

No. 8850

Supreme Court of Illinois

James M.& Harvey T.Pace

vs.

People, for use

1
State of Illinois 3^{es}
Jefferson County 3

Pleas and proceedings had
in the Circuit Court in and
for the County of Jefferson, and
State of Illinois in a certain
suit heretofore pending in said
Court, wherein The People of
the State of Illinois, for the
use of Trustees of Schools,
Township Four South of Range
Two East of the 3rd P.M. were
Plaintiffs, and James M. Pace
and Harvey J. Pace were
Defendants.

Be it remembered, that on the 18th day of
January, in the year of our Lord, one thousand
Eight hundred and sixty seven, the above named
Plaintiffs filed in the office of the clerk of the
Circuit Court, of said County, their amended
declaration,

Which said Amended Declaration is
in the words and figures following to-wit:

State of Illinois In the Jefferson
 Jefferson County 8th Circuit Court
 March Term A.D. 1867

The people of the State of Illinois
 who are for the use of the Trustees
 of Schools of Township (No 4) No Four
 Sixth of Range (No 2) Two East of
 the third principal Meridian in the
 County of Jefferson and State of Illinois
 Plaintiffs by leave of the Court first
 had and obtained by Frank M. Young-
 blood their Attorney Complain of
 James M. Paccard and Harvey T. Pace
 Defendants of a Plea that they under
 to the Plaintiffs for the use aforesaid
 the sum of twelve thousand Dollars
 (\$12000) whereupon the said Plaintiffs
 Complain of said defendants in a
 Plea of Debt for that whereas heretofore
 to-wit: - On the 7th Day of December A.D.
 1863 - to-wit at Jefferson County aforesaid
 by their certain writing obligatory com-
 monly called an official bond sealed
 with their seals, and ^{now} to the Court here
 shown the date whereof is the day and
 year aforesaid acknowledged them-
 selves held and firmly bound jointly and
 severally unto the people of the State

of Illinois in the penal sum of Twelve thousand dollars for the payment of which said defendants thereby bound themselves their heirs executors and administrators firmly which said writing obligatory was and is subject to a certain condition thereunder written whereby is recited the following.

The condition of the above obligation is such that if the above bounden James M. Pace School Commissioner of the County aforesaid shall faithfully discharge all the duties of said Office according to the laws which now are or may hereafter be in force and shall deliver over to his successor in office all moneys books papers and property in his hands as such School Commissioner then this obligation to be void otherwise to remain in full force and virtue.

And which said writing obligatory with the conditions aforesaid thereunder written was then and there received by the said people of the State of Illinois as the official bond of the said James M. Pace as School Commissioner of the County of Jefferson aforesaid.

with the said Harvey T. Pace as his
Surety in the premises.

And afterwards to-wit- on the 26th
day of December A.D. 1863 said writing
obligatory was approved by the County
Court of said Jefferson County as the
official bond of the said James
M. Pace as School Commissioner as
aforesaid and thereupon the said
James M. Pace took it upon himself
to discharge the duties of and was
then and there School Commissioner
of said County and so continued to
be School Commissioner of said
County until the expiration of two
years therefrom and until his succep-
sor was duly elected and qualified
and until after the misconduct of the
said James M. Pace as School Com-
missioner of said County herein after com-
plained of

And Plaintiffs aver that by reason
of the death of Henry B. Mapey
County Superintendent elect under the
act of the Legislature amending the
School Law approved February 16th A.D.
1865 - in and for the said County of
Jefferson and State of Illinois
before filling his Official Bond

as such County Superintendent the said James M Pace thereby holds over and is still the acting School Commissioner of said County of Jefferson.

Yet the said plaintiffs in fact say that the said James M. Pace did not faithfully discharge all the duties required of him as School Commissioner of said County of Jefferson according to ^{the conditions of} said writing obligatory but during the time he was acting and filling the office of School Commissioner as aforesaid wholly neglected and refused so to do for that whereas heretofore to-wit on the first day of April in the year of our Lord One Thousand Eight Hundred and Sixty-six at the County aforesaid the said James M Pace was then and there still the acting School Commissioner of said Jefferson County and as such School Commissioner there came to his hands for the use of Trustees of School of Township Four South Range No 2 East in said County of Jefferson the sum of Four Hundred and Nine Dollars and ten Cents \$409.10 and as such School Commissioner

4 it was then and there the duty of the said James M Pace School Commissioner as aforesaid to pay said sum of money to the Township Treasurer of said Township Four South of Range No 2 East or to some person authorized to receive the same by the said Trustees of Schools upon the demand of the said Township Treasurer or such other authorized person.

And Plaintiffs aver that the Township Treasurer of Township Four South of Range 2 East on or about the tenth day of April A.D. 1866 demanded of the said James M Pace School Commissioner as aforesaid for the use of the Trustees of Schools aforesaid the said sum of Four Hundred and Nine Dollars and Ten Cents \$409.10 Yet the said James M Pace continuing to be School Commissioner as aforesaid has continually neglected from the time the said money came into his hands and from the date of said demand as aforesaid and has ever since neglected and wilfully omitted to pay over said sum of Four Hundred and Nine Dollars and Ten Cents \$409.10 to the said Township Treasurer

or to any other authorized person
by reason whereof the said Trustees
of Township Four South of Range
2 East have been deprived of the
benefit of the said sum of Four Hun-
dred and Nine Dollars and Nine Cents
\$409.10 aforesaid by the said James M Pace
School Commissioner as aforesaid nor
have the said Trustees Township
Treasurer or any person authorized
by them to receive the same ever re-
ceived any part thereof from the said
James M Pace as School Commissioner
as aforesaid

