

13459

No. _____

Supreme Court of Illinois

Pierce.

vs.

Wilcox.

374

374

Curc

History

1860

3544

no circles

Bima Me
April 13 1889

Wm J. Boyanly
Esq.

Lush

You would move in
supreme Court at Alltown
to dismiss

Clement Pierce & Nathaniel Wilcox
appeal from Warren because
there was no judgment below as
appears by the record. —

& Antione Halloway et al at the
suit of Robert Stone, also
appeal from Warren —

Williams is on the other side
in last case & Goudy in first.

I shall be at Alltown
about close of first or beginning
of second week —

Truly yours
A. J. Handing

piece

h.

toil cop

"Exhibit A"

STATE OF ILLINOIS--Third Grand Division.

SUPREME COURT.---April Term, A. D. 1858,

CLEMENT PIERCE,
vs.
NATHANEL B. WILCOX. } **Appeal from Warren.**

A B S T R A C T .

This was a proceeding by attachment commenced by the appellant against the appellee in the Warren Circuit Court.

The affidavit set forth indebtedness upon an account, and averred that "said Willcox is about to depart from this State with the intention of having his effects removed from this State." The defendant plead in abatement of the writ and traversed the allegation, on which issue was joined.

A trial was had by a jury before Hon. John S. Thompson at the March Term 1857. The verdict was for the defendant. The plaintiff moved for a new trial which was overruled and exception taken. Judgment was rendered for costs, and appeal taken.

On the trial evidence was offered by the plaintiff tending to show that the defendant intended to remove from the State and take with him his effects, but did not show when he proposed to leave this State. The proof showed that this writ was sued out and the defendant did not go but remained in the State.

The plaintiff asked the following instructions which were refused, and exception taken.

3. It is not necessary that the defendant should intend to leave the State immediately, or within any limited time in order for them to find that he was about to leave.

4. Although the jury should believe from the evidence that the defendant intended to remain in the State himself and keep his family here, yet if they further believe he was about to remove his property from the State they will find for the plaintiff.

The appellant assigns for error the refusal of the Circuit Court to grant a new trial.

GOUDY & JUDD,
Appellant's Attorneys.

⁵⁷
Supreme Court
April Term 1858

Clement Price
vs

N. B. Wilcox

Abstract,

Gondy & Pinner
offdls attys.

Filed April 28, 1858
L. Leland
Clerk

State of Illinois

Supreme Court of Illinois
April Term A.D. 1859

Clement Price

vs

Nathaniel Wilcox

Geo. H. Harding being sworn says that he is & has been ever since said case came into this Court attorney for said appellee.

That as such attorney for said defendant he employed Wm. F. Bryan to attend to said case during the first week of said Term as is set out in the affidavit of said Bryan. That he relied on said Bryan's attention to said case, & for that reason only was not in attendance at that time.

That before the commencement of this Term of said Court, your affiant notified Wm. C. Gandy attorney for appellant that he should move to dismiss said appeal because no judgment was rendered in the Warren Circuit Court from which appeal could be taken.

That your affiant was much surprised at the reversal of said case for non-judgment, & was first notified thereof by said Gandy at Peoria on Saturday of said first week of said Term.

being then on his way home to Linton
Milton County, N.C.
You affiant then notified said
County after foregoing facts &
that he should move to set
aside said reversal & dismiss
said case for the reason
aforesaid.

You affiant further
states that ^{was rendered} judgment in
said case in the Warren
Circuit Court on the verdict
of the jury.

That judgment has been
rendered in said Court on
said verdict but not till
after said appeal was pending
in this Court.

W. H. Haiding

Wm. H. Haiding
before me this 4th day
of May A. D. 1859
L. Leland Clerk of the Sup. Court
by J. B. Rice Deputy

57
Clement Pierce

n
Nathaniel Wilcox

affidavit of standing

State of Illinois

Supreme Court
April Term 1859

Element Place

vs Appeal from Warren
Salhauer vs. Long

Wm. J. Bryan

deposits from says that on 15th April
1859 he was employed by George
J. Harding to attend to a motion
to dismiss the above case in
the above named court and a
Memorandum which is here to attack
marked "Exhibit A" was at that
time given him by said Harding.

That on the first day of said
April Term your affiant
went from Pana his place of
residence to Ottawa to attend
said Term of said Court & did
so attend said court until the
Saturday there following viz 23^d inst.
That your affiant by mistake
left said Memorandum at his res-
idence in Pana & did not re-
collect the names of said case. Nor

the opposing attorney. That he
perused the docket of said court
for the purpose of ascertaining
the cases in which Hurd was
employed as counsel for the purpose
of ascertaining name of said
case. That he found three ^{only} to
which ^{said} Hurd's name was attached
neither of which was the case
in question. That he attended to
those cases which he found
belonging said case to be among
the number, & did not know the
contrary until ~~my~~ said Hurd to
Pena, Minors - That he made no
communication with said Hurd because
he thought the said business ^{entirely}
~~part~~ to him had then been attended
to. That he is a practicing
attorney of said court.

