

No. 351

Supreme Court of Illinois

Robert Sands

vs.

Thos. Delap

(379)  7

357

1512

518

215

Witness the Honourable Richard M Young Judge of our
Said Circuit Court at Nashville this 14th day of November in the
Year of our Lord One thousand eight Hundred and thirty three
Wart Fellows clerk

upon the back of which said Summons is endorsed the following return
to wit Served by reading to the within named Thomas Delap May 7th 1834
Joel Pennington S. S. C.

By J. G. Randall Deputy

The following is a copy of the paper sent up to said Court by
the Justice of the Peace and filed in the said Clerks Office on the 7th
day of December 1834 To wit.

(Account)

Robert Sands Dr For work and Labour done by way
of Improvement on the South West quarter of Section Eight Town
2 North Range 1 West.

To Making and laying up 5119 Rails	31.19
To Breaking 10 ³ / ₄ Acres of Prairie	21.50
To Building Houses	30.00
To Clearing Ground	24.50
	130.19

The above account Credited by 50 dollars by way of
Rent on said Improved Land Thomas Delap
(Summons)

State of Illinois

Schuyler County 3 The people of the State of Illinois To any
Constable of said County greeting. (You are hereby commanded
to Summon Robert Sands to appear before me at my house on
the 8th day of November at 12 O'clock of said day to answer the
Complaint of Thomas Delap for a failure to pay him a certain de-
mand not exceeding One hundred Dollars. and thereof make due
return as the law directs given under my hand and seal the 2nd
day of November 1833. James Power

on the back of which said Summons is written

Debt \$80.19

Cost 18³/₄ (Return to wit)

Only Executed by reading to the within named defendant November the
2 1833. Mathias Masten C.

Receipt To wit

Received of Robert Sands fifty cents for Plowing and in full
of all other works done on lot N. 8. 2nd 1st
Schuyler County 7th August 1833. Thomas Delap

(Transcript)

Thomas Delapp

vs
Robert Sands } Debt 80.19. c. for work and labor
done by improvement. Summons issued
November 2nd 1833 delivered to Mathias Masten returned
served on the 2nd of November 1833. November the 8th
1833. This day came the parties. and the defendant entered his
motion to dismiss the Suit for the reason that the account was over
One Hundred dollars and not reduced by fair credits was
overruled. then the plaintiff demanded to have the case tried by
a jury. Adjourned for that purpose until the 11th day of this month
the defendant entered his objections. Math Masten serving the
summons on the Jury. November the 11th 1833. This day came
the parties again by their attorneys and the following jury called
and sworn to wit: Othni Preston Peremeat O Bridge Robert
Chadsey Henry Johnson Morris Hobart Daniel Owen the
witnesses being examined the case argued the jury returned
their verdict in favor of the plaintiff for Eighty dollars and
nineteen cents and costs of suit. It is therefore considered
and adjudged that the plaintiff recover of the defendant the
said sum of Eighty dollars and nineteen cents debt and
damages besides the costs of suit. Given under my hand
and seal this 14th day of November 1833.

James Power J.P. (seal)

Defendant demands a Transcript received it Nov^r 14. 1833

I James Power one of the Acting Justices of the Peace of
Schuyler County do hereby certify that the foregoing Transcript
and the papers therein contain a full and perfect statement of
all the proceedings before me in said suit.

Given under my hand and seal this 26th day of Nov 1833.

James Power J.P. (seal)

And afterwards took at a circuit court held at the Court
House in Nashville in and for the said County of Schuyler and
State of Illinois on the 16th day of June A.D. 1834 the
Hon. Richard M. Young Presiding.

Thomas Delapp appellee

vs

Robert Sands appellant

} On appeal

This day came the parties by their attorneys and issues being
joined for trial put themselves upon the Country. and thereupon came
the jurors of a jury to wit Joseph Burton Sam Wood Gar-

- ret G. Worthington Milton M. Graves. Daniel Sherwood
George M. Penney Luke Seeley. Richard Sonderback. Benja-
min O. Wenley Owen Seeley. Timothy Condict and John Brown
who being sworn to well and truly try the issue joined, returned
to consider of their verdict and by agreement of the parties the
Jury is permitted to seal up their verdict and deliver it to the Clerk
and afterwards to separate and meet the Court at 8 o'clock
to morrow morning.

