

No. 12391

Supreme Court of Illinois

Eddy.

vs.

County Commrs. Peoria County.

71641  7

Be it remembered, that heretofore, to wit, on the twenty third day of April in the year of our Lord one thousand eight hundred and fifty two, there was filed in the office of the clerk of the Circuit Court in and for the county of Peoria in the State of Illinois a declaration, copy of Bond sued on, precept, and security for costs, which are in the words and figures following, to wit,

In the Circuit Court of Peoria county, May Term A.D. 1852
State of Illinois, Peoria county ss: The County Commissioners of the County of Peoria, who sue for the use of Alfred J. Gray, plaintiffs in this suit, complain of John Lucas, Samuel Farmer and Labish P. Eady defendants in this suit of a Plea, that they the said defendants tender unto the said plaintiffs the sum of One thousand Dollars lawful money of the United States, which to the said plaintiffs, they the said defendants owe and from them unjustly detain - And thereupon the said plaintiffs complain - For that whereas the said defendants by the names of John Lucas, Samuel Farmer and L. P. Eady on the 15th day of November A.D. 1849 at the County of Peoria aforesaid made their certain writing obligatory under their hands and seals, which said writing obligatory is now here shown to the Court signed and sealed as aforesaid, and therein and thereby acknowledged themselves to be jointly and severally bound to the said plaintiffs to pay to the said plaintiffs the said sum of one thousand dollars above demanded - Which said writing obligatory was and is subject to the condition in substance following - That whereas the said John Lucas was on the

sixth day of November A.D. 1849 duly elected to the office of Justice of the Peace in Lancaster precinct within and for the county of Peoria, Now if the said John Lucas shall fairly account for and pay over all moneys, that may come to his hands under any judgment or otherwise by virtue of his said office, and shall well and truly perform all and every act and duty enjoined on him by the laws of this State to the best of his skill and abilities, then this obligation to be void, otherwise to remain in full force and virtue -

And for assignment of breaches of the conditions of the said writing obligatory according to the statute in such cases made and provided, the said plaintiffs say, that the said John Lucas did not well and truly perform all and every act and duty enjoined on him by law, nor account for and pay over all moneys that come to his said hands by virtue of his said office; ~~and the plaintiff avers that the said John Lucas, on the first day of August A.D. 1851 at the County of Peoria aforesaid by virtue of his said office; and the said Plaintiff avers,~~ that the said John Lucas on the first day of August A.D. 1851 at the county of Peoria aforesaid by virtue of his said office and in his capacity as Justice of the Peace did collect and receive from one Reuben M. Strother the sum of Fifty one dollars and twenty five cents, the property of and money belonging to the said Alfred J. Gray, and collected by him the said Lucas upon a note made by said Strother to said Gray and by him said Gray left with said Lucas for collection and that the said Lucas has refused to account for and pay over the said money to the said Gray although often requested - Whereby an action has

account to the said plaintiffs to have and demand of the said
defendants the said sum of money above demanded -
Yet the said defendants though often requested have not
paid the same, nor any part thereof to the damage of
the said plaintiffs One thousand dollars and therefore they
bring suit &c. - Purple & Sanger, Plffs, attys.

Copy of Bond sued on.

Know all men by these presents, that we John Lucas
of the county of Peoria and State of Illinois, are held and firmly
bound unto the County Commissioners of said county of Peoria and
their successors in office for the use of the People of the State of Illinois
in the penal sum of one thousand dollars good and lawful money
of the United States, for the payment of which well and truly
to be made to the said County Commissioners for the use aforesaid
we do bind ourselves, our heirs, executors and administrators jointly
and severally, firmly by these presents. Sealed with our seals
and dated this 15th day of November A.D. 1849 = The condition
of this obligation is such, that whereas the said John Lucas
was on the sixth day of November A.D. 1849 duly elected to the office
of Justice of the Peace in Lancaster precinct within and for the
County of Peoria; Now if the said John Lucas shall justly and
fairly account for and pay over all moneys, that may come to
his hands under any judgment or otherwise by virtue of his said
office and shall well and truly perform all and every act and
duty enjoined on him by the laws of this State to the best of his

skill and abilities, then this obligation shall be void, otherwise to remain in full force and virtue -