D. F. Rogers

Sworn to & Subscribed
before me this 2nd
May 1859 -

Henry M. Peck
Notary Public

Pierce 57

"
Wilson

affidavit of
Wm. H. G. G. G.

State of Illinois, Supreme Court of Illinois,
April Term AD 1859

Clement Pierce

vs.

Nathaniel Wilcox

The appellee comes
x moves that aside the reversal
of judgment - ruled at this Term
in this case for non joinder -
~~for this~~ and to dismiss the appeal
for want of jurisdiction in this
Court affirm appeal for the
following reasons -

1st because there was no
final judgment rendered on the verdict
of the jury in the Warren Circuit
Court.

2nd because the bond was
not approved by Court nor was
the security approved by the Court,
but was delegated to the Clerk -

The appellee asks the
Court to consider the affidavits of
Wm H Bryan & Geo H Auding on file -

May 4th 1859

Geo H Auding for appellee

Clement Pierce }
vs } Appeal from Warren
Nathl. B. Wilcox } 2

Motion by Appellee for a rehearing
of the motion to set aside the order re-
versing the judgment & to grant the
motion.

Points against the application
by the Appellant.

II. The only notice was by serving
a written notice on the 2^d day of this
term that application would be made
on the 15th day of the term.

Such a notice is insufficient,
because not made before the com-
mencement of the Term.

O'Connor vs Mullen 16 Ill 47.

III. The appeal was prosecuted to the
April Term 1858 - at which Term
a Rule was taken to join in error by
a certain day - the rule expired & the
case was continued for the want of a

compliance with the Rule. At the April Term 1859, no joinder still being made & the case called in its order, the judgment was reversed & the cause remanded.

On the 4th May 1859, the appellee appeared for the first time & moved to set aside the order, for the purpose of moving to dismiss the appeal. This was ~~ex parte~~ without notice & on the 14th May 1859, the Court overruled the motion.

3 Since that time the cause has been placed on the docket of the Circuit Court of Warren County & is now pending in that Court for trial.

The Appellee now comes the second time on notice served during this Term & renews his application so as to enable him to move to dismiss the appeal.

5 1. On this state of facts the motion can not be allowed, because the case has passed from the control of this Court & is pending in the Court below.

2. The motion to dismiss the appeal is a dilatory one & must be made at the first term & on the first opportunity, although the motion may go to the jurisdiction.
Mitchell vs Jacobs, 17 Ill 235.

Therefore the motion must have been made at the April Term 1858 & such motion after that would not have been an answer to the rule to join in Error.

3. The motion has once been fairly made & determined & no new grounds or meritorious reasons in its support are presented.

4. The ground relied on for dismissing the appeal, is that there was no judgment rendered on the verdict as shown by the record.

That was a clerical omission; & it appears from the affidavits of Mr Harding & the Atty of appellant that such formal judgment was rendered afterwards & before the reversal in

this Court, upon the motion of Appellee himself in the Circuit Court.

5. There has been gross neglect by the Appellee & there is no substantial reason for the motion & we insist that this Court cannot act on a case out of its reach & pending in another Court.

W. C. Goudy
Atty for Appellant

374

Blument Pierce

vs.
Athol B. Wilcox

Points for Appellant
against Motion for
rehearing of Motion
to set aside &c.

Fits Aug 2 1860
A. Leland

Col.

374

374

374
W. C. Goudy
App's attorney

State of Massachusetts
Supreme Court of Massachusetts
April Term 1860

Clement Pierce
vs Appeal from Warren
Nathaniel B. Wilcox

To William L. Goudy
Attorney for said Pff &
Appellant —

Please
take notice that on the
fifteenth day of the April
Term 1860 of said Court
or as soon thereafter
as counsel can be heard
I shall move for a re-
hearing of the Motion made
in said case on May 4 1859
to reverse the reversal of
judgment entered in said
case for non-jurisdiction
on the 20th April 1859 &
dismiss said appeal —

Wm. L. Goudy
Attorney for said defendant
& appellee

374
Perce
m

Arden

Notice

Filed April 28, 1880
L. Deland
Clerk

served by copy
made by W. C. Goring
att'y for appellant
Geo H. Hurd
April 18 1880 -

Original

Supreme Court of Illinois
April Term 1860

Elemeut Pierce
vs Appeal from Lawrence -
Nathaniel B. Wilcox

The appellee makes the following points & argument in favor of his motion for a rehearing of the motion to set aside reversal of Judgment entered herein at April Term A.D. 1859 and dismiss appeal.

First - The History of this case as it appears from the affidavits & papers on file is this:

- The Record is filed April 22nd 1858
" Abstract is filed " 23rd 1858

Reversed for non-judgment in error 20th April 1859

May 4th 1859 Motion to set aside this reversal & dismiss appeal because there was no judgment below & for other reasons.