And for that whereas heretofore to wit
on the first day of June A.D. 1866 the
said James M Pace was then
acting as School Commissioner of
said Jefferson County and
Plaintiffs aver that it was then and
there the duty of the said James M.
Pace School Commissioner as
aforesaid on receipt of the State
and Township Funds from the Col-
lector of said County due said
Township Four South of Range 2 East on
the Auditors warrant to pay over to the
Treasurer of said Township Four South

5-

of Two East or other authorized person.
And the said Plaintiffs further
aver that the said James M Pace
School Commissioner as aforesaid
did receive prior to the first day of
June aforesaid from C. G. Vaughan
Collector of said Jefferson County the
amount of State and Township Fund
due said Township Four South of Range
Two East

And plaintiffs further aver that
said State and Township Fund due
said Township Four received by the
said James M Pace aforesaid
amount to the sum of Four Hundred
and Nine Dollars and Ten Cents \$409.10
Yet the said James M Pace continuing
to be School Commissioner as aforesaid
during all the time since the reception
of the said amount of State and
Township Fund due said Township
Four South of Range Two
East has continually neglected
from that time until the present
and wilfully omitted to pay the
same over to the Township Treasurer
of Township Four South of Range
Two East or to any person authorized
by him to receive the same.

And so the said Plaintiffs in fact say that the said James M. Pace did not faithfully discharge all the duties required of him by Law as School Commissioner of the County of Jefferson as aforesaid and that the Trustees of Schools of Township Four South of Range Two East in the said County of Jefferson have been injured by the neglect and misconduct of the said James M. Pace School Commissioner as aforesaid and by reason of the non-performance by him the said James M. Pace of his duties in that behalf, whereby an action hath accrued to the people of the State of Illinois to demand and have of and from the defendants herein, the said sum of Twelve Thousand Dollars (\$12000.) for the use of the said Trustees of Schools of Township Four South of Range Two East.

Yet the said Defendants have not or either of them paid the same or any part thereof to the said Township Treasurer of Township Four South of

6

Ranger Tins East, nor to any person
authorized by him to receive the same
although often requested to do by
the said Township Treasurer to the
damage of the said Plaintiffs of
Twelve Thousand Dollars (\$12000) and
therefore they bring this suit

F. M. Youngblood
Atty for Plaintiffs

Copy of Bond sued on

Know all men by these presents; that
we James McPace and Harvey T. Pace
are held and firmly bound jointly
and severally unto the People of the State of
Illinois in the penal sum of Twelve Thous-
and Dollars, for the payment of which we
bind ourselves our heirs executors and
administrators finally by these presents in
Witness we have ^{hereby} hereunto our
hands and seals this 7th day of Dec
A.D. 1863.

The Condition of the above obligation
is such that if the above bounden
James McPace School Commissioner
of the County of ^{forever} shall faithfully
discharge all the duties of said Office

According to the Laws which now
are or may hereafter be in force and shall
deliver over to his successor in office
all moneys, books, papers and property
in his hands as such School Commis-
sioner, then this obligation to be void
otherwise to remain in full force
and virtue

Jaines M. Pace 
H. T. Pace 

Filed January 18, 1867.

J S Bogan Clerk
By J W Broughton D.C.

7

And afterwards, to-wit on the 6th day of March A.D. 1867, the said Defendants, filed in the office of the said Clerk, their General Demurrer, to said Plaintiffs' Amended Declaration, which said Demurrer, is in the words and figures following, to-wit:

State of Illinois } Circuit Court
Jefferson County } March Term 1867.

The People &c. use of
Trustee Schools &c

Debt.

James M. Pace &
Harvey J. Pace

Demurrer.

And the said Defendants by C. H. Patton their Atty comes and defends the wrong & injury when &c. and says the said Declaration and the matters therein contained in manner & form as therein set forth, are not sufficient in Law for the said Plff to have and maintain their aforesaid action thereof against them, and they the said Defts are not Bound to answer the same & this they are ready to verify. Wherefore he prays Judgment &c.

by
C. H. Patton

their Atty

Filed March 6, 1867. J. S. Bogan clerk by J. T. Pranght &c.
And afterwards, to-wit, at the said March Term, of said Court, the said Defendants filed their Plea, which is in the words and figures following, to-wit

8 State of Illinois Circuit Court
Jefferson County 3 March Term 1867.

The People of the State &
Trustees of Schools
of T. H. S. R. & C. & P. M.

vs

James M. Pace and
Harvey T. Pace

Debt

And the said
1st Plea Defts by C. W. Patton their atty comes
and defends the wrong & Injury
when & he said says that he does
not owe the said sum of money
above demanded or any part
thereof in manner and form
as the said Plff hath above thereof
complained of them and of this the
said Defts put themselves upon
the Country &c

And the Plaintiffs

doth the like

Farmer & Leary

and Youngblood for

Pleffs

by C. W. Patton
his atty.

2nd Plea

And for further plea in this behalf the said defendants say that they said Plffs ought not to have or maintain their aforesaid action thereof against them because he says it became and was by law the duty of the Trustees of said Township to prepare or cause to be prepared by the Township Treasurer the Clerk of the board or other person and forwarded to the said School Commissioner, on or before the second Monday of October preceding the Regular Session of the General Assembly of said State and at such other times as may be required by the School Commissioner or State Superintendent of Public instruction, a statement exhibiting the condition of Schools in their Township for the preceding Biennial period (the terms of which statement will more fully appear by reference to the Statute) and that in default thereof the said Trustees & Plaintiffs should forfeit their right to demand and receive from & of the said School Commissioner their portion of the public funds

for the next ensuing year.

