

No. 12578

Supreme Court of Illinois

Heinake

vs.

Wedig, Admr.

71641  7

18366

Henry Heineke

vs
John Wedig

66

12578

1858

Hedig admin

Holpers Proceedings in a certain cause lately
vs depending in the county court within and
Hemake for the county of Peoria in the state of
Illinois, wherein John Hedig, administrator
of the estate of Conrad Holpers, deceased
was plaintiff, and Henry Hemake was
was defendant, to wit;

On the Eighteenth day of Septem-
ber A.D. 1856, the said plaintiff filed
in the office of the Clerk of said Court,
a declaration in the words and figures
following, to wit;

State of Illinois
County of Peoria

In the County-
Court of Peoria-
County, To the
October term ^{thereof} 1856
John Wedig administrator
of Conrad Wolpers deceased
vs.
Henry Hinaha

In assumpsit

Damages \$800.00

John Wedig plaintiff in this
suit administrator of all and singular
the goods, chattels & credits which were of
one Conrad Wolpers deceased at the time
of his death who died intestate, by
Davidson & Ferise his attorneys complains
of Henry Hinaha defendant in this suit
in a plea of assumpsit, for that whereas
the defendant on the third day of March-
A.D. 1853 at the city of St. Louis in the State
of Missouri to wit at the County of Peoria
and State of Illinois aforesaid made
his ^{certain} promissory note in writing bearing
date March 3rd 1853 and then and there
delivered the same to the said Conrad

— Wolpers in his life time, and thereby then
 & there promised to pay to the said
 Conrad Wolpers five hundred dollars with
 six per centum interest thereon until paid
 in twelve months from the date thereof,
 without defalcation or discount which
 period has now elapsed and the said
 Henry Hinaka then & there in consideration
 of the premises promised to pay the am-
 —ount of the said note to the said Conrad
 — Wolpers according to the tenor & effect
 thereof: Yet the said defendant hath
 disregarded his promises and hath not
 paid any of the said monies or any part
 thereof, either to the said Conrad Wolpers
 in his lifetime or to the plaintiff as
 administrator aforesaid since the death
 of the said Conrad Wolpers to the dama-
 —ge of the plaintiff as administrator
 aforesaid in the sum of Eight Hundred
 dollars, and thereupon he brings suit
 And the plaintiff brings into Court
 here his letters of administration
 which give sufficient evidence to
 the Court that he is administrator of
 the said Conrad Wolpers deceased.

(Signed)

Davidson & Frisbie
 Plffts Attys

State of Illinois }
County of Lewis } ss In the County Court

and on the same day the said plaintiff
filed in said office, a certain bond
for costs in the words and figures fol-
=lowing, to wit;

John Wedj, administrator { Before Thomas Bryant
of Conrad Walpers deceased } Judge of the County Court
as { of Peoria County
Henry Hemake } Illinois -

We do hereby enter ourselves
security for costs in this cause, and
acknowledge ourselves 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 18th day of September A.D.
1856 - Henry Summers
(signed) John Wickman

and on the same day the said plaintiff filed in said office a copy of a certain promissory note in the words and figures following, to wit:

\$500 ⁰⁰/₁₀₀ Copy of note sued on
Twelve months after date I promise to pay to the order of Conrad Wolpers five hundred dollars, payable and negotiable without abatement or discount and for value received, bearing six per cent interest from date until paid

St. Louis March 3. 1853 -

(signed)

Henry Kinnick

and afterwards, to wit, on the 19th day of September A.D. 1856, the said plaintiff sued out of the office of the Clerk aforesaid, a certain writ of summons in the words and figures following to wit;

6th

The People of the State of Illinois
To the Sheriff or any constable of Peoria-
County, - Greeting -

We command you
to summon Henry Hernake - If he
may be found in your County, to appear
before our County Court for Peoria County
on the 1st Monday of October at the hour of
10 o'clock A.M. to be held at Peoria within
and for the said County of Peoria then and
there to answer unto John Wellig admr
Est Conrad Woppers Seed in a plea of trespass
on the case on promises - damages
\$ 800. - as he says - and make return of this
writ with an endorsement of the time and
manner of serving the same on or before
the 1st Monday of September next - Witness
Charles Kettelle Clerk of our said County -
Court, and the seal thereof, at Peoria, this 19th
day of September in the year of our Lord one
thousand, eight hundred and fifty six
(signed) Chas Kettelle
for Geo W Kettelle Spty Clerk

and afterwards to wit, on the day and
year last above-mentioned, the Sheriff
of the county of Peoria aforesaid, returned
the said writ of summons, into the office
of the clerk aforesaid, with his endorse-
ment thereon in the words and figures
following to wit:

Served on Henry Hernake, by reading to him
this writ, September 19th 1856
(signed) J. D. Gross - Sheriff
By A. R. Kidwell - deputy

L.S.

and afterwards to wit; on
the 7th day of October A.D.
1856, the said defendant filed
in the office of the clerk of the
court aforesaid, a demurrer to
the said declaration, in the words
and figures following, to wit;

State of Illinois }
 County of Peoria } *Ed* In the County Court
 October Term A.D. 1856

John Wedig admr &c - of
 Conrad Wolpers deceased

vs Assumpsit
 Henry Winaka,

and the said defendant
 by Charles C. Bonney his attorney comes
 and demurs to the declaration of the
 said plaintiff herein, for that the said
 plaintiff hath not brought the said
 supposed letters of administration into
 Court here nor made any perfect in
 fact thereof, also for that the said dec-
 laration is otherwise informal and
 insufficient; and this he the said def-
 endant is ready to verify, wherefore
 he prays judgment &c -
 (signed)

Charles C. Bonney
 attorney for Plaintiff

And afterwards, to wit, on the 11th day
 of October A.D. 1856, being the ~~sixth~~ day
 of the October Term A.D. 1856 of the
 court aforesaid, - present the Hon.
 Thomas Bryant presiding judge,
 Charles Feltell clerk, and David
 S. Louns sheriff, the following proced-
 -ings were had in the cause aforesaid,
 to wit;

John Medig Adm^r Est

Conrod Wapens

VS

Assumpsit.

Henry Weinake

This day came the Plaintiff by Peter Davidson Esq. his Attorney And the Defendant by Charles C. Bonney Esq. his Attorney And this cause came on to be heard on the Demurrer of the Defendant to the Declaration filed in this cause And the Court being fully advised in the premises is of opinion that said Declaration is sufficient in law for the Plaintiff to have And maintain his action therein. Whereupon the Defendant asked leave to withdraw the said Demurrer which was granted And leave given to plead which was done. Whereupon both parties waived a trial by jury And agreed that all matters both of law And fact arising in this case should be tried by the Court. The Court having heard the Evidence And the arguments of counsel doth consider that the Plaintiff ought to recover of the Defendant his damages by reason of the Promise, but because the Court knows not what damages the Plaintiff has sustained And this action is brought upon an instrument in writing for money only. The Court is directed to make an assessment thereof And report the same to the Court, Whereupon came the Defendant by his Attorney And entered his motion for a new trial of the

11

said cause, Whereupon the Court after due consideration overruled the said motion, to which ruling the Defendant then ^{and} ~~there~~ excepted. Thereupon came the Clerk ^{and} reported to the Court, to the Court the sum of Five Hundred ^{and} 58/100 Dollars as due from Henry Weiniak to John Wedig as Adm^r. Est. Conrad Woepers. Therefore it is considered by the Court that the said John Wedig Administrator Estate Conrad Woepers have ^{and} recover of the said Henry Weiniak the sum of Five Hundred Dollars ^{and} fifty Eight cents his damages in form aforesaid assessed ^{and} also his costs ^{and} charges by him about his Suit in this behalf Expended.

which said pleas of the said defen=
 =dant, whereof mention is made
 in the record of the proceedings aforesaid, and which were filed in the
 office of the clerk aforesaid, on the said
 11th day of October A.D. 1856, are
 in the words and terms following
 to wit;

State of Illinois
County of Peoria

In the County Court
October Term A.D. 1856

John Wedig, administrator of
Conrad Wolpers deceased
vs
Henry Hinaka Assumpsit

And the said defendant by Charles C. Bonney his attorney comes and defends the wrong and injury when ye, and says that he did not undertake or promise in manner and form as the said plaintiff hath in his said declaration alleged against him the said defendant, and of this he puts himself upon the Country ye,

(signed)

Charles C. Bonney

Attorney for Defendant

Plaintiff doth the like

(signed)

P. Davidson atty for Idt

And the said defendant by his said attorney, craves oyes of the said supposed Letters of administration and they are read to him in these words, to wit,

County of St Louis S.S.