May 14th 1859 Motion Overruled.
April 18th 1860 - Notice given to appellant of motion for a rehearing of said motion of May 4th 1859 - on 15th day of

the term, or as soon as counsel can be heard.~.

Affidavit of W. C. Lundy filed April 2nd 1860
 "That before reversal on appellees motion judgment was rendered on verdict in Court below in accordance" &c.

Affidavit of W. C. Lundy filed May 2nd 1860
 "That the judgment was rendered on the verdict not in accordance, but as a matter of course on motion for new trial having been overruled appellees motion, appellant resisting the motion"

The first point made by appellee is -

1. The court had no jurisdiction of the case which was still pending below.

Moody v. Drake 13 W. 344
& reports positive -

This Court had no jurisdiction of the case when judgment was reversed, and the fact of want of jurisdiction being brought to the knowledge of the Court at any time during the term the appeal must be dismissed, & no negligence of the party can confer jurisdiction. *Hearn v. Litchell* 10 Texas 216

But the party are not guilty of negligence - certainly not such negligence as this Court will punish by refusing to do justice -

See the affidavits of
Group Bryan & gett board
showing that the default occurred
through a pure accident -

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But the party are not guilty of negligence - certainly not such negligence as this court will punish by refusing to do justice -

See the affidavits of
Group Bryan & gett board
showing that the default occurred
through a pure accident -

In the case cited by appellant Mitchell & Jacobs & al.

17 Ill. 236 — the court distinguish between defects that go to the jurisdiction & those which do not; the latter may be waived, but not the former by the parties' act.

This Court under the Constitution had no power to act till the court below had adjudged the case.

There is no evidence that the judgment was rendered below to correct a clerical omission; in this the Court is clearly in error, and the court well observed that he does not state that the order of judgment was entered in vacuo pro tunc; but assigns a reason for the Court's action, which by the Court's affidavit is shown and ought to have been the true reason —

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17 Ill. 236 — the court distinguish between defects that go to the jurisdiction & those which do not —; the latter may be waived, but not the former by the parties' act.

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The appellant has been
unable to find
A Comm or Cullen (6 Hl. 47-
but submits,

That this application
is in the nature of a petition
for a rehearing, and that
the Court will look into the cir-
cumstances of the case as shown
in the petition for a rehearing
& affidavits accompanying -
being, the appellee asks for
the rehearing at the very first
moment when he found that
he needed such rehearing, and
had used every means known
to him & usually & commonly
resorted to, to learn what the
decision was.

113 Again, this Court decided
in cases referred to in attached
brief to 183, 4, 5 - 181-482 -
on docket of April Term 1858
that the precise application
or motion made here was an
express motion, & heard & sustained
without any notice.

That motion was made during the same term in each of said cases; the same precise motions were made in this.

This motion stood better in one point than those in this case there was no judgment below & this was assigned for a reason - in those. the only reason assigned was that the bonds were approved by the clerk, and the court will mark that this also was a reason assigned in this case.

This case was also better than those in this - that here the non-jurors are shown by the affidavits of Bryan & Harding to be the result of accident alone.

These decisions were all made against the counsel for appellee, & he has a realising sense of them.

The appellee is in a singular predicament. He can neither go forward, nor back.

He has judgment, but it is claimed to be reversed. & yet two terms have passed in the Court below & this case has not been reinstated.

See the affidavit of Geo. H. Harding -

The appellee desires to prosecute the appellant upon the ^{Bond for damages sustained by the} attachment so maliciously & counselably filed out, and he will then be met by the statement that he has no judgment in the case - !!!

Now all this is a clear result of the original error in the jurisdiction of the Court, & we most earnestly pray the Court for the sake of justice to correct it -

Geo. H. Harding
for appellee

³⁷⁴
Clement Perce
n

Nathaniel B. Wilson

Argument for
Motion &c

Filed May 3^d 1860
at Kelowna
Ct.

13459

Supreme Court of Illinois
3rd Grand Division
April Term 1850

Clement Pierce
vs Appeal from Wm
Nathaniel B. Wilcox

Wm C. Goudy Esq
Attorney for said Appellant
Please take

Notice that on the 15th day of said
term of said Court or as soon
thereafter as counsel can be
heard I will apply to the Court
on said motion for a rehearing
of the motion of May 4 1850
in said case & for leave to file
a petition for a rehearing
in said case -

Wm C. Goudy
for Appellee

374
Rice
n
Wilcox

Additional
Notice

Filed April 20, 1860
L. Leland
Clerk

Served on
Wm. L. Leland by
Copy. April
20, 1860

Wm. L. Leland

Supreme Court of Illinois
3^d Grand Division
April Term 1860

Clement Pierce
on Appeal from Warren
Nathaniel B. Wilcox

Your petitioner Nathaniel
B. Wilcox prays for a rehear-
ing of the motion made on
May 4 1859. to set aside reversal & dismiss appeal.

