

12893

No. _____

Supreme Court of Illinois

Stevenson

vs.

Sherwood

71641  7

John D. Stevenson

vs

Delevan A. Sherwood

Brief Argument

This was an action of assumpsit brought by Appellee vs Appellant on an assigned note.

The Errors assigned are
1st No declaration appears to have ever filed in the case.

There is to be sure in the Record a copy of a declaration, but nothing whatever to show that it was ever filed in this case or in any other, and the record does not show that any declaration was ever filed in this case.

We submit that this Court will not go outside of the record to ascertain what was the actual fact in regard to the filing of said declaration, nor will they presume it to have been filed but in accordance with the rule "That what doth not appear upon the record doth not exist" that this case pre- =

Bruse 27-
m

ly as if no declaration had ever
ever been filed in it - 14. Dec - 58 -

This being so I need no argu-
ment to sustain the position that
it was error in the Court below
to render any judgment in the
Cause - The case would be pre-
cisely like one where there was
nothing except a summons or other
write in the Case. No Court what-
ever would presume in such
a case to render judgment

2- If there had been a declaration
filed in the Case the 3^d Plea which
is a good one was unanswered
and the Court Erred in entering
judgment for the Plaintiff before
disposing of the issue tendered by
the 3^d Plea -

This rule of law is so well estab-
lished by ~~our~~ this Court that I
need only refer to its ~~records~~
decisions -

In Dow & Dow vs Ratelle 12 Dec 373 -
This Court say "The Court (below) without
noticing the plea, rendered judg =

ment against the defendant -

"It was error to enter final judgment for the plaintiff, before disposing of the issue ~~for~~ tendered by the plea" -

And say the same in the Case of *Bell vs Sheldon* 12 Ill. 372 -

Also in 15 Ill. 13 - This Court say "There were several pleas filed upon which no issue was taken, nor was there any disposition made, or notice taken of them, but the parties proceeded to trial upon other pleas & issues. This has been repeatedly held to be erroneous. *Wright vs Wright* 25 Ill. 222 -

Brashaw vs Keddell 4 Ill. 33 -

Steelman vs Watson 5 Ill. 249 -

Wroor vs Little 11 Ill. 549 "

This is precisely the present Case the 3^d Plea was unanswered, no notice was taken of it, but the parties proceeded to trial upon other pleas & issues

Need anything further be said?
Wright 577 - 3 J. J. Marshall 600

10 *Pellonoe* 155 -

Pearl vs Wellman et al 3^d Ill. 326. where the plea was a plea of payment (~~pro~~) in an action of debt

3^d The Affidavits showed good Cause
for a continuance
See Affidavits Abs pages 2 & 3 -

They show the utmost diligence on
the part of the defendant in ^{endeavoring to} obtain
ing the evidence of a witness whose
evidence if obtained would com-
pletely substantiate the Defendants
Pleas. I think a reference to the
affidavits will leave no doubt
in the mind of this Court as to
the sufficiency of the Affidavits

The matter which said affidavits
show, deft expected to prove by said
witness was a complete defence
to the action, the diligence therein
shown was as great as deft was
bound to use and would have
secured the evidence of the wit-
ness but for his sudden and
unexpected removal to an un-
known part of a frontier state -

4th. The Court only found the issue for the Plaintiff -

There was ^{an} issue joined on the first plea and also on the second. And an issue tendered by the third but unanswered - The Record says "Trial by the Court and the issue is found for Plaintiff" what issue? The issue on the first Plea? if so there is no finding on the 2^d & 3^d. If on the 2^d. then there is none on the 1st & 3^d. And until all the issues are disposed of ~~say~~ ^{single} judgment would be erroneous -

Either of those pleas were a perfect answer to the declaration, and unless the issues on each & every one were found for plaintiff he would not be entitled to judgment -

They were not all so found, nor can the Court say which issue was found for plaintiff -

The judgment was therefore error

See authorities above cited

also 2. Salk. 374.

