

No. 13363

# Supreme Court of Illinois

Bacon

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vs.

Lawrence

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Jameson & Morse, Printers, 14 La Salle St., Chicago.

# SUPREME COURT OF ILLINOIS,

APRIL TERM, A. D. 1861.

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HENRY BACON,  
    *Plaintiff in Error,*  
    vs.  
DANIEL LAWRENCE,  
    *Defendant in Error.*

} Writ of Error to Iroquois.

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## POINTS OF PLAINTIFF IN ERROR.

### I.

The Court erred in allowing plaintiff's motion to dismiss his appeal, because

*First*, on the execution of the bond by the plaintiff, the appeal was perfected. 11 *Illinois*, 419. The filing of another appeal bond by the defendant would not have accomplished anything more. And the law never requires a person to do a useless thing.

*Second*, under our statute and practice, the perfecting an appeal vacates the original judgment. The plaintiff below appealed this case the very day he got judgment, so that there was no judgment remaining for the defendant to appeal from.

13 Ills. 668

*Third*, the law should not be used as an engine of oppression.

The plaintiff by appealing the judgment after a trial below upon the merits, and the suing out and service of a summons upon the appellee, gave the defendant to understand that he was drawn into court in good faith for another trial, and by dismissing his appeal, he should not be allowed to say that he did it merely to *impose* upon him.



## II.

The cross motion of defendant to join in the appeal should have been allowed.

It will not do to say that the whole risk of the appeal is upon the plaintiff, and therefore he should dismiss it when he pleases, for the record shows that the defendant offered to file a good and sufficient bond, and this would change the whole risk upon the defendant.

Where both parties appear, and are ready for trial, the Court is bound to hear the matter according to the justice of the case. *Justice's Statute, Sec. 66.*

21 Ill. 90

This case cannot be likened to one where the appeal was not taken in time. Because it *was* taken in time; the appellee was legally in court, and the statute (*Sec. 68 Justice's Act*), provides that the trial shall be *de novo*, and that *the rights of the parties shall be the same as in original actions*. Now, will this court say to the defendant below, it is true, you were legally in court, you were ready for trial, willing to assume the risk of the appeal, and injustice would be done you in case it were denied, but we cannot relieve you; you had no rights in the Circuit Court? It is believed not. The idea has hitherto gained some credence, that Courts were established for the promotion of justice; but if "sharp practice" of this kind is to be tolerated, it will not be long before men will begin to think that if they get justice, it will be in *spite* of law, and not *because* of law.

For these brief reasons, it is asked that the judgment of the Circuit Court may be reversed.

CHARLES H. WOOD,  
*For Plff in Error.*



162 - 97  
Henry Bacon  
Pltff. in Error

Daniel Lawrence  
Deft. in Error

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Points of  
Pltff. in Error

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Filed April 16. 1861

A. A. Leonard  
Clerk

97

13363



# IN THE SUPREME COURT,

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3 Justice's transcript, showing change of venue to M. H. Messer, the nearest justice.

4 January 10th, 1861. Transcript received from Justice Rumley. Court adjourned till January 11th. Cause heard. Lawrence, the plaintiff, recovered judgment against the defendant of \$48.16 and costs.

5 Same day plaintiff appeals his own judgment.  
Certificate of justice to his transcript.

Plaintiff's appeal bond. Penalty one hundred and twenty dollars, in usual form.

6 Appellee summons issued from the Circuit Court, January 16th, 1861.

7 Summons served on Bacon, January 26th, 1861.



8 February 20th 1861. Plaintiff moves to dismiss his appeal.

Defendant makes cross motion for leave to join in the appeal.

9 Court ordered that plaintiff be allowed to dismiss his appeal Defendant excepted. Final judgment rendered against plaintiff for costs of appeal.

#### BILL OF EXCEPTIONS.

10 Shows that on the 22nd of February, A. D. 1861, motion by appellant to dismiss his appeal coming on for a hearing, the defendant by his  
11 counsel offered to file an appeal bond with good and sufficient security, and filed the affidavit of Henry Bacon, wherein he swears that he has a good defense to said action, on the merits thereof. That defendant would have taken an appeal to the Circuit Court, if plaintiff had not done so. That defendant supposed it was not necessary for him to join in said appeal in order to secure a trial of said cause in the Circuit Court. That injustice will be done him in case he is debarred a trial of said cause.

12 Defendant excepts to the judgment of court, dismissing the appeal and rendering final judgment in said cause.

#### ERRORS ASSIGNED.

The court erred in allowing plaintiff's motion to dismiss his appeal.

The court erred in overruling defendant's cross motion for leave to join in the appeal.

The overruling defendant's motion and dismissing the appeal was contrary to law, to equity, to justice and to right.



162  
Henry Bacon  
Plff. in Error  
vs  
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Deft. in Error

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Abstracts

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Filed Apr. 25-1861

Louise Leland

Clerk



# IN THE SUPREME COURT,

APRIL TERM, A. D. 1861.

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