Entered into in my office and
approved by me this 23rd day
of November A.D. 1849

John Lucas 
Samuel Farmer 
J. P. Eddy 

R. Hamilton, clk pro tem -

County Commissioners of Peoria County
for the use of Alfred I. Gray

In the Circuit Court of
Peoria County - May Term A.D. 1852

John Lucas, Samuel Farmer,
Sabish P. Eddy,

Issue summons in debt
on bond - Debt \$1000. 00
Damages - 1000. 00

Returnable to next term. To Sheriff of Peoria County - A.D. 1852.
Purple & Sanger, Plffs atty.

Laurel Gale Esq. clk &c -

County Commissioners of Peoria County
for the use of Alfred I. Gray

In the Circuit Court of Peoria
County - May Term 1852 -

John Lucas, Samuel Farmer,
Sabish P. Eddy,

I do hereby enter myself security for costs
in this cause and acknowledge myself

bound to pay or cause to be paid all costs which shall accrue in this action
either to the opposite party or to any of the officers of this Court, pursuant to the

laws of this State - Dated Apr 23. 1852 -

N. H. Purple."

And thereupon afterwards on the same day, the clerk of said court issued a summons under the seal of said court to the Sheriff of Peoria County in the words and figures following, to wit:

"The People of the State of Illinois, To the Sheriff of Peoria County, Greeting: We command you to summon John Lucas, Samuel Farmer and Labish P. Eddy if he may be found in your County, to appear before our Circuit Court on the first day of the term thereof to be held at Peoria, within and for the said County of Peoria, on the second Monday May next then and there in our said court to answer unto the County Commissioners of the County of Peoria, who sue for the use of Alfred J. Gray, of a plea, that they render unto the said County Commissioners the sum of one thousand Dollars, which they owe to and from the said County Commissioners unjustly detain, to their damage one thousand dollars as they say and make return of this writ with an endorsement of the time and manner of serving the same, on or before the first day of the term of the said court to be held as aforesaid -

L. S. 3

Witness Jacob Gale, clerk of our said court and the seal thereof at Peoria this 23rd day of April in the year of our Lord one thousand eight hundred and fifty two.

Jacob Gale, clerk."

Which summons was returned by said sheriff endorsed as follows to wit:

"Served on John Lucas by reading to him this writ, April 28th 1852 -
James L. Riggs shff By J. D. Irons, deputy."

And afterwards, to wit, on the 18th day of August A.D. 1852, the clerk of said circuit court issued an alias summons in said cause to the Sheriff of said Peoria county, in the words and figures following, to wit:
"The People of the State of Illinois, To the Sheriff of Peoria county, Greeting:
We command you to summon Samuel Farmer and Labish P. Eddy, impleaded with John Lucas, as we have heretofore commanded you to summon them, if they may be found in your county, to appear before our Circuit Court on the first day of the term thereof to be held at Peoria, within and for the said county of Peoria on the third Monday of November next, then and there in our said Court, to answer unto the County Commissioners of the County of Peoria, who sue for the use of Alfred J. Gray of a plea that they render unto the said County Commissioners the sum of one thousand dollars, which they owe to and unjustly detain from the said County Commissioners, to their damage one thousand dollars, as they say, and make return of this writ, with an endorsement of the time and manner of serving the same on or before the first day of the term of the said Court to be held as aforesaid -

L.S.

Witness Jacob Gale, clerk of our said Court and the seal thereof, at Peoria this 18th day of August in the year of our Lord one thousand eight hundred and fifty two - Jacob Gale, clerk."

which summons was returned by said Sheriff endorsed as follows, to wit:
"Served on J. P. Eddy by reading to him this writ, August 19th 1852 -

James L. Riggs Sheriff

By J. J. Irons, Spty."