And depts aver that the said Trustees, Township Treasurer Clerk of the Board or other person whose duty it was to return said Statement as aforesaid to the party aforesaid, did make default thereof and did fail and neglect to forward said statement to the said School Commissioner in the time and manner required by law by reason whereof they then and there forfeited their right to demand and receive from depts, as School Commissioner that portion of the public funds for the ensuing year ~~to~~ ~~the~~ ~~year~~ ~~that~~ ~~the~~ as averred in said declaration to have been demanded and depts aver that the said sum of four hundred and nine dollars and ten Cents in said declaration avers to have been advanced by said Treasurer from said School Commissioner in the month of April 1866 was the sum which would have been due said Trustees & Co from said depts for said year from said public funds but for their own failure

neglect and forfeiture aforesaid
 And this the said Defendants are
 ready to verify wherefore they pray
 Judgment if the said Plff his
 action aforesaid thereof against
 them ought to have or maintain

By C. M. Patton

Atty for Defts.

Filed March 8, 1867.

J. S. Bogan Clerk

By J. M. Braugh A.C.

And afterwards to-wit on the 8th day of March, 1867,
 the said Plaintiffs file their Demurrer to the second
 plea, which said Demurrer, is in words and
 figures following to-wit:

The People of the State of
 Illinois for the use of the Trustees
 of Schools, of S4 R 21 E.

vs

James M. Pace and
 Harvey S. Pace

Jefferson Circuit Court,

A.D. 1867.

Debt.

And the said Plaintiffs come
 and say that the Plea of the defendants secondly by
 them above pleaded is not sufficient in law wherefore they pray
 Judgment &c.

J. M. Youngblood Atty for
 Plffs

Filed March 8, 1867. J. S. Bogan Clerk. By J. M. Braugh A.C.

And afterwards, to-wit at the said March term of said Court,
 the said Defendants present their amended 2nd plea, which

11

is in the words and figures following, to wit:
2nd Plea ^{amended plea.} and for further plea in this behalf
the said Defendants say that the
said Plffs right not to have or
maintain their oforsaid action
thereof against them because he
says that it became and was by law
the duty of the Trustees of said Township
to prepare, or cause to be prepared by the
Township Treasurer, the Clerk of the
Board, or other person, and forwarded
to the said School Commissioner, on
or before the second Monday of October
preceding the Regular Session of the
General Assembly of said State and
at such other times as may be required
by the School Commissioner or State Super-
intendent of Public instruction, a state-
ment exhibiting the condition of schools
in their Township for the preceding Bi-
ennial period (the terms of which
statement will more fully appear
by reference to the Statute) and that
in default thereof the said Trustees &
Plffs should forfeit their right to
demand and receive from said, the
said School Commissioner, their por-
tion of the public funds for the next
ensuing year.

12

And Deft aver that the said Trustees, Township Treasurer Clerk of the Board or other person whose duty it was to return said statements as aforesaid to the party aforesaid - did make default thereof and did fail and neglect to forward said statement to the said School Commissioner in the time and manner required by law and by the requirement of the State Superintendent of Public Instruction - And Deft aver that such Reports as aforesaid have been required to be made in or before the 2nd Monday of October annually by the said State superintendent for the period of six years before the bringing of this suit by Plffs and that such Reports in the time and manner aforesaid have not been made to Deft as such School Commissioner whereby Deft was forbidden by Law to pay the said sum above demanded and by reason whereof they then and there forfeited their right to demand and receive from Deft as School Commissioner their portion of the public

funds for the ensuing year as
avered in said declaration to have
been demanded.

And depts aver that the said
sum of Four Hundred and nine
dollars and ten cents in said dec-
laration avered to have been demanded
by said Treasurer from said School
Commissioner in the month of April
1866 was the sum which would have
been due to said Trustees & from
said depts for said year from said
Public funds but for their own,
failure neglect, and forfeiture
aforesaid

And this they the said
Defendants are ready to verify
wherefore they pray judgment if the
said Plff his action aforesaid
thereof against them ought to have
or maintain.

by C. W. Patton
attly for depts.

And afterwards to wit at the said March term of
said Court, the said Defendants file their 3rd
Plea, which is in the words and figures following
to wit:

The People of the State
 of Illinois, use of Trustees } March Term
 of Schools of Town 4. } 1867 Jefferson
 S. B. D. C. } Circuit Court,
 v. S. }

James M. Pace and } Deft.
 Henry J. Pace }

3^d Plea. And for further Plea
 in this behalf Defendants say that
 Plffs ought not to have or maintain
 their aforesaid action against them
 because they say, that at the time
 the funds belonging, or to belong to the
 said Township, when apportioned by
 Deft. James M. Pace as School
 Commissioners of said County as aforesaid
 came to the hands of said James M.
 Pace and from that time to the bringing
 of this Suit the Township Treasurer
 of said Township had no good and
 sufficient Bond as such Treasurer
 of said Township on file in the office
 of the Deft. as School Commissioners
 of said County, as is and was required
 by Law. By reason Whereof Defts aver
 that the said Treasurer had no
 authority to demand or receive from
 said School Commissioners the said
 sum of money, in said Declaration

averred to have been demanded,
 And further that said Plffs, nor
 any other person for them, properly
 authorized, have ever demanded the
 funds in said Declaration mentioned
 or any part thereof from the time it is
 by said Declaration averred, the said
 funds came to the hands of Deft,
 James M. Pace to the time of the
 bringing of this suit, and so the Defts
 say that the said James M. Pace,
 as School Commissioner as aforesaid,
 was not bound by law to pay the
 same in manner and form as alleged
 in said Declaration and this they
 are ready to verify. Wherefore they
 pray judgment, if said Plffs ought to
 have or maintain their said action
 against them.