The grounds are,
That no judgment was rendered
by the Circuit Court in
said case - and this Court had
therefore no jurisdiction of
the case. That the security in the Bond was ^{fixed, nor} not approved by the Court.
No notice of such motion
was necessary being made at
the same term when reversal
was had. This was the practice
of the Court in the cases numbered
181. 182. 183. & 184 April Term 1858. -
where precisely the same state of facts
existed so far as the failure to approve ^{the} security of the
Bond was concerned. In those cases the Court
required no notice & none was given.

It is enough that the fact
of the want of jurisdiction is
brought to the notice of the
Court, and the Court will at
any time correct the erroneous
Order.

It is unnecessary to cite
authorities to show the want
of jurisdiction.

If notice was necessary
the affidavits on which said
motion was submitted suf-
ficiently show such notice.

The Affidavit on file
is referred to as the basis for this petition.

Nathaniel B. Allen
By his attorney
Geoffrey

374
Pierce
on
Wilson

Petition for
Rehearing.

Filed April 20. 1860
L. Deland
Clerk

Supreme Court of Illinois
April Term 1860

Elemeut Rice
v Appeal from Warren
Nathaniel B. Wilson

George F. Harding
being sworn says

That the
Judgment rendered in said
case after the appeal
taken therein was made
more than one year after
said appeal was prayed
for said case was pending
in this Court.

That said Judgment
was not entered to
correct a clerical error
or omission -

That the Motion for
said Judgment was
made by affidavit; that
the reason why said
Motion was made & on which
it was asked, and granted
by the Court as assigned by the Court,

was that the defendant
was entitled to the same
as a matter of course;
that it was not pretended
that such judgment was
ever before entered by
any one.

That said
motion was resisted
by Wm. Gundy for
appellant, & the decision
of the Court allowing
the same was by him
excepted to.

That said
judgment was merely
a judgment for costs
against the appellant
who was the plaintiff
below; that no other
judgment was ever ren-
dered in said case.

That it is & was
agreed that the service of
the notices made in this case
upon Wm. Gundy should
be treated in all respects equiva-
lent to service upon his client

The appellant made
at the same time &
in the same way -

That this a -
freement was made
when said notices
were given by & be-
tween said Grady
& appellant -

That as
stated in his former af-
fidavits appellant was never
able to learn the fate of
said Graham until the
second day of the present
term - although he had
made repeated ap-
plications to the clerk
of this court to learn
the fact, and had also
made on two several
occasions application
to the Chief Justice of
this court Hon J. D. Cotton
before this term of court
to learn the fate of the
same in vain.

Affiant further states
that he is sure & positive
that the motion for said
Judgment & the reasons
assigned for allowing
he same were not
put on the ground of
any clerical omission,
and states that if the
Entry in said case was
in pro time, he is
entirely ignorant of the
same, and knows that
such entry was not made
with his consent but
is against it, & is clearly
in error & done after
own motion by the clerk,
or without authority by the
agent given at the time
of the ruling. Affiant

& was further states that said case has
^{not at the second term after reversal of said case}
never been reversed by his knowledge,
George J. Hurd

Given to & subscribed
before me this 3rd May 1885
J. C. C. Clerk.

Perce 374

in

Wilmington

Affidavit
of Deposition

Handy -

Filed Apr. 3^d 1860
Delaware
Ch.

374

STATE OF ILLINOIS--Third Grand Division.

SUPREME COURT.--April Term, A. D. 1858.

CLEMENT PIERCE,
vs.
NATHANEL B. WILCOX. } Appeal from Warren.

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This was a proceeding by attachment commenced by the appellant against the appellee in the Warren Circuit Court.

The affidavit set forth indebtedness upon an account, and averred that "said Willcox is about to depart from this State with the intention of having his effects removed from this State." The defendant plead in abatement of the writ and traversed the allegation, on which issue was joined.

A trial was had by a jury before Hon. John S. Thompson at the March Term 1857. The verdict was for the defendant. The plaintiff moved for a new trial which was overruled and exception taken. Judgment was rendered for costs, and appeal taken.

On the trial evidence was offered by the plaintiff tending to show that the defendant intended to remove from the State and take with him his effects, but did not show when he proposed to leave this State. The proof showed that this writ was sued out and the defendant did not go but remained in the State.

The plaintiff asked the following instructions which were refused, and exception taken.

3. It is not necessary that the defendant should intend to leave the State immediately, or within any limited time in order for them to find that he was about to leave.

4. Although the jury should believe from the evidence that the defendant intended to remain in the State himself and keep his family here, yet if they further believe he was about to remove his property from the State they will find for the plaintiff.

The appellant assigns for error the refusal of the Circuit Court to grant a new trial.