Proceedings at a term of the Circuit Court begun and held
at the Court-House in the City of Peoria, in and for the County of Peoria
in the State of Illinois, on the second Monday of May, in the
year of our Lord one thousand eight hundred and fifty three,
it being the ninth day of said month - Present the Honorable
Orslove Peters, Judge of the 16th Judicial Circuit in the State
of Illinois, to wit:

Friday, May 13th A.D. 185-3

The County Commissioners of Peoria county
for the use of Alfred L. Gray

vs

debt on bond

John Lucas, Samuel Farmer
& Labish P. Eddy.

On motion of the plaintiffs by Purple their
attorney, Ordered that the defendants Lucas and Eddy
plead to this action by Monday morning next.

Tuesday, May 17th A.D. 185-3

This day came the plaintiffs by Purple their attorney, and
the said John Lucas being three times solemnly called, came
not but made default.

Tuesday June 7th A.D. 185-3

The plaintiffs by Norman H. Purple their attorney suggested
that the said Alfred L. Gray has departed this life,
Whereupon it is ordered on their motion, that the administrator of
the estate of the said Alfred L. Gray, when ascertained

be made party to this suit.

Proceedings at a term of the Circuit Court begun and held at the Court-House in the City of Peoria, in and for the County of Peoria in the State of Illinois on the second Monday of September in the year of our Lord one thousand eight hundred and fifty three, it being the twelfth day of said month - Present the Honorable Anselmo Peters, Judge of the 16th Judicial Circuit in the State of Illinois, to wit,

Tuesday, September 13th A.D. 1853.

The County Commissioners of Peoria County
for the use of Alfred I. Gray

vs

debt on bond

John Lucas, Samuel Farmer
& Sabish P. Eddy,

On suggestion of the plaintiffs at the last term of the death of the said Alfred I. Gray, and the same not being denied by the defendants, it is ordered on motion of plaintiffs by Norman H. Purple their counsel, that Ezra C. Sanger administrator of the Estate of Alfred I. Gray, deceased be substituted as the person for whose use this suit is carried on in place of said Gray, and that the defendants plead to this action by Thursday morning next.

And afterwards, to wit, on the 29th day of November
A.D. 1853, the following pleadings were filed in said cause
to wit,

County Commissioners vs.

vs

Peoria Circuit Court.

John Lucas & als.

November Term 1853-

1. And defendant Eddy comes and defends the wrong and injury
when vs. and says, that he did not make the said writing obligatory
in said declaration mentioned, and that the same is not his act
and deed, and of this he puts himself upon the country vs.
Plff doth the like } Merriam for Eddy.

Purph & Langer, for plffs }

2. And for a further plea in this behalf defendant Eddy says
Actis non, because he says, that after making said writing
obligatory, to wit, on the second day of April A.D. 1850
to wit, at the County of Peoria aforesaid, the People of the
said County of Peoria duly adopted the Township organization
and then and there became and were from that time up
to and until after the committing the breaches of said writing
obligatory as in said declaration mentioned subject to the provisions
of a law passed by the legislature of the State of Illinois entitled
"An act to provide for Township organization, under which any County
may organize whenever a majority of voters of such County at
any General election shall so determine" Approved February 12, 1849.
And after the making of said writing obligatory, to wit, on the

second day of April A.D. 1850, to wit: at the said county, the People of the said county of Peoria adopted the said act, and from thence hitherto have been subject to and governed by the provisions of the said act and the amendments thereto and the substitute therefor, and that on the said 2nd day of April A.D. 1850, the said Lucas was duly elected a justice of the Peace in and for the Township of Timber in said county and hath qualified as such justice and given bond and security as such justice - which said Township of Timber is within the territorial limits of the said precinct of Lancaster in said declaration mentioned - and that said Lucas hath been and was at the time of the said breaches in said declaration mentioned a justice of the Peace under the said act of the Legislature of the State of Illinois in and for the said Township of Timber and under and by virtue of his said last mentioned election, and that from and since the time when said Lucas was so elected and qualified the said Lucas hath not acted as such justice except by virtue of his said last mentioned election and qualification as a Justice of the Peace of the said Township of Timber: And the said defendant Eddy avers, that during all the time when the said Lucas acted as a Justice of the Peace of the said precinct of Lancaster he well and faithfully performed his duty as such Justice of the Peace according to the terms of the condition of the said writing obligatory; and that the said breaches in said declaration mentioned occurred after the said Lucas

was elected and qualified as such Justice of the Peace of the said township of Kimber, and that said Eddy as the security of said Lucas is in no wise responsible upon the said writing obligatory for the default of said Lucas in the said breaches mentioned and set forth, and thus the said defendant Eddy is ready to verify - wherefore he prays judgment &c -

