusive jurisdiction to said County Courts, is contrary to Sec. 8, Art. 5, of the Constitution.

M. M. BOYCE, for
Plaintiff in Error.

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In the Supreme Court
of the State of Illinois
Nathan, J. Orton

vs
Ambrose Turner

Abstract of record &
Assignment of Errors

Filed May 8, 1859

Leland
Clerk