The State of Missouri.

To all Persons to whom these present shall come - Greeting,
Know Ye, that whereas Conrad Wolpers -

— Late of the County of St. Louis died
 intestate as it is said having at the
 time of his death property in this
 State which may be lost destroyed or
 diminished in value if speedy care
 be not taken of the same, To the end
 therefore that the said property may
 be collected, preserved and disposed of
 according to law, we do hereby appoint
 John Weding administrator of all and
 singular the goods and chattels rights
 and credits which were of the said
 Conrad Wolpers, at the time of his death
 with full power and authority to
 secure and dispose of said property
 according to law, and collect all moneys
 due said deceased and in general to
 do and perform all other acts and
 things which are or hereafter may
 be required of him by law

In Testimony
 whereof I Peter Ferguson Judge of the Probate
 Court in and for the County of St. Louis
 hereto sign my name and affix the seal
 of said Court at office this seventh day
 of November

A.D. 1853 (signed) Peter Ferguson
 Judge of Probate



State of Missouri }
County of St Louis } ss

I. William T. Ferguson

Clerk of the Probate Court of the County of
St. Louis, certify that the foregoing is a true
copy of the letters of administration granted
to John Wedig on the estate of Conrad Walpers
deceased as the same now remains of
Record in my office

In Testimony whereof I hereto
set my hand and affix the seal of the
Probate Court for the County aforesaid at
office in said County this seventh day
of November in the year of our Lord 1853
(signed) William T. Ferguson
Clerk

State of Missouri }
County of St Louis } ss

I. Peter Ferguson Judge of
the Probate Court of said County of St Louis
do hereby certify that the foregoing, except
the certificate and attestation of the Clerk
of the said Probate Court for St Louis County
is a true copy of the letters of administrat-
ion granted to John Wedig on the estate
of Conrad Walpers deceased, as the same
now remains of Record in the office of
the Judge of the said Probate Court, and
that the foregoing certificate and



— attestation of the said clerk of the said Court of Probate is in due form of law and that the said letters of administration were granted to said John Wedig in pursuance of and agreeably to the laws of the State of Missouri In testimony whereof I have hereunto subscribed my name at office this Fourth day of September, A.D. 1856

(signed) Peter Ferguson

Judge of St. Louis Probate Court
State of Missouri }
County of St. Louis } ss

I William H. Ferguson, Clerk of the Probate Court of St. Louis do hereby certify that Peter Ferguson, whose genuine signature is affixed to the above certificate is the acting Judge of the Probate Court of said St. Louis County and is duly qualified commissioned and sworn according to Law

In testimony

whereof I have set my hand and affixed the Seal of the Probate Court for the County of St. Louis at office in said County, this fourth day of September in the year of our Lord 1856

(signed)

William H. Ferguson
Clerk



17

Which being read and heard the said defendant for further plea in this behalf says activ' now because he says that the said plaintiff is not nor ever hath been administrator of the goods or chattels, rights or credits which were of the said Conrad Wolpers deceased, in manner and form as the said plaintiff hath in his said declaration in that behalf alleged; and This he is ready to verify, wherefor he prays judgment &c

Signed / Charles C. Bonney
attorney for Defendant

and which said instrument is writing for money, whereof mention is made in the record aforesaid, and which was filed by the said plaintiff in the office of the Clerk aforesaid, on the said 11th day of October A.D. 1856, is in the words and figures following, to wit;

\$500.⁰⁰ / 100 Twelve months after date, I promise to pay to the order of Conrad Wolpers five hundred dollars, payable and negotiable without defalcation or discount, and for value received, bearing six percent interest from date until paid - Saint Louis March 3^d 1853

(Signed)

Henry Heineke -

and is indorsed on the back thereof as follows, to wit:

\$30.00 interest paid April 20. 1854

(signed)

Cl. Knitter

and which said motion for a new trial, whereof mention is made in the record aforesaid, and which was filed in the office of the clerk of said court on the said 11th day of October A.D. 1856, is in the words and figures following to wit;

Wedge adms &c.

as Peoria County Court
Hunkas } Oct. Term 1856

Defendant enters motion for new trial of this cause, for the following reasons, to wit;

1st The verdict of the court is contrary to law.