4 Johns 213 -

9th The Court did not find any debt or damages, his verdict was that the issue was found for plaintiff and nothing more -

3 days after But the judgment was rendered for \$76.40 Debt and \$153.80 damages -

How was this debt & this damages ascertained? not by the finding of the Court for the record sets out that finding and ~~it is~~ ~~not~~ then is no determination of the amount of debt or assessment of damages there - The Court in a case tried by it, stand in the place of the jury and if the finding is such an one that if it were the finding of a jury no judgment could be based upon it, it will be equally faulty in this Case -

A special verdict, or finding of a Judge in the nature of a special verdict, when trial by jury is waived, should find all the conclusions of fact so as to leave nothing for further determination except

questions of law -

Sisson vs Barrie

3. Helm 475-

2 Conn 51 406-

4. Texas 38-

B. C. Cook
for appellants

As to the unanswerable plea, I conceive that whether the same evidence might have been given under the plea of the general issue is not the question. The question is has the party by not answering the plea, admitted a defense upon the record, what is not traversed in a pleading is admitted in *Pearl v. Williamson* 3 Helm 326. The court say, "The matter set up in the plea not being denied the defendant was entitled to judgment on it."

In *Weatherford v. Wilson* 2 Seam 256 The court say these pleas were in bar of the ~~action~~ declaration if good barred the action.

The 3^d amended plea in this case if it was good as it clearly was barred the ^{declaration} action and if unanswerable barred the action.

Although it might well be that if a special demurrer had been improperly sustained

to such a plea for the reason that it amounted
to the General issue still the court is satisfied
that all the evidence had been made under
the General issue & no injury had been sus-
tained by deft might refuse to reverse the
decision, this was claimed to be the case
in 20 Ill 570. *Curtis vs Martin*

But that is entirely different from the case
at bar. Here there are two questions
1st does a good plea unanswerable bar the
action.

2^d Is this a good plea

B. L. Cook

249-132
S. Stevenson

Shirwood

Appts. argt.

Filed May 6, 1859
L. Deland
C. M.

SUPREME COURT OF ILLINOIS,

Third Division—April Term, 1859.

JOHN D. STEVENSON, }
 vs. } *Appeal from*
DELEVAN O. SHERWOOD. } *Ogle County Circuit Court.*

2 Suit commenced August 23d, 1854.

No statement that a declaration was ever filed in the case. But a declaration is set out; how it came in the record does not appear, nor when. There is one count only on a note alleged to have been given by the plaintiff to T. Sweet for \$700, with 12 per cent. interest, dated Buffalo Grove, July 16th, 1841, averment of an assignment of the note by Sweet to pl'ff.

1st. Plea of General Issue.

5 2nd Plea, payment to plaintiff.

3d Plea, payment to Sweet, the payee.

6 General replication to 2nd plea.

6 Demurrer to 3d plea sustained, and leave to amend.

7 Amended 3d plea, payment to Sweet, the payee, while he was holder and owner of the note.

To this amended plea there was no replication.

The record does not show how those pleas, or the replication, or demurrer, came into the record, or when; no statement that they were filed in the case.

7 June Term, 1857, defendant moved for a continuance, and in support of his motion read the following affidavits:

Delevan A. Sherwood, }
 vs. }
John D. Stevenson. }

John D. Stevenson, the above defendant, first being duly sworn, on his oath states, that he cannot safely proceed to the trial of said cause, owing to the absence of one William H. Andrews, whose attendance or deposition it is out of the power of this affiant to have or produce at the present term of this Court; that this affiant asks to refer to his affidavit of the last term, and make it a part of this his application for a continuance. And affiant further, upon his oath, states, that immediately after the last term of this Court, (not having been fully advised by said Andrews, or any one else of the name of a proper person to act as Commissioner, for the purpose of taking the deposition of said Andrews,) wrote said Andrews, requesting him to give the name of a proper person to act as Commissioner.

To this letter affiant received an answer from a friend of said Andrews, stating that the said Andrews, a few days before, had left that section for Kansas, stating no particular place or part of Kansas the said Andrews had removed to. That affiant thereupon wrote to the Post Master, and friend of said Andrews, residing in said Spencer, Massachusetts, to learn, if possible, the residence or post office address of said Andrews, in Kansas. That affiant has been unable, up to this time, to learn the whereabouts of the said Andrews. That he has used every consistent means in his power to obtain said knowledge, and has hitherto failed. That affiant knows of no witness by whom he can prove the payment aforesaid, but by said Andrews. And that this application is not made for delay, but that justice may be done, and that he hopes to be able to procure the attendance of said witness or his deposition, at next term of this Court.