By

C. H. Patton

Atty. for Defts

Filed March 12, 1867 J. & P. Bogan Clerks

By J. M. Prange D.C.

And afterwards to wit at the said March term of
 said Court, the said Plaintiffs filed their Demurrer
 to said 3rd Plea, which is in the words and
 figures following to wit

March Term
Jefferson Circuit Court
A. D. 1867

The People &c for the
use of Trustees of Schools
T. 4 S. R. 2. E.
vs.
James M. Pace
Harvey T. Pace

Deft.

and the said
Plaintiffs, by Youngblood, their Atty.,
come and defend the wrong and
injury, when &c. and say that the
3rd Plea by the Deft. alone pleaded
is not sufficient in law, and this
they are ready to verify, &c.

Youngblood, &

Tanner & Casey, attys.
for Deft.

Filed March 12, 1867. J. S. Bogart Clerk.

By J. M. Baugh, D.C.

And afterwards to-wit at the said Term of said Court,
the said Plaintiffs filed their Demurrer to second
plea as amended, which is in the words and
figures following to-wit:

17

State of Illinois } March Term Jefferson
County of Jefferson } Circuit Court, A.D. 1867

The People of the State of Illinois }
to the use of the Trustees of }
Schools for T. 4 S. R. 2 E. 3 = P. M. } Def.
v.s.

James M. Pace & Harvey T. Pace }

And the
said Plaintiffs, by Youngblood their Attorney,
come and say that the Second amended
plea is not sufficient in law, to preclude
the said Plaintiffs from recovering
in this behalf. Wherefore they pray
judgment & whether they ought to make
reply unto said plea.

F. M. Youngblood
Atty.

Filed March 14, 1867. J. E. Bogan Clerk

By J. M. Youngblood, Atty.

And afterwards to wit at the said March
term of said Court, the said Defendants file
an amended plea, which is in the words and
figures following to wit:

18

People use of Trustees } March Term 1867.
 Schools T4 R. 26. 3^d P. M. } Circuit Court Jefferson
 v. s. } County, Ills.
 James M. Pace and } Debt.
 Harry T. Pace }

Amended
 Plea

And for further plea in
 this behalf the said Defs- say that Plffs.
 ought not to have or maintain their aforesaid
 action against them. Because they say
 that by the School Law, as amended Feb'y
 21st 1861 it was the duty of the Board
 of Trustees of said Township to prepare
 or cause to be prepared by the Township
 Treasurer the clerk of the Board or
 other person and forwarded to the
 School Commissioner of said County
 on or before the 1st Monday of October
 preceding each regular Session of
 the General Assembly of this State
 and at such other times as may
 be required by the School Commis-
 sioner or by the State Superinten-
 dent of Public instruction a State-
 ment exhibiting the Condition of
 schools in said Township for the
 preceding biennial Period giving
 separately each year commencing
 on the 1st Mondays of October and
 ending on the last of September

19 (the Items of which Statement will more fully appear by reference to section 36 of said Statute) and by Sec 79 of said Statute it is provided in substance that It shall not be lawful for the County School Commissioner or any other officer or person to pay over any portion of the Common School Fund to any local treasurer School Agent, Clerk, Board of education or other officer or person of any Township unless a Report of the number of Children or white persons and other Statistics relative to schools and a Statement of such other information as are required of the Board of trustees or Directors as aforesaid and of other school officers and Teachers under the provisions of this act shall have been filed at the time or times aforesaid specified in this section with the school Commissioner of the proper County as aforesaid and the times specified in said Section 79 for filing said "statement" is the

same as first above stated
 as will appear by reference
 thereto — Defts aver that the
 said State Superintendent of Public
 Instruction did require the Board
 of Trustees of said Term aforesaid
 to prepare of Course to be prepared
 and forwarded to the Deft as
 School Commissioner of said
 County on the second Monday
 of October A.D. 1864 the Statement
 provided for by Section 36 of said
 Statute the said year 1864 not being
 the year preceding the regular Session
 of the General Assembly of this
 State, of all which the Plffs had
 due notice but failed and
 neglected to do and this the
 said Defts are ready to verify
 { by C. H. Patton
 atty for Defts.
 Filed March 14, 1867 J. S. Bogan clero By J. M. Baugh N.C.

And afterwards, to-wit at the March Term of the said Circuit Court, A.D. 1867, the following orders appear of Record in said cause, and which are in the words and figures following, to-wit:

"Common Law Docket, Jefferson County Circuit Court, Record, 4th day, March Term 1867

Thursday March 7, A.D. 1867.

No 21 The People vs. for the use of
Trustees of Schools T. & S. R. & E.

vs

James M. Pace and
Harvey J. Pace

Debt and Damages

Came this day the Parties in person, and by their Attorneys, and thereupon the Defendants by their Counsel, by leave of the Court, file their General Demurrer to the Plaintiffs amended Declaration herein.

Same

vs

Same

Same

Again on this day come the parties, by their Attorneys, and the Court having heard the arguments of Counsel, on the General Demurrer filed herein of this day, and being thoroughly advised in the premises, finds the law to be with the plaintiffs, and overrules said General Demurrer. Whereupon, by leave of the Court, the Defendants by their Counsel file their Plea.

Saturday March 9. A.D. 1867.

No 21.

The People of the State of
Illinois, for the use of Trustees
of Schools. T. & S. R. & E.

vs

James M. Luce et al.

Debt and damages.

On this day come the
Parties by their Attorneys and thereupon the Plaintiffs
file their Demurrer to the second plea of the Defendants.
The Court having heard said Demurrer argued and
being sufficiently advised, finds the law to be with the
Plaintiffs and sustains said Demurrer.