2nd The verdict of the court is unsupported by evidence.

(signed)

Charles B. Borney

attorney for
Plaintiff

and which said assessment of damages, whereof mention is made in the record aforesaid, is in the words and figures following to wit;

State of Illinois } In the Circuit Court,
Peoria County vs } October Term A.D. 1856
John Wedg admr }
Est. Conrad Wolpers }
 plaintiff } judgment by default
 vs } in assumpsit
Henry Henrich }
 defendant }

Having assessed the damages against the defendant in default; by computing the interest on the Note in the declaration mentioned in this cause, according to law and the order of the court, I do hereby report the same as follows;

Principal	\$500.00
Int 3 y 7 mo. 8 day	58.16
	558.16

(Signed)

Chas. Wetzel Clerk
Pr Geo. H. Wetzel scty

Oct 11th/56

And afterwards to wit, on the said
11th day of October A.D. 1856, the
said defendant made, and caused
to be signed and filed in the office
of the clerk aforesaid, his bill of
exceptions in this cause, in the words
and figures following, to wit;

State of Illinois }
 County of Peoria } In the County Court

John Widig administrator of }
 Conrad Wolpers deceased }
 vs } Assumpsit
 Henry Hiniker

Be it remembered that
 upon the trial of this cause the plain-
 tiff to maintain the issue on his part
 offered in evidence a certain prom-
 issory note as follows to, wit,

\$500.00 Twelve months after date
 I promise pay to the order of Conrad
 Wolpers five hundred dollars payable
 negotiable without defalcation or discount
 and for value received bearing six per
 cent interest from date until paid.

Saint Louis March 3rd 1853

(signed)

Henry Hiniker

Which said note is endorsed on the back
 thereof as follows to, wit,

\$30.00 interest paid

April 20, 1854 (signed) Wm Hiniker

Also a certain certified copy of certain
 letters of administration which said copy
 is as follows to, wit,

County of St Louis }
 The State of Missouri }
 To all Persons to whom these
 presents shall come Greeting:

Know Ye that

22

Whereas Conrad Wolpers late of the County of Saint Louis died intestate, as it is said having at the time of his death property in this State which may be lost destroyed or diminished in value if speedy care be not taken of the same. To the end therefore that the said property may be collected preserved and disposed of according to law: We do hereby appoint John Hedig administrator of all and singular the goods and chattels rights and credits which were of the said Conrad Wolpers at the time of his death with full power and authority to secure and dispose of said property according to law and collect all moneys due said deceased, and in general to do and perform all other acts and things which are or hereafter may be required of him by law:

In Testimony where
of I Peter Ferguson Judge of the
Probate Court in and for the
County of St Louis hereto sign
my name and affix the seal of
said Court at Office this Seventh
day of November A.D 1853-

Peter Ferguson

State of Missouri }
County of St Louis } ss.

Judge Probate

I William Ferguson Clerk
of the Probate Court of the County of
St Louis certify that the foregoing is
a true copy of the Letters of administrat.

ion granted to John Wedig on the estate of Conrad Wolpers deceased as the same now remains of Record in my office.

In Testimony Whereof I have set my hand and affix the seal of the Probate Court for the County of said at Office in said County this seventh day of November in the Year of our Lord 1853.

Wm. H. Ferguson

State of Missouri }
County of St. Louis }

Clerk

I, Peter Ferguson Judge of the Probate Court of the said County of St. Louis do hereby certify that the foregoing except the certificate and attestation of the Clerk of the said Probate Court for St. Louis County is a true copy of the letters of administration granted to John Wedig on the estate of Conrad Wolpers deceased as the same now remains of Record in the Office of the Judge of the said Probate Court, and that the foregoing certificate and attestation of the said Clerk of the said Court of Probate, is in due form of law, and that the said letters of administration were granted to said John Wedig in pursuance of and agreeable to the laws of the State of Missouri.

In Testimony Whereof I have hereunto subscribed my name Office this

24

Fourth day of September A.D. 1856,
Peter Ferguson Judge of
St. Louis Probate Court

State of Missouri }
County of St. Louis }

I William H. Ferguson
Clerk of the Probate Court of ~~the County~~
~~of St. Louis~~, do hereby certify that Peter
Ferguson, whose genuine signature
is affixed to the above certificate
is the acting judge of the Probate
Court of said St. Louis County and is
duly qualified commissioned and
sworn according to law.