GOUDY & JUDD,
Appellant's Attorneys.

Supreme Court
April Term 1858

Clement Price
vs
Wm. B. Wilcox
Abstract

Gordy & Inau
Appellants

Filed April 23, 1858
L. Leland
Clerk

STATE OF ILLINOIS--Third Grand Division.
SUPREME COURT.---April Term, A. D. 1858.

CLEMENT PIERCE,
vs.
NATHANEL B. WILCOX. } **Appeal from Warren.**

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4. Although the jury should believe from the evidence that the defendant intended to remain in the State himself and keep his family here, yet if they further believe he was about to remove his property from the State they will find for the plaintiff.

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GOUDY & JUDD,
Appellant's Attorneys.

57
Supreme Court
April Term 1858

Clement Pierce

= vs =
Nathl. B. Miles

Abstract

Gordy & Inada
Oppls Atty

Filed April 23, 1858

L. Leonard
Clerk

Be it Remembered that on the 14th day
March in the Year of our Lord one Thousand
Eight hundred and fifty Six Clement
Pierce filed in the office of the Clerk of
the Circuit Court an Affidavit which is
in the Words & figures as follows, to Wit

State of Illinois }
Warren County }

Clement Pierce being duly
sworn deposes and Says that Nathaniel
B Wilcox is justly indebted to the said
Clement Pierce in the sum of Six hundred
& fifty Dollars (\$650.00) the balance of an
account due said Pierce for goods and
Chattels sold and delivered to said Wilcox
from the first of December¹⁸ 1854 to the first
of Jan^y 1856, and that according to the
best information and belief of this affiant
said Wilcox is about to depart from this
State with the intention of having his effects
removed from this State. Wherefore this
affiant prays that a Writ of Attachment
may issue out of and under the Seal of
the Circuit Court in and for said County,
directed to the Sheriff of said County Com-
manding him to attach the lands, tenements,
goods, Chattels, rights, Credits, & effects

And Moneys of Said Wilcox, of every kind
or so much thereof as will be sufficient,
to satisfy the claims above mentioned,
with Interest and Costs of suit, in whose
hands or possession the same may be found.
Subscribed & sworn Clement Pierce
to before me this 14th day
of March A D 1856

Wm Billings clk
Filed Mar 14th 1856 Billings clk

(Copy of Bond)
State of Illinois } April Term A D 1856
Warren County }

Know all men by these pres-
ents, that we Clement Pierce and Elijah
Heanon are held and firmly bound unto
Nathaniel B Wilcox in the penal sum of
thirteen hundred dollars lawful money, to
the payment of which, well and truly to be
made, we bind ourselves, our heirs, Executors
and Administrators, jointly and severally,
firmly by these presents, Sealed with our
seals, and dated this 14th day of March A D
1856,

The condition of this Obligation is such
that whereas the above bounden Clement
Pierce hath on the day of the date hereof

prayer an Attachment out of the Circuit Court of said County at the suit of Clement Pierce against the estate of the above named Nathaniel B Wilcox for the sum of Six hundred and fifty Dollars and the same being about to be sued out of said Court Returnable on the Second Monday of April next, to the term of the Court then to be holden; Now if the said Clement Pierce shall prosecute his suit with effect, or in case of failure therein shall well and truly pay and Satisfy the said Nathaniel B. Wilcox all such costs in said suit, and such damages as shall be awarded against the said Clement Pierce his heirs, Executors, or Administrators in any suit or suits which may hereafter be brought for wrongfully suing out the said Attachment, Then the above obligation to be void, Otherwise to remain in full force and effect.

Witness our hands and seals the
day and year first above written

Approved by me this 14th } Clement Pierce Seal
day of March A D 1856 } Elijah Hanson Seal
Wm Billings Clerk

Filed March 14th 1856

Billings Clerk

(Copy of Writ)

State of Illinois

Wane County }^{ss} The people of the State of
Illinois, to the Sheriff of Wane County, Greeting,

Whereas Clement Pierce hath Complained on
oath to William Billings Clerk of the Circuit Court
of Wane County that Nathaniel B Wilcox is justly
indebted to the said Clement Pierce to the amo-
unt of Six hundred & fifty dollars, And Oath
having also been made that the said Nathaniel
B Wilcox is about to depart from this State with
the Intention of having his effects removed from
this State, And the said Clement Pierce having
given bond and Security according to the direction
of the act. in such case made and provided

We therefore Command You that you attach
so much of the estate real or Personal of the
said Nathaniel B. Wilcox if to be found in
your County as shall be of Value sufficient
to satisfy the said debt and Costs, according
to the Complaint, and such estate so attached
in your hands to secure or so to provide that
the same may be liable to further proceedings
thereupon according to law, at a Court to be
holden at Monmouth for the County of Wane
on the Second Monday of April next so as to
compel the said Nathaniel B Wilcox to
appear and answer the Complaint of

2^d
the said Clement Pierce, When and where
you shall make known to the said Court how
you have executed this Writ

Witness William Billings Clerk of our said
Circuit Court at Monmouth this 14th day
of March. In the year of Lord One thousand
eight hundred and fifty Six

Wm Billings Clerk

On the back of foregoing Writ is the following
return made by the Sheriff of Nassau County.