Same

vs

Same

Same

Again on this day come the Parties, by their
Attorneys, and on motion, leave is given said defendants
to amend their said second plea herein filed; which
said amendment is thereon made.

Same

vs

Same

Same

And again on this day come the parties, by their
Attorneys, and on motion, leave is given said
Defendants to file an additional plea.

Sunday March 12, A.D. 1867

No 21. The People &c. for the use of
Trustees of Schools T. 4. S. R. 2. E.

vs Debt and damages
James M. Pace et.al.

On this day come the Parties in person and by their Attorneys, and thereupon the Plaintiffs by their counsel file their Demurrer to the third plea of the Defendants. The Court having heard said Demurrer Argued, and not being fully advised takes time to consider the same.

Second Wednesday March 13. A. D. 1867

No 21. The People &c. for the use of
Trustees of Schools T. 4. S. R. 2. E.

vs Debt and Damages
James M. Pace et.al.

On this day come the parties by their Attorneys, and the Court having fully considered the Demurrer to the third plea entered up herein of yesterday, and being fully advised in the premises, finds the law to be with the Plaintiffs, and sustains said Demurrer, to which ruling of the Court, the Defendants by their Counsel excepts

Same
vs Same.
Same

Again on this day come the parties by their Attorneys, and thereupon the Plaintiffs by their counsel file their Demurrer to the second plea as amended.

The Court having heard said Demurrer argued, and not being fully advised, takes the same under advisement.

Same
vs
Same

And now again come the parties by their attorneys and the Court having fully considered the Demurrer, filed herein, of this day, to the second plea of Defendants, and being fully advised, finds the law to be with the Plaintiffs, and sustains said Demurrer.

Second Thursday March 14. A.D. 1867.

No. 21. The People of the State of Illinois for the use of Trustees of Schools T. & S. A. 2. E.

James M. Pace and
Harvey T. Pace

Debt. and Damages.

On this day come the parties by their Attorneys, and thereupon on motion, leave is given said defendants to file an amended plea.

Same
vs
Same

Again on this day, come the Parties by their Attorneys, and thereupon the Plaintiff by their counsel file their Demurrer to the amended plea of Defendants, filed of this day. The Court having heard said Demurrer

argued, and being fully advised, finds the law to be with the Plaintiffs, and sustains said Demurrer; to which ruling of the Court, the Defendants by their Counsel except. And this cause coming on for a hearing, and issue being joined, by agreement of parties, is submitted to the Court for trial. The Court having heard the evidence and fully examined the proofs and exhibits, and having also heard the arguments of counsel, and being thoroughly advised in the premises, It is ordered that the said Plaintiffs have judgement in their favor, and against the said Defendants; for the sum of Twelve thousand dollars, the penal sum of the Bond, together with their Debt of four hundred and nine dollars and ten cents, and damages, of twenty two dollars and eighty four cents.

It is therefore further considered and ordered by the Court, that the said Plaintiffs recover of and from the said Defendants, the aforesaid sum of Twelve thousand dollars, the penal sum of the bond aforesaid, to be discharged upon the payment of Four hundred and nine dollars, and ten cents, debt, and twenty two dollars and eighty four cents damages, and their costs and charges herein expended, to be taxed &c. And that execution issue, therefor. To be endorsed satisfied, upon the payment of the aforesaid debt and damages and costs of suit, returnable &c.

State of Illinois
Jefferson County

I, John S. Bogan Clerk of the Circuit Court, in and for said County, in the State aforesaid, do hereby certify, the above and foregoing to be a correct transcript, and copy of the Amended Declaration, Demurrer to the same, 1st Plea, 2nd Plea, Demurrer to 2nd Plea, Amended 2nd Plea, 3rd Plea, Demurrer to 3rd Plea, Demurrer to 2nd Plea as amended, Amended Plea. And all the orders of Court made in said cause at the March Term thereof, A.D. 1867, as appears of record in my said Office, and on file therein.

Given under my hand and the Seal of said Court at Office in M^onticello this 10th day of June A.D. 1867.

John S. Bogan

Clerk



And the said Plaintiffs in error assign as Errors in said Record the following: -

1st The Court erred in sustaining Demurrer to 2nd Plea, and to said 2nd Plea as amended. -

2nd The Court Erred in Sustaining Demurrer
to 3rd Plea & to said 3rd Plea as amended.

3rd The Court Erred in ^{the manner of} rendering judgment.

William H. Green & Gilbert,
Attorneys for Plaintiffs

Wm. H. Green &
Gilbert

In Supreme Court

To June Term A.D. 1868

James M. Pace et al vs J. Gordon in Error

People of the State of Illinois
vs The Directors of Schools

And the said Directors of Schools
as Defendants in error now come and
say that there is no error either in
the record and proceedings of said case
or in any judgment as aforesaid
in manner then and there assigned
and they therefore pray that the ~~same~~ said
Judgment may be affirmed and that their
costs may be allowed to them
James H. Green, Atty
for Deft. in Error

The writ of error will be made a Supersedeas
on Plaintiff in error showing a bond
with Brian L. Palmer's Security in the
Penalty of Six Hundred dollars
Entered according to Law.
Cady July 22. 1867 Wm. H. Brown
Ch. J. Sup. Ct. N.Y.

11
The People of the State of
New Jersey, for the new
Quarter, 1458 &c.

22
James M. Pace and
Nancy J. Pace,

Second

Filed August 18th 1867
J. W. Milam
Clerk

Rec'd of Mr. A. J. V.

The People of the State of Illinois.

To the Clerk of the Circuit Court for the County of *Jefferson*..... 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 *Jefferson*..... County, before the Judge thereof, between,.....