In Testimony
Whereof I hereto set my hand and
affix the seal of the Probate Court for the
County of St. Louis at Office in said
County this fourth - day of September
in the year of our Lord 1856

William H. Ferguson
Clerk

Also the testimony of Peter Davidson Esq.
that the said plaintiff was a non-resid-
ent of and absent from this State resid-
ing in the State of Missouri, and had
informed him said Davidson that
he said plaintiff had lost the origin-
al Letters whereof a copy was offered,
and that he said Davidson believed
such information to be true, which
said note, copy, and testimony were
all the evidence offered upon such

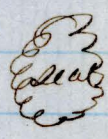
trial. Also that the said Defendant by his counsel, ^{afterwards} then and there objected that the Court had then and there no lawful authority to receive any evidence to support the case of said Plaintiff herein, and further objected that even if the Court had then and there ~~was~~ ~~there~~ such lawful authority the evidence aforesaid was wholly insufficient, and ~~therefore~~ ^{therefore} moved the Court to exclude the same, which said objections and motion were overruled and denied by the Court, whereⁱⁿ ~~for~~ the said defendant by his counsel then and there, excepted to the opinions and decision of the Court in overruling said objections and in denying said motion. — Nevertheless the Court received such evidence and found a verdict thereon for the plaintiff and ordered the Clerk of said Court to assess the damages of the said plaintiff in this behalf — And there upon the said Defendant entered his motion for a new trial of this cause to, wit,

Defendant enters motion for new trial of this cause for the following reasons to, wit.

1st The verdict of the Court is contrary to law

2nd The verdict of the Court is unsupported by evidence —

- And thereupon on consideration
thereof the Court overruled and den-
ied the motion last aforesaid and
rendered judgment for said Plaintiff
whereupon the said Defendant by
his Counsel then and there except-
ed to the opinion and decision
of the Court in overruling and deny-
ing the said last mentioned moti-
on, and prayed the Court to sign
and seal this bill of exceptions
which is according to law -

Thomas Bryant 
C. Judge

State of Illinois }
County of Peoria } I, Charles Rutledge, clerk
of the county court within and for the
county of Peoria in the State of Illinois,
do hereby certify that the foregoing is a full com-
plete and true transcript of all and singular the Record
and proceedings in a certain cause lately depending in
the County Court of Peoria County State of Illinois
together wherein John Medig Administrator ^{of the} Estate of
Rod Welpers deceased is Plaintiff and Henry Horn-
ake is Defendant together with all things concerning
the same without any addition, alteration or omission
whatsoever as the same appears of Record and on file
in my Office.

Witness my hand and Official Seal
at Peoria this 3^d day of April A.
D. 1859.

Charles Rutledge Clerk
per Geo. H. Rutledge Deputy Clerk

State of Illinois set-

In the Supreme Court
at Ottawa - Of the
April Term A.D. 1857-

Henry Hernake plaintiff in Error

^{vs}
John Wedig administrator of
Conrad Wolpers decedent
defendant in error -

Error to Peoria
County Court-

and hereupon comes the said
Henry Hernake by Charles C. Bonney
his attorney, and says that in the record
and proceedings aforesaid, and also in
the rendition of the judgment
aforesaid, there is manifest error in
this to-wit; that the said county court
neither had nor could have jurisdiction
of the sum for which the judgment
aforesaid was given: there is also
error in this, to-wit, that the said John
Wedig hath not in anywise answered,
replied to, denied or noticed the said
plea of the said Henry Hernake by
him secondly above pleaded to the
said declaration of the said John
Wedig; there is also error in this to-wit,

that the evidence recd by the said
county Court is wholly insufficient
to warrant or support a verdict in favor
of the said John Wedig; there is also
error in this, to wit, that there is no
such assessment of damages in
the record and proceedings aforesaid,
as doth or can warrant or support
the judgment aforesaid; there is also
error in this to wit, that the said motion
for a new trial of the action aforesaid,
was overruled and denied
by the said county Court; there is
also error in this to wit, that by the
record aforesaid it appears that the
judgment aforesaid, in form aforesaid
given, was given for the said John
Wedig, against the said Henry Heineke
whereas by the laws of the land the
said judgment ought to have been
given for the said Henry Heineke against
the said John Wedig. And the said
Henry Heineke prays that the judgment
aforesaid, for the errors aforesaid,
and for other errors apparent in the
record and proceedings aforesaid, may
be reversed, annulled and altogether
held for nothing, and that he may

be restored to all things which he hath
lost by occasion of the said judg-
= ment &c.