Manning Thurman, for Eddy.

3 And for further plea in this behalf the said defendant Eddy says *ad hoc* now, because he says, that heretofore to wit, on the 6th day of November A.D. 1849, the said Lucas was elected a justice of the Peace of the precinct of Lancaster, then one of the Justices precincts of the said County of Peoria, and that only as the security of the said Lucas as a Justice of the Peace of said Precinct of Lancaster the said defendant Eddy executes the said writing obligatory in said declaration mentioned, and that afterwards to wit, on the 2nd day of April A.D. 1850, the People of the said County of Peoria having adopted Township organization under the laws of the State of Illinois, the said Lucas was under said Township organization elected Justice of the Peace of the Township named "Kimber" in said County, and accepted said last mentioned office and qualified as such Justice of the Peace said Township of Kimber according to the Statute in such case made and provided, whereby the office of the said Lucas as Justice of the Peace of said precinct of Lancaster became vacated and determined, and the said

defendant Eddy avers, that each and every of said breaches in said declaration assigned occurred and were made after said Lucas was elected and qualified as Justice of the Peace of the said Township of Timber, and this the said defendant Eddy is ready to verify, wherefore he prays judgment &c. Manning Merriman, for deft Eddy.

4th And for further plea in this behalf the said defendant Eddy says actio non, because he says there was not at the time of the commencement of said suit any such corporation as the County Commissioners of the County of Poria as by the said writ and declaration is supposed: and of this he puts himself upon the country &c. Manning Merriman attys for deft Eddy.

And afterwards, to wit, on the 1st day of December A.D. 1883, the plaintiffs filed a demurrer in said cause to defendants pleas in the words and figures following, to wit,

County Commissioners &c.	}	In Circuit Court of Poria County.
vs		
John Lucas & others		

And the said plaintiff for Replikation to Defendants Second, third and fourth pleas, says procludi non because he says, that the said pleas and the matters and things therein contained are not sufficient in law to preclude the said plaintiff from having and maintaining his action aforesaid, against the said defendant, and that he is not bound in law

to answer the same and this he is ready to verify.
Wherefore he prays judgment &c. Purple Sanger
for "Plff."

Proceedings in the Circuit Court in and for the County of Peoria
in the State of Illinois at a term thereof begun and held at the
Court-house in Peoria on the third Monday in the month
of November in the year of our Lord one thousand eight hundred
and fifty three, it being the twenty first day of said month -
Present the Honorable Onslow Peters Judge of the sixteenth
Judicial Circuit in the State of Illinois, to wit.

Wednesday, December 7th A.D. 1853

The County Commissioners of Peoria County
for the use of Ezra G. Sanger, administrator
of the estate of Alfred J. Gray, deceased

vs

debt on bond

John Lucas, Samuel Farmer & Labish P. Eddy

This day came the parties by their respective attorneys,
and this cause ^{came} on to be heard on the demurer of the plaintiff to
the 2nd 3rd & 4th pleas of the defendant Labish P. Eddy, on
consideration whereof the Court is of opinion, that the said
2nd 3rd and 4th pleas of the said defendant Eddy are
insufficient in law to bar the plaintiffs from this action,
and it is therefore considered that the plaintiffs be not barred
from having or maintaining this suit for anything in said
2nd 3rd and 4th pleas alleged.