James M. Pace and Harvey L. Pace

Plaintiff, and.....

*The People of the State of Illinois, for the use
of the trustees of schools of Township four (4)
South Range two (2) East of Jefferson County
Illinois*

Defendant^s, it is said manifest error hath intervened to the injury of the aforesaid.....

James M. Pace and Harvey L. Pace

as we are informed by *their*..... complaint, and we being willing that error, if any there be, should be
corrected 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 the Justices of our 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 Mt. Vernon, in the County of Jefferson, on the first Tuesday in June 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, SIDNEY BREESE, Chief Justice of the Supreme Court,

and the seal of said Court at Mt. Vernon, this *fifth*.....

day of *August*..... in the year of our Lord, one

thousand eight hundred and *sixty seven*.....

R. D. Willinks

Clerk of the Supreme Court.

SUPREME COURT

FIRST GRAND DIVISION.

James M. P. et al
Marion S. Pace

PLANTIFF IN ERROR

VS.

The People of the State of
Illinois, for the use of the trustees
of 2nd vol. of D4 BR 2E,
Upper and Lower Illinois

DEFENDANT IN ERROR.

WRIT OF ERROR

Issued FILED.

August 5th 1867

W. D. Williams

*This writ of error is made a supersedeas
and is to be obeyed accordingly*

W. D. Williams

Ch. J. C.

IN SUPREME COURT.

The State of Illinois, First Grand Division.

June Term, A. D. 1868.

JAMES M. PACE & HAREY T. PACE,
Plaintiffs in Error.

vs.
THE PEOPLE OF THE STATE OF ILLI-
NOIS, For use of the Trustees of Schools
of Township No. 4, South of Range No. 2,
East.

Error to Jefferson.

ABSTRACT.

- 2 Declaration in debt on bond of James M. Pace, School Commissioner of Jefferson county
3 for \$12000 debt; damages \$12000.
- 4 Breach, that \$409 10 came into hands of said School Commissioner for use of the said
Trustees, that it was his duty to pay over said money to the Treasurer of said Township or other
person authorized to receive it, and that on demand he refused to pay,
- 7 Demurrer to declaration, overruled.
- 8 Plea *nil debit* and issue joined.
- 9 The second plea avers that it was the duty of said Trustees to prepare, or cause to be pre-
pared and forwarded to the School Commissioner, on or before the second Monday in October
preceding the regular session of the General Assembly, and at such other times as may be required
by the School Commissioner or State Superintendent, a statement exhibiting the condition of
Schools in their Township for the preceding biennial period, and that in default thereof said
Trustees should forfeit their right to demand and receive from the School Commissioner their
portion of the public funds for the next ensuing year. And said Trustees did make default and
failed to forward said statement as required by law, whereby they forfeited their right, &c.; and
that the said \$409 10 in the declaration mentioned is the sum that would have been due said
Trustees from said defendant from the public funds but for said default, &c.
- 10 General demurrer to 2nd plea.
- 22 Demurrer to 2nd plea sustained, and leave to amend 2nd plea.
- 11 Second plea, as amended, is same as the original plea except that it is more carefully ex-
pressed; and also contains the following additional averment: "And defendants aver that such
reports as aforesaid have been required to be made on or before the 2nd Monday of October
annually by said State Superintendent for the period of six years before the bringing of this
suit."
- 17 General Demurrer to 2nd plea as amended, filed.
- 24 General Demurrer to 2nd plea as amended, sustained.
- 14 Third plea alleges that when the funds that should have been apportioned to said Township
came to his hands and from that time to the bringing of this suit the Township Treasurer of
said Township had not filed a good and sufficient bond as required by law. And further that
said plaintiffs nor any other person for them properly authorized have ever demanded the funds
in said declaration mentioned.
- 16 General Demurrer to 3d plea filed.
- 24 General Demurrer to 3d plea sustained.
- 18 An amended plea was filed setting up the same defence substantially as the original 2nd
plea and referring to the various sections of law upon which the plea was based.
- 25 The Court being fully advised, &c., order that plaintiffs have judgment in their favor and
against defendants for the sum of \$12000, the penal sum of the Bond, together with their debt
of four hundred and nine dollars and ten cents, and damages of twenty-two dollars and eighty-
four cents.
- 25 The same order proceeds as follows: "It is therefore further considered, &c., that said
plaintiffs recover, &c., the aforesaid sum of \$12000, the penal sum of the Bond aforesaid, to be
discharged upon payment of \$409 10 debt and \$22 84 damages, &c."

[ASSIGNMENT OF ERRORS.]

- 1st. The Court erred in sustaining demurrer to 2nd plea and to 2d plea as amended.
- 2nd. The Court erred in sustaining demurrer to 3d plea and to 3d plea as amended.
- 3d. The Court erred in the manner of rendering judgment.

BRIEF.

The 36th section of the School Law of 1857 (see Session Acts of 1857, p. 270,) particularly recognizes October 1st as the beginning of the school year. In various sections of that law, October 1st is treated as the beginning of the school year. The State Superintendent of Public Instruction, in his authorized publication of Common School decisions, on page 143, Sec. 2, decides that the school year begins Oct. 1st.

In the 36th section above referred to, it is provided that each township shall, on or before the 2nd Monday of October, preceding each General Assembly, and at such other times as may be required by the State Superintendent, forward to the School Commissioner a statement exhibiting the condition of schools in their respective townships for the preceding biennial period, giving separately each year, commencing on 1st Mondays of October. The amendment to that section by the Act of 1865 (see Session Acts 1865, page 113, Sec. 13) provides that any township from which such report is not received in the manner and time required by law shall forfeit its portion of the public funds for the next ensuing year. This forfeiture took place the 2nd Monday in October, 1865, but the report, if made, would have been for the school year beginning October 1st, 1864, and ending Sept. 30, 1865. The public funds of the "next ensuing," are the taxes collected in the "next ensuing year," that is, the year 1866.