[Signed,]

J. D. STEVENSON.

Subscribed and sworn to before me this 2nd day of June, A. D., 1857.

[Signed,]

H. A. MIX,

Notary Public.

STATE OF ILLINOIS—OGLE COUNTY, SS.

Circuit Court of said County, October Term, A. D., 1856.

Delevan A. Sherwood, }
vs.
 J. D. Stevenson. }

John D. Stevenson, the above defendant in this suit, first being duly sworn, on this oath, deposes and says, that he cannot safely proceed to trial of the above cause, at this term of Court, owing to the absence of William H. Andrews, whose attendance or deposition it is out of the power of this defendant to have at this term of Court. That this affiant expects to be able to prove by the said Andrews, that the note on which the above action has been brought, has been fully paid and satisfied by this affiant.-- That from the time of the commencement of this suit up to the present time, this affiant has made use of the utmost vigilance to learn the residence of the said Andrews. That said Andrews, some years since, did live in the vicinity of Davenport, Iowa, which was the last knowledge this affiant had of him at the commencement of this suit. That after the commencement of this suit, he wrote to an acquaintance at Davenport, and to other places in the vicinity. That he was advised by answer he received, that said Andrews had removed to the western part of Iowa, but what particular place this affiant could not learn. This affiant further states that after the September term of this Court, 1855, affiant was advised by one Daniel Higley, who was a connection of said Andrews, that the said Andrews was still somewhere in the western part of Iowa, and that said Higley was a brother-in-law, residing in Iowa, from whom he could learn the residence of the said Andrews. At some time afterwards said Higley advised this affiant that he had heard from his brother-in-law, who advised him that said Andrews has removed to the State of New York, but what place said Higley was unable to advise affiant; and from that time to the present, affiant has used the utmost diligence, by inquiry and writing, to learn the residence or whereabouts of the said Andrews, none of which proved favorable; and that affiant had despaired of learning the residence of said Andrews, when a son of said Andrews, a young man of some 18
 11 years of age, came to the residence of affiant, some three weeks since, and advised him that his father, the said William H. Andrews, now resides in the town of Spencer, in the State of Massachusetts; that thereupon affiant wrote to said Andrews in regard to the matter of the payment of said note, and also to get from said Andrews the name of a suita-

ble person to act as Commissioner; and that within the last three days, this affiant has received a letter from said Andrews, but that he has been unable to procure his deposition at the present term of Court; but that affiant will be enabled to procure it before the next term of this Court; that this application is not made for delay, but that justice may be done; and that said Andrews is the only witness within the knowledge of this affiant, by whom the payment of said note could be proved.

(Signed)

J. D. STEVENSON.

Subscribed and sworn to before me on this 6th day of October, 1856.

(Signed)

H. A. MIX, Notary Public.

11. The court overruled the motion and defendant excepted.
12. June 10th, 1857, trial by the court and the ISSUE is found for plaintiff, whereupon defendant enters his motion in arrest of judgment, and for a new trial.
13. June 13, 1857, motion for new trial overruled. Motion in arrest of judgment overruled. Exception by deft.
Judgment rendered for \$76.40, debt, and \$153.80, damages and costs. Defendant appeals.

ERRORS ASSIGNED:

- 1st. First. The court erred in trying the case with the 3d plea unanswered.
- Second. The court erred in overruling motion for continuance.
- Third. The court erred in rendering the judgment aforesaid.

B. C. COOK,

Attorney for Appellant.

POINTS AND AUTHORITIES

There does not appear to have been any declaration filed before the trial in the case.

2d. If there was, the 3d plea, which is a good one, was unanswered.

3d. The affidavits showed good cause for a continuance.

4th. The court only found the issue for plaintiff. There were other issues undisposed of.

5th. The court did not find any debt or damages; his verdict was that the issue was found for plaintiff.