And afterwards to wit on the 17th day of June 1834 being
a continuation of the said Court the following proceedings were
had To wit.

Thomas Delap
vs
Robert Sands } On appeal

This day came again the parties by their
attorneys and the Jurors empannelled in this cause on yesterday
being called came into Court and answered to their names to wit
Joseph W. Parton & Sam. Cox Garrett G. Worthington Milton
M. Graves. Daniel Sherwood. George M. Penney. Luke Seeley.
Richard Sonderback. Benjamin O. Wenley. Owen Seeley. Tim-
othy Condict and John Brown. and thereupon rendered the fol-
lowing verdict To wit. We of the Jury find for the Plaintiff and
assess his damages to eighty dollars and nineteen cents damage &
whereupon the defendant by his attorney moved the Court to
set aside the verdict of the Jury and grant a new trial.

And afterwards To wit on the 21st day of June 1834
being in continuation of the said term of the Court the following
orders were made To wit.

Thomas Delap
vs
Robert Sands } On appeal

This day came again the parties
by their attorneys and the motion entered in this cause to set
aside the verdict of the Jury and grant a new trial is overruled
by the Court. It is therefore considered and adjudged by the
Court that the Plaintiff recover of the defendant the sum of eighty dol-
lars and nineteen cents damages and also his costs about his suit
in this behalf expended. and that he have execution therefor where-
upon the defendant prayed an appeal which is granted upon condition
that the said defendant enter into Bond with Richard Dougherty his se-
curity within thirty days in the penal sum of two hundred dollars.

The following are the reasons filed on motion for a new trial to wit
Thomas Delap

vs
Robert Sands Motion for a new trial for the following
reasons. First That the verdict of the jury is contrary to law.
Second the verdict is without evidence in law to support it.
Minshall

Sands vs Delap on trial of an appeal from a Justice
of a Peace Cause of Action a on Promises.

Be it Remembered that on the trial of this cause
the Counsel for the Plaintiff to maintain and prove the issue on
his part that the Plaintiff had made certain improvements on a
quarter Section of land belonging to Sands before said Sands had
come to the Country. That said Sands had in a conversation
in June with one John Pichey said that if he Delap would
give him immediate possession of said land he would permit
Delap to take off his Crop and pay him what ever two dis-
interested men would say said improvements were worth.

The Plaintiff proved by another ~~set of~~ that in June while
Sands family were living in Town that Sands & Delap being
together in conversation Sands called him out of the Shop
where he was at work and on his going to the parties Sands
stated to Delap in hearing of witnesses that he would pay him
for the improvements he has made on his land what any two
disinterested men would say it was worth and when Sands
had made this statement Delap appeared satisfied &
witness left them supposing they wanted him no farther
being busy. The Plaintiff proved that before Corn was
ripe enough to gether that Sands was in possession of one
half of the house & that Delap when his Corn was ripe
gathered it. and during the year moved in the fall off from
said quarter. and ever since has exercised no controul
over any part of the same. And Sands ever since has
had the possession of said quarter. The Plaintiff further
proved that before the Corn was ripe and when said Sands
Delap was living on the Premises the Plaintiff had two
disinterested men on the Premises and gave notice to the defend-
ant by a messenger that he was about to have the valuation
of said Improvements and that he might attend and choose
his Valuers. That defendant said he would have nothing to do
with it Choosing men or valuing improvements whereupon the.