The second plea sets up the provisions of the law and that a report had been required as provided by law, and that no report was made. Wherefore the School Commissioner refused to pay, &c.

The 2nd plea alleges facts, which, if true, work a forfeiture of the rights of the township to its distributive share of the public funds. If that right was forfeited, he was obeying the law in refusing to pay its share to the negligent township, and in leaving it for the distribution to the other townships in the county. The plea was good in general demurrer.

In the 4th section of the "Act to amend the School Law," approved Feb. 16, 1865, (See Session Acts, 1865, p. 113) it is printed that no part of the School fund shall be paid to any Township Treasurer, unless said Treasurer had filed his Bond.

The third plea avers that the Treasurer had filed no bond, and is good on general demurrer.

The judgment is so informal that it can not stand, and there is nothing on the face of the judgment to authorize an amendment in this court.

The judgment is for "\$12,000, the penal sum of the Bond, and debt of \$409,10 and \$22,84 damages." If the allegations in the declaration had been proven, and there had been no defence, or an insufficient defence, the judgment would have been for \$12,000 debt, and \$12,000 damages, to be discharged, &c. But as the judgment does not follow the allegations in the declaration, the court having nothing before it but the record can not correct the judgment.

GREEN & GILBERT,

For Plaintiff in Error.

STATE OF ILLINOIS,
SUPREME COURT,
First Grand Division.

ss.

The People of the State of Illinois,

To the Sheriff of Jefferson 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 Jefferson county, before the Judge thereof between James M. Pace and Harvey J. Pace

plaintiff and

The People of the

State of Illinois for the use of trustees of schools of Township four (4) South Range two (2) East of Jefferson County

defendant it is said that manifest

error hath intervened to the injury of said James M. Pace

Harvey J. Pace as we

are informed by their 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 MOUNT 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 Trustees of schools of Township four (4) South Range two (2) East of Jefferson County

that they be and appear before the Justices of our said Supreme Court; at the next term

of said Court, to be holden at MOUNT VERNON, in said State, on the first Tuesday

in June next, to hear the records and proceedings aforesaid, and the errors

assigned, if they 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 James M. Pace and Harvey J. Pace

notice together with this writ.

WITNESS, the Hon. Sidney Bruce Chief

Justice of the Supreme Court and the seal thereof, at

MOUNT VERNON, this Tenth day of

August in the year of our

Lord one thousand eight hundred and Sixty seven

R. D. Miskin

Clerk of the Supreme Court.

I have executed this Supersedeas by executing
 the same to W. B. Anderson & J. S. Senter.
 and Richard Liberty trustees of 482 E
 14 Sept 1867 Sunday 3
 Milwage 37 \$1.85 Retiring 10 \$3.70
 M. D. & D. Shiff J. C. Lee

SUPREME COURT.

FIRST GRAND DIVISION.

James M. Pace
 Henry T. Pace

PLAINTIFFS IN ERROR.

vs.
 The People of State Illinois
 for use of Trustees of school
 F. S. & R. L. & Co

DEFENDANT IN ERROR.

Susan M. B. Anderson
 A. J. Senter

Scire Facias.

FILED

Sept 30th 1867
 W. B. Anderson
 A. J. Senter

[Faint, mostly illegible text from the reverse side of the document, including phrases like "you shall give the said", "the said Court shall order in this behalf", and "in the year of our"]

IN SUPREME COURT.

The State of Illinois, First Grand Division.

June Term, A. D. 1868.

JAMES M. PACE & HAREY T. PACE,

Plaintiffs in Error.

vs.

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East.

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- 8 Plea *nil debet* and issue joined.
- 9 The second plea avers that it was the duty of said Trustees to prepare, or cause to be pre-
pared and forwarded to the School Commissioner, on or before the second Monday in October
preceeding the regular session of the General Assembly, and at such other times as may be required
by the School Commissioner or State Superintendent, a statement exhibiting the condition of
Schools in their Township for the preceeding biennial period, and that in default thereof said
Trustees should forfeit their right to demand and receive from the School Commissioner their
portion of the public funds for the next ensuing year. And said Trustees did make default and
failed to forward said statement as required by law, whereby they forfeited their right, &c.; and
that the said \$409 10 in the declaration mentioned is the sum that would have been due said
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came to his hands and from that time to the bringing of this suit the Township Treasurer of
said Township had not filed a good and sufficient bond as required by law. And further that
said plaintiffs nor any other person for them properly authorized have ever demanded the funds
in said declaration mentioned.
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plea and referring to the various sections of law upon which the plea was based.
- 25 The Court being fully advised, &c., order that plaintiffs have judgment in their favor and
against defendants for the sum of \$12000, the penal sum of the Bond, together with their debt
of four hundred and nine dollars and ten cents, and damages of twenty-two dollars and eighty-
four cents.
- 25 The same order proceeds as follows: "It is therefore further considered, &c., that said
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discharged upon payment of \$409 10 debt and \$22 84 damages, &c."

ASSIGNMENT OF ERRORS.

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- 2nd. The Court erred in sustaining demurrer to 3d plea and to 3d plea as amended.
- 3d. The Court erred in the manner of rendering judgment.

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BRIEF.

The 36th section of the School Law of 1857 (see Session Acts of 1857, p. 270,) particularly recognizes October 1st as the beginning of the school year. In various sections of that law, October 1st is treated as the beginning of the school year. The State Superintendent of Public Instruction, in his authorized publication of Common School decisions, on page 143, Sec. 2, decides that the school year begins Oct. 1st.