B. C. COOK.

12 Ill 372

15 " 13

2 Scam 222

4 " 53

5 Gilman 249

11 Ill 549

The plea should have been answered

I guess it should have been continued

The finding was only for the plaintiff. That was the end of the trial & the finding. The rest was a question of law

240-722

John D. Stevenson

vs

Debra O. Sherman

at test.

Filed April 21, 1859

L. Leland

Clerk

1 Pleas in the Circuit Court of Ogle County
Illinois in a certain cause now pending in said
Court wherein Melvan A Sherwood is Plaintiff
and John W Stevenson is Defendant.

Præcipe State of Illinois } In the Circuit Court of said
Ogle County } County of the September Term Ad 1854
Melvan A Sherwood }

vs
John W Stevenson
R B. Light Esq Clerk of said Court Sir, Please
issue summons in the above entitled cause returnable
at said Term in an action of Debt, Debt of 700. & Dam-
ages \$200. Yours &c Miles B. Light Plffs Attg
Filed Aug 22. 1854.

Security for
Costs. (Signed) R B. Light Clerk.

State of Illinois. Ogle County fs.
Ogle Circuit Court of the Sept Term Ad 1854.
Melvan A Sherwood }
vs
John W Stevenson }

I do hereby enter my-
self security for costs in this cause and acknow-
ledge myself bound to pay or cause to be paid
all costs which may accrue in this action either
to the opposite party or to any of the officers
of this Court in pursuance of the laws of this
State. Dated this 22nd day of August A.D. 1854
(Signed) Miles B. Light.
Filed Aug 22 1854
(Signed) R B. Light Clerk

State of Illinois

Ogle County

The People of the State of Illinois
To the Sheriff of said County. Greeting
We command you to summon John D. Stevenson
if he shall be found in your county personally to be
and appear before our Circuit Court of said County on
the first day of the ^{next} term thereof to be begun and hold-
den at the Court-house in Oregon on the first Monday
in the month of September next to answer & plead
& Sherwood in a plea of debt of seven hundred dol-
lars (\$700.) damages two hundred dollars (\$200.) and
have you then there this writ with an endorsement
thereon of the manner in which you may execute the
same

Due

Witness B B Light Clerk of our said
Court and the seal thereof the 2nd
day of August A.D. 1854

(Signed)

B B Light Clerk -

deputy of the
above -

delivered the within in the within named John
Stevenson this 2nd day of August 1854 by reading
the same in his presence and hearing.

(Signed)

Edw. Baker Sheriff of Ogle Co.
By E B Tyler Deputy -

Declaration

State of Illinois

Ogle County

In the Circuit Court of said County
Of the September Term A.D. 1854 -

Ogle County to wit. Dr. Levan & Sherwood Plaintiffs
in this suit vs. Miles B Light his attorney Complainant
of John D Stevenson Defendant in this suit who
has been summoned to answer the said Plaintiff
of a plea that he owes unto the said Plaintiff
the sum of seven hundred dollars lawfull money
of the United States which he owes to and unjustly

detainees from him

For that the said defendant by the name and style of J. A. Stevenson here to fore to wit on the sixteenth day of July in the year of our Lord one thousand eight hundred and forty one at Buffalo Grove to wit at said Ogle County made his certain promissory note in writing bearing date a certain day and year therein mentioned to wit the day and year afore said and thereby then and there promised to pay twelve months after the date thereof to one F. Sweet or order the sum of seven hundred dollars for value received with interest at the rate of twelve per centum per annum and then and there delivered the said promissory note to the said F. Sweet

And the said F. Sweet to whom or to whose order the payment of the said sum of money in the said promissory note specified was to be made to wit on the day and year afore said after the making of the said promissory note at Ogle County afore said indorsed the said ^{promissory} note under his hand to the said Plaintiff by which said indorsement the said F. Sweet then and there ordered and appointed the said sum of money in said promissory note mentioned to be paid to the said Plaintiff and then and there delivered the said promissory note so indorsed as afore said to the said Plaintiff of all which the said defendant ^{then and there} had due notice to wit at said Ogle County by means whereof and by force of the statute in such case made and provided the said defendant then and there became liable to pay unto the said Plaintiff the said sum of money in the said promissory note

specified and interest thereon according to the effect of said note and the said Plaintiff avers and faiths the said period of twelve months mentioned in said promissory note has long since elapsed and said promissory note is now & long since due and payable.