Charles C. Bonney
attorney for
Plaintiff in Error

And the said John Wedg, by
his attorney, cometh
into court here, and saith that
there is no error either in the record
and proceedings aforesaid, or in the
rendition of the judgment aforesaid,
and prays that the justices of the
said Supreme Court now here may
proceed to examine as well the record
and proceedings aforesaid, as the
matters aforesaid above assigned
for error, and that the judgment
aforesaid in form aforesaid given,
may be in all things affirmed,
&c.

To the clerk of the said Supreme Court;
You will please issue notice to
the said defendants in error,
according to the affidavit herewith
filed, and the rule of said Court
in such case made and provided,
and send the same to the undersigned
for publication &c.

Charles C. Bonney
attorney for
Plaintiff in Error.

66.
Henry Heinicke
Plaintiff in Error
— vs —
John Heding admr
vs. defendant in Error
Record and
assignment of Errors

Filed April 29. 1857

J. Leland
Clerk

State of Illinois ; set;
In the Supreme Court,
at Ottawa.

Henry Heinake
 plaintiff in error
 versus
John W. Edy, administrator
of Conrad Wolfers deceased
defendant in error.

} Error to Peoria
County Court.

State of Illinois }
County of Peoria }

Charles C. Boney
of the county and state aforesaid, being
first duly sworn upon his oath says,
that he is of counsel for the plain-
-tiff in error in the above-entitled
cause, and that the above-named
defendant in error is absent from,
and a non-resident of this state
of Illinois, and resides at Saint
Louis in the state of Missouri as
this affiant verily believes, and further
saith not.

Subscribed and sworn to before } Charles C. Boney
me this 25th day of April }
A.D. 1857- Enoch Sloan, clk Peoria County Circuit Court

Hinkle

Wolpers

In the supreme Court of
Wolpers, Adm'r of The State of Illinois.

The following is submitted by the defend-
ants in error upon a single point. All other
points in the case being submitted without argu-
ment.

To the declaration, The defendant below
filed two pleas - Gen. issue & a special plea deny-
ing the right of Hedig to sue as administrator of Con-
rad Wolpers deceased. Upon the second plea there
was no issue - no notice having been taken of the
plea whatever. The question now arises - is this error?

In the part of the dect. in error, it is con-
tended that it is not, ~~(the following reasons given.)~~

1st The plea denying the
right to sue as administrator, is a plea on a badmen-
& should be sworn to, & pleaded first of all. It was not
sworn to, nor was it pleaded until after demurrer was
overruled & after the plea of the gen. issue filed. It
was hence out of time & place & might have been
stricken from the files on motion.

2nd Under our statute
(See Appendix to Rev. Stat. pp. 596,) an administrator from
a neighboring state must on trial, exhibit his letters
of administration duly certified. Hence the very matter
raised by this neglected plea, must necessarily have been

proven under the general issue. It has been decided
 by the Supreme court (See Ross vs Reddick 1 Scam. 73.) that
 where a neglected plea raises matter that may be
 proven under the general issue, and proceeds to trial
 without objection (there being one good issue) the
 irregularity is waived. The record in this case shows
 that both parties declared they were ready for trial.
 The bill of exceptions also shows that no objec-
 -tions were made to receiving evidence, ^(limited) the plaintiff
 below had given in his entire testimony. It is
 now too late for the plaintiff in error to take advant-
 -age.

R. Davidson
 for deft. in error.

1853-69

Hennake

by
Weddig admr

Hennake

vs

Wolfeville Mt. of

Argument

for

deft. in error

Deft's argument

Filed May 19, 1854

L. Deland

Clerk

183 66

Kernake v. Wedg & c.

affidavit of
non-residence

Filed April 29. 1857
L. Leland
Clerk

State of Illinois

Sct

In the Supreme Court
— at Ottawa —

Heinake

v.