By virtue of the Within Writ of
Attachment I have attached the following
described property viz, 17.5 bush of Oats,
between four and Six hundred Bushels Corn
14 head of three year old Steers three Yoke of
Oxen 4 head Milch Cows & one Cow & calf
as the property of Nathaniel B Wilcox also
by reading the within Writ to the said
Nathaniel B Wilcox

James McCoy Sheriff
By D. B. Eilenberger Depy

March 15th/56

Filed April 11th 1856

Billings clk

(Copy of Declaration)

State of Illinois } Waneu Circuit Court
Waneu County } April Term AD 1856

Clement Pierce by Paine & Griffith
his Attorneys Complain of Nathaniel B. Wilcox
who has been Attached to answer to an action
of trespass on the Case upon promises,
For that whereas the said defendant heretofore
to Wit, On the fourteenth day March AD 1856
at Waneu County, was indebted to the ^{said} plaintiff
in the sum of Six hundred and fifty dollars
for driven goods, wares, merchandises, and
Chattels by the said Plaintiff before that time
sold and delivered to the said defendant, and
at his Special instance and request, and
being so indebted, he the said defendant
in Consideration thereof, afterwards, to Wit,
on the day and year aforesaid at Waneu
County aforesaid undertook and then and
there faithfully promised the said Plaintiff
to pay him the said sum of money when
he the said defendant should be thereunto
afterwards requested,

And whereas also the said defendant
afterwards to Wit, On the day and year last
aforesaid at Waneu County, aforesaid acco-
unted with the said Plaintiff of and concer-
ning driven other sums of money from the

regarding his said Several promises and undertakings but Contriving, and fraudulently intending Craftily and Subtly to Deceive and defraud the said Plaintiff in this behalf hath not as yet paid the said several sums of money, or any or either of them, or any part thereof to the Plaintiff (although often requested so to do) but the said Defendant to pay him the same hath hitherto wholly neglected and refused, and still doth neglect and refuse, So the damage of the said Plaintiff of Six hundred and fifty dollars, and therefore he brings his suit &c

Pain & Griffith

Attys for P^tff

Copy of Acct sued on
State of Illinois } Wm W. Vincent Count to
Wm W. Vincent } April Term AD 1886
Clement Pierce

vs

Nathaniel B Wilcox

Nathaniel B Wilcox Dr

To Clement Pierce

1884 To 75 Shocks of Corn from west side of Road \$37.50

To Balance on Steer & Heifer 45.00

" Your Cattle running in Stock field 4.50

Nov 7th 1884 " Balance due me on my order \$33.26

" Three Shocks of Corn they sold Insurance 2.25

June 6 " 1885	Delivered	do	do	32 baskets	
" 16 "	Delivered	do	do	30 do	
" 25 "	Delivered	do	baskets of corn	120 do	
July 2 / 85	Do		12 baskets	12	
					\$180.00

To using my Corn to feed three horses
from April 1st to February 1st 1885 supposed
to be 50 bushels

\$25.00

To 16 acres of Oats on the ground

March 1st 1886 To 96 head of Stock hogs at \$4.00

\$384.00

Filed March 31st 1886 Wm Billings clk

1886	Amended account		
March	To house Rent		\$25.00
"	16 acres of Oats on the ground		32.00
"	my part of 96 Hogs run off by you		122.00
Filed Sept 4 th 1886 Billings clk			

Pleas before the Honorable John S Thompson Judge of the tenth judicial circuit, of the State of Illinois, At a circuit Court begun and held at the Court house in Mokenmouth within and for the County of Warren, ^{and State of Illinois} on the Second Monday in the month of April, In the year of our Lord one thousand eight hundred and fifty six

Present the Honorable John S Thompson Judge of the tenth judicial circuit of the State of Illinois

Now A. M. Craig States Attorney
William Billings Clerk
James McCoy Sheriff.

Clement Pierce

ss

vs

} Attachment

Nathaniel B Wilcox

State of Illinois } Warren Circuit Court
Warren County } April term AD 1856

Clement Pierce

vs

Nathaniel B Wilcox

Motion to Quash Writ.