Yet the said Plaintiff in fact saith that the said Defendant although often requested so to do did not nor would pay the said sum of seven hundred dollars in the said note specified or any part thereof to the said Plaintiff but hath hitherto wholly neglected and refused so to do whereby an action hath accrued to the said Plaintiff to demand and have of and from the said Defendant the said sum of seven hundred dollars in said note specified & the said sum above demanded. And the said Plaintiff saith that he hath sustained damages because as afore said in the sum of five hundred dollars and thereupon he brings suit by -

(Signed)

Miles B. Sigart is attorney

Copy of note upon which this suit is brought & endorsed.

Buffalo Grove July 16 1841

"Twelve month after date I promise to pay to the order of F Sweet seven hundred dollars for value received twelve per cent interest"

(Signed)

J. D. Stevenson

Endorsed

Pay to the Bearer

Filed Aug 25 1854

(Signed) F Sweet

(Signed) R B Sigart

(Signed)

Miles B. Sigart Plff's atty.

6
Pleas.

State of Illinois Circuit Court of said County
Ogle County May Term 1858

Derevan A Sherwood
vs
John A Sternum

And the said defendant comes and defends, and says he is not indebted to the Plaintiff in manner and in form as the Plaintiff hath above declared against him - and of this he puts himself upon the Country and the Plaintiff doth the like by Miles Beggs his atty

And for a further plea in this behalf the defendant says actio non because he says that heretofore to wit on the 1st day of Jan'y 1854 at said County fully paid to the Plaintiff and satisfied to the Plaintiff the several causes of action in the Plaintiffs declaration mentioned and this he is ready to verify.

And for a further plea says actio non because he says that heretofore to wit on the 1st day of January A.D 1844 at said County the defendant fully paid unto said F Sweet the payee of said note all causes of actions in said Plaintiffs declaration mentioned and this he is ready to verify wherefore he prays judgment.

(Signed)

H A Mix for Plff

Filed May 13 1858
(Signed) B B Beggs clerk

Application of William A. Sherwood
vs
John H. Stevenson

And The said Plaintiff
by Miles B. Dight his attorney comes and
to the second plea of the defendant herein says
precludit non. because he says that the said de-
fendant did not pay any satisfaction to the said Plain-
tiff the cause of action in Plaintiff's declaration
set forth as the defendant in said second plea
thinks thereof alleged and of this he puts him-
self upon the country

And the defendant doth the
like

It is the order of the court

And The said Plaintiff by Miles B.
Dight his attorney comes and says as to the third
plea of the defendant herein that the same is
not sufficient in law.

Filed May 13 1858. M. B. Dight Plff Atty

(Signed) B. B. Dight Clerk

June Term A D 1857

William A. Sherwood

Order of
Court.

as
John H. Stevenson

Deft.

Now on this day this
cause came on to be heard upon the demurrer
put in by the Plaintiff to the defendant's third
plea herein, and it was argued by counsel
in consideration whereof the Court held the
said demurrer to be sufficient whereupon on motion
of the said defendant the defendant has liberty
to amend his said plea

Amended
3rd Plea

State of Illinois Circuit Court of said County
Ogle County June Term A.D. 1857.

Delevan A. Sherwood

vs
John W. Stevenson

And for a further Plea
says & avers that because he says that here before
to wit on the 1st day of January A.D. 1844 at said
County, and while said payer was holder of said
note and after the maturity of said note the
defendant fully paid unto said F. Sweet the payer
of said note all causes of actions in said Plaintiff's
declaration mentioned and this he is ready to verify
wherefore he prays judgment.

(Signed) H. A. Mix for Plff

Filed June 2^d 1857 ^{for or Smith} R. B. English clk

Order of Court.

June Term June 3rd 1857
Delevan A. Sherwood

vs
John W. Stevenson

Now on this day came the
defendant by Mix his attorney and enters his
motion for a continuance of this cause, which
motion after argument of counsel and being
considered by the Court is over ruled.