Wedig &c

}

Error to Peoria County
Court —

Plaintiffs Brief -

If there be any intention of the framers of the Constitution, manifest upon its face, it is that all Courts of each particular kind provided for in the Constitution, should have a uniform organization and jurisdiction. — Art. V. Constitution —

If this be so, whenever the legislature attempts to confer upon any particular court of any class of courts established by the Constitution, any peculiar exclusive organization or jurisdiction not extended to all courts of that class, they act against the plain manifest meaning of the Constitution, in this, that in so far as they attempt to confer such organization or jurisdiction, so far, they are in fact not creating an organization for, or conferring jurisdiction upon any constitutional tribunal, but on the contrary are creating a new court of a new class, and merely attaching it to, and declaring that its terms shall be holden by the judge of some constitutional court.

Thus when the legislature extended the jurisdiction of the ~~Peoria~~ Peoria County Court

of Peoria County, it ceased to belong to the class of Courts known to the Constitution as "County Courts"; and if on the other hand it is contended that this is such a court as the legislature had a right to create, to wit, a court of inferior civil and criminal jurisdiction in a city, then it is clearly an unconstitutional Court, as it has no uniformity of organization and jurisdiction with other Courts of that class created prior to this.

There is no law giving said County Court jurisdiction of the amount claimed and recovered, unless it be the act of February 9th 1835, entitled "an act to extend the jurisdiction of the County Court of Peoria County." In this case the Legislature have simply attempted to authorize the County Court of Peoria County to usurp and exercise a portion, and a large portion of the powers of the Circuit Court of the 16th Judicial Circuit within that County. This attempt is as null and void as would be an act declaring that a Justice of the Peace for Peoria County, might and should, in addition to his other powers and duties, hold a monthly term of the Circuit Court for the trial of civil causes—

If such acts as these are to be Tolerated, we have no longer any judicial System—there is no longer any citizenship of the state: on the contrary, the State is divided into petty local communities, governed,

not by well-known general laws, but by petty local rules; The citizen of one County fears to be found in another, lest he or his estate be summarily subjected to the operation of laws, and the determination of Courts, which have no existence in his own; The process, judgment, order or decree of the County Court may be of a force and effect in one County, so different from that which they severally have in ~~another~~ as to circumscribe the rights and remedies of the citizen by County lines, instead of leaving them to be settled by the law, and in the tribunals which are common to the whole State.

And there is another aspect of this matter worthy of consideration. It was the intention of the framers of the Constitution, not that any one man should control, and in his own sole personal discretion exercise the law-making power, under any pretences in any form, but that the interests and the wisdom of the State at large, represented in the General Assembly, should give their sanction before any statute whatsoever should be enacted. - Yet if such special laws as that here questioned are to be upheld, citizens of the several districts can rely no more upon the interests of and the wisdom of the whole General Assembly for the protection of their rights. When the representative of any district

is disposed to experiment in legislation touching the judiciary, he has but to introduce his bill, confining ~~to~~ its operation to his own district or to one or more of the counties in it, and straightway, it is said by other members, "this is no concern of ours, however in=
=expedient or unconstitutional the pro=
=posed innovation may be, if they (the people of such district or county) want it let them have it." - Thus hasty and unwise legislation, promotive of nothing but private purposes, legal uncertainties, vexatious litigation and judicial per=
=plexities, covers the land. It will not do to answer that this would be an appropriate argument to a legislative body. The only hope and safety of the people from that insidious despotism which steals and wears the ~~robe~~ sacred robe of Statutory law, is in the fidelity of the Court of last resort. Well may the fears of the people rise, when this tribunal pauses in the discharge of its official duty to listen to reasons of mere local expediency, rather than to arguments based upon the general con=
=sequences which must flow from a Statute whose constitutionality is questioned. The latter are a proper guide to a true interpretation, - The former ought never even to be heard by the judges of a court ~~from~~ whose judgment there is no appeal.

"The fact that the parties appeared before the county
Court and contested the merits of the case, can
have no bearing on the proper decision of this question".
X 11 Illinois 122 Williams et al. &c. v. Blaken-
-ship et al. &c.

The Plaintiff in error confidently
submits without argument the other matters by
him assigned for error &c.

Charles C. Bonney
attorney for
Plaintiff in error.
" "

183

Hencke v. Wodig &c.

In Error.

Plaintiffs Brief.

Filed April 22, 1857
S. Leland
Clerk

Charles C. Rorney for Plf