Said defendant for Cause of said motion says that the affidavit filed in said Cause is insufficient in this,

1 There is no allegation therein that said

Said defendant was about to depart out of
this State

2 There is no allegation that the said Plaintiff
was informed or believed that said defendant
was about to depart out of this State

Manning & Davidson
for defendant

3 The affidavit does not set forth that the remo-
val of said property out of this State was to the
injury of said Plaintiff

Savage Manning &c
for Deft

Filed April 15th 1886 Wm Billings Clk

And afterwards to wit on the 15th day of April
1886 the following record was made in the
above entitled Cause,

83 Clement Pierce
vs
Nathaniel B Delcoy } Attachment

This day came the defendant
by his attorneys, and moves the Court to Quash
the Writ herein for reasons on file,

And afterwards to wit on the 22nd day of April
AD 1886 the following appears ^{from the files} of the Court, in
the above entitled Cause,

(Copy of Plea in Abatement)
 Nathaniel B Wilcox

Advs } Attachment
 Clement Pierce } In the Hannu County

Circuit Court April term AD 1886

And the said defendant in his own proper person
 Comes and says that it is not true, nor was it
 true at the time of making the Original affi-
 -davit filed herein, that the said defendant was
 about to depart from this State with the inten-
 -tion of having his effects removed from this
 State as the same is stated and charged in
 the said Original affidavit filed herein by
 the said Plaintiff against the said defendant

Wherefore he prays judgment of the said affi-
 -davit and Writ, and that the same be quashed
 &c

Davidson & Hite Attys
 for Deft

N. B. Wilcox the defendant being first
 duly sworn says that the matters and things
 set forth and stated in the above and
 foregoing plea, are true in substance and
 in fact.

N. B. Wilcox

Subscribed & Sworn
 to before me this 22^d day
 of April AD 1886

W Billings Clerk

Filed April 22^d 1886 W B Billings
 Clerk

And afterwards to Wit on the 25th day of
April AD 1856 the following record was made
in the above entitled Cause

Clement Pierce

83

vs

} Attachment

Nathaniel B Wilcox }

On motion of Plaintiff Atto-
ney it is ordered by the Court that he have
leave to file an amended account herein,

And afterwards to Wit on the 26th day of April
1856 the following order was made

Ordered by that Court adjourn until
the next term in Course

Pleas before the Honorable John S
Thompson Judge of the Tenth Judicial
Circuit of the State of Illinois, At a circuit
Court begun and held at the Court House
in the City of Monmouth within and for
the County of Warren and State of Illinois
On the Third Monday in the Month of
September, In the year of our Lord One
Thousand Eight hundred and fifty six

Present Hon John S. Thompson Judge

A. M. Craig States Attorney

William Billings Clerk

James McCay Sheriff

And Afterwards to Wit on the first day of
said term the following Affidavit appeared from
the files in the above suit,

State of Illinois, County of Mann &
Clement Pierce } Circuit Court
As } September Term AD 1856
Nathaniel B Wilcox }

Clement Pierce the Plaintiff in
this case being duly sworn and his oath states
that he cannot safely proceed to trial at the pre-
sent term of this Court on account of the absence
of Nathaniel Crawford who is a material
Witness for this Deponent on the trial of the
issue joined on the plea of Abatement herein
And he expects & believes he can prove by the
said Witness that the said Defendant had
made preparation to removal from this State
and take all his property with him and did
remove a part of his effects in the night time
from the place where he then resided on the
place of this Deponent, to another point in the
same County, where he left his property
temporarily, but intending to take the same
directly after, out of the State, that the Defendant
did sell & dispose of Ninety six head of Hogs
which were sent to Massachusetts, for the purpose
of avoiding the payment of his liability to this
Deponent, and that such occurrence took place
just about the time this suit was commenced,

60.1111
that the said Witness worked for & lived with
the said Defendant, and derived his information
from conversation with the defendant and from
the assistance he gave him in the said removal
of the effects aforesaid, and he further states he
caused a subpoena to issue for the said Witness
returnable to this term, which has not been
served, that the Witness has resided in this
County for some time, but left the County for
Ohio as much as two months ago, but of such
removal and absence this deponent had no in-
formation until about ten days ago, While this
deponent had supposed that he would be in
attendance at this term, he further states that
said Witness now resides in Gallipolis Ohio
that he has been unable to obtain his evidence
by deposition since he had any information
of his departure, and that he expects to be able
to obtain the deposition or attendance of the
Witness by the next Term, and that he
knows of no other Witness by whom he can
prove the foregoing facts, & that this affidavit
is not made for delay

Subscribed & sworn to } Clement Pierce
before me this 15th day of }
September 1886

Wm Billings clk

Filed Sept 15th 1886 Billings clk

And afterwards to Wit on the Second day
of said term the following record was made
in the above entitled Cause

Clement Price

vs

Nathaniel B Wilcox } Attachment

This day came the Plaintiff and
filed his affidavit, and moves the Court for
a Continuance, and for leave to Amend his
Declaration, after being advised in the premises
it is ordered by the Court that the Motion be
allowed, that this Cause be Continued until
the next term of this Court, and that leave
be given to the Plaintiff to amend his declar-
ation at his cost, Therefore it is considered
that the defendant have and recover of the
said Plaintiff his costs by him at this term
of this Court expended and may have
Execution therefor,