Bill of
Exceptions

Delevan A. Sherwood

vs
John W. Stevenson

Be it remembered that
on this 2^d day of June and of the said June
Term of said Court came the defendant by his

8
attorney and the Plaintiff by his attorney and the
motion for a continuance in this cause coming on
for final hearing, and on the hearing of said mo-
tion, the defendant reads his affidavit to which
affidavits are in the words and figures following
to wit:

State of Illinois
Ogle County
Vernit Court of said County
June Term 1857.

Affidavit for
Continuance
June Term - John A. Sherwood
vs
John A. Stevens

John A. Stevens the
above defendant first being duly sworn on his oath
states that he cannot safely proceed to the trial of
said cause owing to the absence of one William
A. Andrews whose attendance or deposition is in
out of the power of this affiant to have or produce at
the present term of this court. That this affiant ask
to refer to his affidavit of the last term and make
it a part of this his application for a continuance.

and affiant further upon his oath states that im-
mediately after the last term of this court (not
having been fully advised by said Andrews or any
one else of the name of a proper person to act as
commissioner for the purpose of taking the de-
position of said Andrews) wrote said Andrews
requesting him to give the name of a proper person
to act as commissioner. To this letter affiant re-
ceived an answer from a friend of said Andrews
stating that the said Andrews a few days before
had left that section for Kansas, stating no
particular place or part of Kansas the said An-
drews had removed to. That affiant thereupon

9 wrote to the Post Master and friend of said
Andrews residing in said Spencer Massachu-
setts. to learn if possible the residence or post
office address of said Andrews in Kansas.
That affiant has been unable up to this time
to learn the whereabouts of the said Andrews in
Kansas: That he has used every convenient means
in his power to obtain said knowledge but has
heretofore failed: That affiant knows of no witness
by whom he can prove the payment afore said but
by said Andrews, and that this application
is not made for delay but that justice may be
done & that he hopes to be able to procure the
attendance of said witness or his deposition at
next term of this Court. (Signed)

Subscribed & sworn to J. J. & Steven son
before me this 8th
day of June A.D. 1857
(Signed) H. A. Mix
Notary Public

Affidavit State of Illinois } as Circuit Court of said County
returned in the Oyle County }
foregoing and }
at the October & Levam & Sherwood }
as }
John & Steven son }

John & Steven son the
above defendant in this suit first being duly
sworn in this oath deposes and says that he
cannot safely proceed to trial of the above cause
at this term of Court owing to the absence of
William H. Andrews whose attendance or deposi-

it is out of the power of this defendant to have
 at this term of Court: That this affiant expects
 to be able to prove by the said Andrews that the
 note in which the above action has been brought has
 been fully paid and satisfied by this affiant. That
 from the time of the commencement of this suit up
 to the present time this affiant has made use
 of the utmost diligence to learn the residence
 of the said Andrews that said Andrews some
 years since did live in the vicinity of Davenport
 Iowa which was the last knowledge this affiant
 had of him at the commencement of this suit.
 That after the commencement of this suit he
 wrote to an acquaintance at Davenport, and
 to other places in the vicinity that he was ad-
 vised by answer he received that said Andrews
 had removed to the Western part of Iowa but
 what particular place this affiant could not learn.
 This affiant further states that after the September
 term of this Court 1855, affiant was advised by
 one Wm Higley who was a connection of said Andrews
 that he said Andrews was still some where in the
 Western part of Iowa, and that said Higley had a
 brother in law residing in Iowa from whom he
 could learn the residence of the said Andrews
 at some time afterwards said Higley advised
 this affiant that he had heard from his brother-
 in law, who advised him that said Andrews
 has removed to the State of New York but what
 place said Higley was unable to advise affiant
 and from that time to the present affiant has
 used the utmost diligence by inquiry and
 writing to learn the residence or whereabouts
 of the said Andrews none of which proved favorable