Plaintiff had the improvements valued by two disinterested men who valued it at the price of \$130. and deducted from it \$50 for Rent. And said Valuers proved in Court that the improvements were worth the sum they valued them to. Further on the trial of said Cause the Plaintiff offered in evidence proof of the valuation of said improvements by two men in the Selection of which men said Sands had no participation, and here the Plaintiff closed their testimony whereupon the Defendants Counsel moved the Court to direct the Jury to find for the defendant as in case of a nonsuit which the Court refused whereupon the defendant by his Counsel excepted to such opinion and prayed that this his exceptions might be signed sealed and made a part of the record pursuant to the act of Assembly in such case made and provided Exceptions allowed and ordered to be made a part of the record June 21st 1834

Richard M. Young (seal)
Circuit Judge &c

Thomas Delap

v

Robert Sands

On appeal

Schuyler Circuit Court. before me.

Entering appearance of atty 12 ¹ / ₂ Filing of process 12 ¹ / ₂	95
Issuing 3 Subpoenas \$1.50. Filing same 18 ³ / ₄	1. 18 ³ / ₄
Meaning 11 witnesses 37 ¹ / ₂ Calling & meaning June 18 ³ / ₄	56 ¹ / ₄
Entering Verdict 12 ¹ / ₂ Entering Judgment 25 ¹ / ₂	37 ¹ / ₂
Entering Satisfaction of Judgment.	95
Taking & filing 8 affidavits 18 ³ / ₄ each.	93 ³ / ₄
Copying Records \$1.25. Certificate & sub 50.	6. 75
Docket Fee	2. 50
Copy Fee	3. 00
Sheriff's Fees	\$16.31 ¹ / ₄

Serving 3 Subpoenas \$1.75 returning 37 ¹ / ₂	\$2.12 ¹ / ₂
24 mile travel \$1.12 ¹ / ₂ Summoning jury 50 Calling jury 12 ¹ / ₂	2.25 3 4. 37 ¹ / ₂
Witnesses Fees	
Mattias Martin 4 days	\$2.00
John Moore 4 days	2.00
Isaac Penington 4 do	2.00
Isaac Linder 4 "	2.00
Sawyer & Ritchey 4 "	3.50 \$11.50

Costs before the Justice of the Peace. Justice fees.

Issuing Summons 18 ³ / ₄	Docketing suit 12 ¹ / ₂	31 ¹ / ₂
Issuing 3 Subpoenas 18 ³ / ₄		56 ¹ / ₂
Issuing venire 25.	Continuance 12 ¹ / ₂	37 ¹ / ₂
Administering Oaths 11 ¹ / ₄		37 ¹ / ₂
Entering Judgment 25.	Entering appeal 25.	50
Making 2 Transcripts		50
Constables Fees		2. 12 ¹ / ₂

Serving Summons 25.	Serving 11 Subpoenas 75.	\$1. 00	}	2. 75
20 miles travel		1. 00		
Summoning Jury 50.	attending trial 25.	75		
Witnesses Fees viz.				
Joel Prunington		50	}	2. 00
Grace Linder		50		
James E. Ritchey		50		
George Howard		50		
				\$39. 56 ¹ / ₂

Defendants Costs. Also fees.

Docketing suit 12 ¹ / ₂	Entering appearance 12 ¹ / ₂	25
Filing papers on appeal taking Bond &c		50
Issuing Summons 50.	filing same 6 ¹ / ₄	56 ¹ / ₂
Entering order overruling motion to instruct the jury.		25
do do do do for new trial.		25
Filing reasons 11 ¹ / ₄ .	Filing exceptions 11 ¹ / ₄ .	12 ¹ / ₂
Entering order allowing exceptions.		25
Entering order granting appeal.		25
Taking appeal Bond 50.	filing do 6 ¹ / ₄	56 ¹ / ₂
Copying Records 2.		11. 25.
Official Certificate & seal to do.		50.