This day this cause came on to be tried, and by agreement of parties, the same was submitted to the Court for trial, and the said John Lucas being three times solemnly called came not, but made default, and the Court after hearing the evidence finds the issue in favor of the plaintiffs and assess their damages at fifty five dollars - It is therefore considered and adjudged by the Court, that the said plaintiffs have and recover of the said defendants Eddy and Lucas the sum of One thousand dollars the debt in said declaration mentioned and also their damages amounting to the sum of fifty five dollars assessed as aforesaid together with their costs in this suit in that behalf expended and that execution issue therefor according to the statute in such case made and provided - And it is further considered and adjudged by the Court, that the judgment for the penalty above named shall stand as security for such other breaches of said bond as may afterwards happen pursuant to the statute in such case made and provided - The said Eddy prayed an appeal in this cause to the Supreme Court, which is allowed on his filing bond in forty days in penalty of two hundred dollars with A. L. Merriman as surety and conditioned according to law.

And afterwards on the twenty first day of December A.D. 1853, the said Labish P. Eddy filed in the office

of the clerk of said Circuit Court an appeal Bond in this cause in the words and figures following, to wit:

"Know all men by these presents, that we Labish P. Eddy as principal and A. Lee Merriman as security are held and firmly bound unto the County Commissioners of Peoria County in the penal sum of two hundred dollars, for the payment of which well and truly to be made, we bind ourselves jointly, severally and firmly by these presents. Witness our hands and seals this 16th day of December A.D. 1853.

The condition of the foregoing obligation is such that whereas on the seventh day of December A.D. 1853 at and during the November Term of the Peoria County Circuit Court A.D. 1853, the said County Commissioners of Peoria County, who sued for the use of Ezra G. Sanger administrator of the Estate of Alfred I. Gray, recovered judgment against said Labish P. Eddy impleaded with John Lucas and Samuel Farmer for the sum of one thousand dollars debt on bond and for the sum of fifty five dollars damages from which judgment said Eddy prayed an appeal to the Supreme Court of the State of Illinois, which appeal was granted. Now if said Eddy shall duly prosecute his said appeal and shall pay the said judgment, costs, interests and damages in case the judgment shall be affirmed then this obligation to be void, else to be and remain in full force and virtue.

L. P. Eddy *[Signature]*
A. L. Merriman *[Signature]*

State of Illinois
Peoria County I, Jacob Gale clerk of the Circuit Court
in and for Peoria county in the State of Illinois do hereby
certify that the foregoing is a true and correct transcript from
the Records and proceedings in a certain cause in the Circuit
Court of said county, wherein the County Commissioners of Peoria
County for the use of Ezra G. Sanger administrator of the estate of
Alfred I. Gray, deceased are plaintiffs and John Lucas,
Samuel Farmer and Labiah P. Caddy are defendants, of
Record and on file in my office.

In witness whereof I have set my hand
and affix the seal of said Circuit Court
at Peoria this third day of June in
the year of the Lord one thousand eight
hundred and fifty four.

Jacob Gale, clerk -

Clerk's fees: for Transcript, certificate & seal \$5.⁰⁰ paid by Gray's atty -

Jacobus P. Eddy
 Appellant
 " County Commissioners
 of Pavia County
 Appellees

Supreme Court
 Appeal from Pavia

And said appellant
 comes and says that in the Records
 and proceedings aforesaid in said
 Court there is manifest Error, and
 that said judgment ought to be reversed
 or aside or set aside - And said
 Appellant assigns the following Causes of Error

- 1 The Court Erred in sustaining the Demurrer
 to the said Pleas filed by Appellant -
- 2 The Court Erred in giving judgment for
 said Appellees upon said Demurrer -
- 3 The Court Erred in rendering judgment
 against Appellant in said case

And for other Causes of Error -
 Witness My Hand
 Appellants Attys

And the said Appellants that in the Record
and Proceedings and in the Rendition of the Judg-
ment aforesaid there is no Error, wherefore they
pray that the said Indyment may be affirmed

J. B. Purce
for Appellants

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Jabish P. Eddy

County Comm^y Poria Co. Ind.

Record

1854

Filed June 13. 1854.

L. Keland Clk.

12391

1854

Deposited