11 ~~and~~ that affiant had despaired of learning
the residence of said Andrews, when a son of
said Andrews a young man of some 18 years of
age came to the residence of affiant some three
weeks since and advised him that his father
the said William H. Andrews now resides in the
town of Spencer in the state of Massachusetts,
that thereupon affiant wrote to said Andrews
in regard to the matter of the payment of said
note, and also to get from said Andrews the name
of a suitable person to act as commissioner, and
that within the last three days this affiant has
received a letter from said Andrews, but that he
has been unable to procure his deposition at the
present term of court; but that affiant will be
enabled to procure it before the next term of
this court; that this application is not made
for delay but that justice may be done and
that said Andrews is the only witness within
the knowledge of this affiant by whom the
payment of said note could be proved.
Subscribed & sworn to ^(signed) J. H. Stevenson
before me on this 6th
day of October 1856
(signed) A. A. Mix
Notary Public

And the court being fully advised
in the premises overrules said motion. To
which ruling of the court in overruling said
motion the defendant excepts, and prays
that his bill of exceptions may be
signed and sealed by the judge and made
a part of the record of this cause in

purvance of the statute in an en made and provided, which is accordingly is done

(Signed)

John V. Justice
Judge

Bill of Exceptions filed June 11 1857

Deleau A. Sherwood

vs

John W. Stevenson

Mr W Smith

clerk

Debt June Term

June 10 1857

Now again come the parties hereto and this cause coming on for trial a jury being waived by the parties hereto the evidence is heard by the Court and the case found for the Plaintiff whereupon the defendant moves the Court ~~in~~ ^{for} arrest of judgment and for new trial herein.

Deleau A. Sherwood

vs

John W. Stevenson

Debt June Term

June 13th

Now on this day come the said Plaintiff by sight his attorney and the defendant by sight his attorney and after argument by counsel and the Court being fully advised of the premises the defendant's motion in arrest of judgment and for a new trial are overruled and it is considered by the Court that the said Plaintiff have and recover of the said defendant the sum of twenty six dollars and forty cents debt and one hundred and fifty three dollars and eighty cents damages together with his costs of suit in this behalf expended and that he have execution therefor.

Order of William A. Sherwood of
Court vs. John A. Stevenson
West June 13 1857

And again on this day comes the parties here to by their attorneys and the defendant prays an appeal of this cause to the supreme court and it is ordered by the court that the defendants have an appeal as aforesaid on filing a bond conditioned according to the form of the statute in such case made and provided in the sum of Five hundred dollars within thirty days with Leicester H. Williams or Thomas H. McClure or Henry A. Mix as surety.

Appeal.
Bond.

Know all men by these presents that we John A. Stevenson and Thomas A. McClure are held and firmly bound unto William A. Sherwood in the penal sum of Five Hundred dollars for the payment of which well and truly to be made we bind ourselves our heirs executors administrators and assigns jointly severally and jointly by these presents. Witness our hands and seals this 8th day of June A.D. 1857.

The condition of the above obligation is such that whereas the above named William A. Sherwood at the June Term of the Circuit Court of Ogle County Illinois, at the term of said court begun and holden at Oregon in said county on the first day of June A.D. 1857

and on the thirteenth day of said June did recover a judgment against the above defendant John D Stevenson in an action of debt for the sum of twenty six dollars and forty cents debt and one hundred and fifty three dollars and eighty cents damages and costs of suit from which judgment the said Stevenson prayed an appeal to the Supreme Court of this state for the Northern or third division thereof. Now if the said John D Stevenson shall well and truly pay whatever judgment costs, interests and damages shall be rendered in said Supreme Court, in case the judgment shall be affirmed. and shall also well and truly prosecute his said appeal then this obligation to be void otherwise to remain in full force and virtue

(Signed)

J D Stevenson
J H McClure



Filed July 14, 1857

(Signed)

M W Smith Clerk

State of Illinois

Cogle County ss J. Mortimer Smith Clerk of the Circuit

Court in and for said County do hereby certify that the foregoing is a full true and perfect transcript of the record and proceedings had in the above entitled cause as appears to me from the Records and files of my office

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at Oregon in said County this 16th day of March 1858 Mortimer Smith Clerk

Fee for Manuscript \$5.00
McMurry Clerk

And now

Delevan A. Sherwood
240 m 122

John D. Stevens
appet

Transcript

Filed April 20. 1859
L. Leland
Clerk

Cash p. 5. to
Rice -