Serving Summons 50.	Returning do 12 ¹ / ₂	25.	}	1. 75
4 miles travel		25.		
Serving Supersedeas 50	Returning do 10 ¹ / ₂ .	12 ¹ / ₂		
4 miles travel		25		62 ¹ / ₂

Appeal Bond To wit.
 Know all men by these presents that we Robert Sanders and
 Richard Dougherty of the County of Schuyler and State of New
 York are held and firmly bound unto Thomas Delapala
 of the same County and State in the penal sum of Two hun-

and dollars current money of the United States for the payment
of which well and truly to be made we bind ourselves our heirs ex-
ecutors and administrators jointly, severally and firmly by these pre-
sents (Witness our hands and seals this first day of July 1834)

The condition of the above obligation is such that whereas the said
Thomas Delap did on the 21st day of June A D 1834 in the
Circuit Court in and for the County and State aforesaid recover a
judgment against the above bound Robert Sands for the sum
of Eighty Dollars and nineteen cents damages and
costs from which said Judgment of the Circuit Court of the
said Robert Sands has appealed to the Supreme Court of said State. Now if the said Robert Sands
shall duly prosecute his said appeal with effect and shall
moreover pay the amount of the Judgment, costs interest
and damages rendered or to be rendered against him, in case the
said Judgment shall be affirmed in the said Supreme Court,
then the above obligation to be void, otherwise to remain in
full force and virtue

Robert Sands (Seal)
Richard Daugherty (Seal)

Taken and entered into
before me at my office in

Pittsville this 1st day of July A D 1834

H. H. Fellows clk of Schuyler Circuit Court

State of Illinois of
Schuyler County, I Hart Fellows Clerk of the
Circuit Court of Schuyler County do hereby certify
that the foregoing record is a true full and complete
record of all the orders judgments papers and
proceedings in the said Circuit Court in the case
of Thomas Delap against Robert Sands
as they appear of record or on file in my office

In witness whereof I have hereunto
set my hand & affixed the seal of
said Court at Pittsville this
24th day of November 1834
Hart Fellows clk

Robert Sands
vs. Appeal
Thomas Delap
vs. Record
Robert Sands
From Schuyler County

Filed Decr. 1st. 1834
James M. Duncan

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Sands
vs.
Delap } Appeal from Schuyler

Delap brought a suit before a Justice of the Peace on an account comprising various items of labor performed, on the Land of Sands, which Delap had occupied without the consent of Sands. The labor had been rendering without the request of Sands, and when he resided in another State. Delap on his account made a credit of \$50. in the word of the account, "by way of Rent on said improved Land," On the Trial before the Justice of the Peace, Sands moved to dismiss the suit because the Justice had not Jurisdiction thereof, the account being over one hundred Dollars, and not reduced by four credits. A motion to nonsuit the plaintiff in the Circuit Court was, also, made in that Court but overruled. It is unnecessary to consider any other point raised in the cause than the one of Jurisdiction.

The case comes directly within the principle and reasons of the decisions in the cases of Clark et Cornelius, Ellis vs Smider and Blue vs Ben Lendingham. This Court decides in the last case in accordance with the other decisions in the other enumerated cases.

that "the Statute of 1827 giving jurisdiction
to the Justices of the Peace in Civil cases
did not authorize a Justice to entertain
Jurisdiction where the account was open
and unsettled and the whole amount of
the accounts of either party exceeded \$100
This is precisely the case here, The Appellee
claims \$134.44 and gives a credit of \$80.00
for rent supposed due for Land which
from the case, it must be evident, he
never occupied with the agent of Appellee.
The relation of Landlord and Tenant now
where appears by evidence in the case,
but the fair inference is, that he was an
intruder on the Land. But the credits,
as in the case last referred to, ^{were} made
by the party himself, when in truth he had
paid nothing to Land; for the purpose of
merely gaining, as he supposed, a discharge
from the Magistrate. It is evident it
was not a bona fide credit. There could
have been no ascertaining of a Balance between
the parties, as contemplated by the Statute.

In ascertaining this balance the Justices had
necessarily to investigate accounts, one
account much exceeding one hundred dollars

and consequently therein greatly exceeded
his Jurisdiction by assuming & the
Judgment of the Court below, is reversed
for want of Jurisdiction. ~~It is unnecessary~~
~~to mention the other points raised in the~~
~~cause on the facts of the case~~

Sand
Delap } Minnie

Just recovered
with Cots Smith

was 2 occupied

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