In the 36th section above referred to, it is provided that each township shall, on or before the 2nd Monday of October, preceding each General Assembly, and at such other times as may be required by the State Superintendent, forward to the School Commissioner a statement exhibiting the condition of schools in their respective townships for the preceding biennial period, giving separately each year, commencing on 1st Mondays of October. The amendment to that section by the Act of 1865 (see Session Acts 1865, page 113, Sec. 13) provides that any township from which such report is not received in the manner and time required by law shall forfeit its portion of the public funds for the next ensuing year. This forfeiture took place the 2nd Monday in October, 1865, but the report, if made, would have been for the school year beginning October 1st, 1864, and ending Sept. 30, 1865. The public funds of the "next ensuing," are the taxes collected in the "next ensuing year," that is, the year 1866.

The second plea sets up the provisions of the law and that a report had been required as provided by law, and that no report was made. Wherefore the School Commissioner refused to pay, &c.

The 2nd plea alleges facts, which, if true, work a forfeiture of the rights of the township to its distributive share of the public funds. If that right was forfeited; he was obeying the law in refusing to pay its share to the negligent township, and in leaving it for the distribution to the other townships in the county. The plea was good in general demurrer.

In the 4th section of the "Act to amend the School Law," approved Feb. 16, 1865, (See Session Acts, 1865, p. 113) it is printed that no part of the School fund shall be paid to any Township Treasurer, unless said Treasurer had filed his Bond.

The third plea avers that the Treasurer had filed no bond, and is good on general demurrer.

The judgment is so informal that it can not stand, and there is nothing on the face of the judgment to authorize an amendment in this court.

The judgment is for "\$12,000, the penal sum of the Bond, and debt of \$469.10 and \$22.84 damages." If the allegations in the declaration had been proven, and there had been no defence, or an insufficient defence, the judgment would have been for \$12,000 debt, and \$12,000 damages, to be discharged, &c. But as the judgment does not follow the allegations in the declaration, the court having nothing before it but the record can not correct the judgment.

GREEN & GILBERT,

For Plaintiff in Error.

James M. & Harry T. Pace.

to

Trustees of Schools &c.

Abstract & Brief of Plff. in Rem.

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Filed 8th June 1868

R. S. Willmucke
Clerk

Pace

The People

Mr Justice Lawrence delivered
the opinion of the court

This was an action
of debt on the official bond of
Pace as school commissioner of
Jefferson County, the breach alleged
being that he had refused to
pay to the treasurer of a certain
township the funds belonging to the
school trustees of said township.
The defendant pleaded two special
pleas, in the first of which he
averred that the trustees had
failed to forward to the school
commissioner ^a statement exhibit-
ing the condition of schools in
the township for the preceding trien-
nial period, and in the second
averred that the township treasurer
had not filed a good and
sufficient bond as required
by law. The circuit court held
the pleas bad on demurrer, and
gave judgment for the plaintiffs.

The argument has been
 furnished us in this case on
 behalf of the appellee, and we
 are not able to see how the
 judgment of the circuit court can
 be sustained. The 36th section
 of the school law of 1857 requires
 the statement or report mentioned
 in the first special plea to be
 made, and points out spe-
 cifically what it shall contain,
 and the 13th section of the
 act of 1865, ~~amending~~ the school
 laws, provides, ~~that if the report~~
~~is not received from~~ any township
 failing to make such report
 shall forfeit its portion of
 the public funds for the next
 ensuing year. The 4th section
 of the last named act, Laws of
 1865 pag 113, also provides that
 no portion of the ~~the~~ school fund
 shall be paid the township treasurer
 unless he has filed his bond. These
 pleas were drawn under these two
 sections, and we see no ground
 for sustaining the demurrer.

Reversed & remanded.

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June 9, 1868
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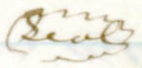
Know all men by these presents, that we James
M. Pace, Harvey T. Pace, and Merwin^S Plummer of
the County of Jefferson and State of Illinois are
held and firmly bound unto the Trustees of Schools
of Township four (4) South of Range two (2) East of said
County and State in the sum of six hundred
dollars, lawful money of the United States for the
payment of which sum to well and truly make we
each of us jointly and severally bind ourselves,
our heirs, and assigns firmly by these presents.

Witness our hands and seals this fifth day of
August A.D. 1867.

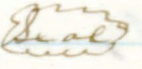
The Condition of the above obligation is such, that
whereas the said trustees obtained a judgement
at the March term of the Jefferson County Circuit
Court for the year 1867 against the said
James M. Pace and Harvey T. Pace in words and figures
following: "for the sum of twelve thousand dollars, the
principal sum of the bond, together with their debt, of
four hundred and nine dollars and eighty four
cents", and whereas the said James M. Pace and
Harvey T. Pace have sued out a writ of error from
the Supreme Court; now if the said James M. Pace
and Harvey T. Pace, shall well and truly and
without delay present their said writ of error,
and upon the dismissal of said writ of error
or the affirmance of the decree in the said Cause
by the said Supreme Court well and truly pay

or cause to be paid all costs that may be made
by reason of the presentation of the said writ of error
as aforesaid and all costs that may be adjudged
or damages awarded against them by the said
Supreme Court and upon the full payment thereof
the said obligation shall be null and void,
otherwise to remain in full force and effect.

Given under our hands and seals the
day and year first above written.

James M. Luce 

H. T. Pass 

Hiram S. Plummer 

The People State of Illinois,
for our Senators &c

James M. Pusey and
Harvey L. Pusey

Bond (\$600.00)

8850

Filed August 5th 1867

Wm. K. C.