And afterwards to Wit on the Third day
of said term the following order was made

There being no further business before the
Court, It was ordered by the Court, that
the Sheriff adjourn this Court, until the
next Special term of Court,

Pleas before the Honorable John
S. Thompson Judge of the tenth Judicial
Circuit of the State of Illinois, At a special
term of the Court, begun and held at the
Court house in Mornmouth, Within and for
the County of Warrick and State of Illinois
On the fourth Monday of November, In the
year of our Lord, One thousand eight hun-
dred and fifty six, It Being the 24th day
of said month aforesaid,

Present Hon John S Thompson Judge
James H Stewart States Attorney
William Billings Clerk
James McCoy Sheriff

(Copy of Affidavit)
State of Illinois, County of Warrick,
Clement Pierce } Circuit Court
vs } November Special Term
Nathaniel B. McCoy } A.D. 1856,

Clement Pierce being duly sworn
on his oath States that he cannot safely
proceed to the trial of this case at this term
on account of the absence of
Crawford who is a material Witness for
this deponent on the trial of this cause
that he expects to believe he can prove

by said Witness the same facts set forth
in an Affidavit made and filed herein at
the last term of this Court for a continuance
on account of the absence of the said Witness
And he further States that immediately after
the last term of this Court he caused a
notice to be served & a Commission to issue
thereunder to take the deposition of such
Witness & mailed the same to the place
where said Witness resided, to Wills Near
Gallopolis, Ohio and that such Commis-
sion & deposition has not yet been returned
And he States that he knows of no other
evidence by whom he can prove such
facts, that the facts and statements contained
in the affidavit made as aforesaid are each
and all true that this deponent expects to
obtain the deposition of such Witness before
the next term of this Court, & he States that
the said Witness still resides at the same
place in the State of Ohio, stated in his
said former Affidavit

Subscribed & Sworn to Clement Pierce
before me this 28th day of
November 1886

Wm Billings clk
Filed Nov 28th 1886
Billings clk

And afterwards to Wit, on the said 25th
day of November AD 1856, the following
record was made in the above entitled
Cause

Almonst Pierce }
vs } Attachment
Nathaniel B Wilcox }

This day came the defendant
and enters his motion to quash the Writ of
Attachment herein. The court after hearing
the argument of Counsel, It is ordered that
said motion be overruled. Then came the
Plaintiff and enters his motion for a Contin-
uance herein, which motion is allowed and
this Cause is continued untill the next
Term of this Court at the Plaintiffs Cost
It is therefore considered by the Court that
the said defendant have and recover of
and from the said Plaintiff his Costs of
this Term, laid out and expended and
may have execution therefor.

(Copy of Amended Declaration)
 State of Illinois } Warren County Circuit
 Warren County } Court to November Term AD 1886

Clement Pierce by Paine & Griffith
 his Atty Complain of Nathaniel B Hilcox
 who has been attached to answer to an action
 of Trespass on the Case upon promises,

For that whereas the said defendant here
 tofore to Wit, on the fourteenth day of March AD
 1886 at Warren County was indebted to the said
 Plaintiff in the sum of Twelve hundred and
 fifty dollars for divers goods, wares, mercha-
 nize and Chattels by the said Plaintiff
 before that time sold and delivered to the
 said defendant and at his special instance
 and request, and being so indebted he the
 said defendant, in consideration thereof after-
 wards, to Wit, on the day and year aforesaid
 at Warren County aforesaid undertook and
 then and there faithfully promised the said
 Plaintiff to pay him the said sum of money
 when he the said defendant should be there-
 to afterwards requested. And whereas also
 the said defendant afterwards, to Wit, on the
 day and year last aforesaid at Warren
 County aforesaid accounted with the said
 Plaintiff of and concerning divers other sums
 of money from the said defendant to the

said Plaintiff before that time due and owing
and then in arrears and unpaid and upon
such accounting the said Defendant was
then and there found to be in arrears and
indebted to the said Plaintiff in the further
sum of Twelve hundred and fifty dollars of
like lawful money of the United States, and
being so found in arrears and indebted he
the said Defendant undertook and then and
there faithfully promised the said Plaintiff to
pay him the said sum of money in this Court
mentioned when he the said Defendant should
be thereunto afterwards requested,

And in Twelve hundred and fifty dollars
for money then and there paid by the Plaintiff
for the use of the Defendant at his request,

And in Twelve hundred and fifty dollars
for money then and there received by the Defen-
dant for the use of the Plaintiff,

And in Twelve hundred and fifty dollars
for the price and value of work then and there
done and materials for the same provided
by the Plaintiff for the Defendant at his
request,

Nevertheless the said Defendant notwithstanding
his said several promises and undertak-
ings but contriving and fraudulently, inten-
ding craftily and subtly to deceive and

Defendant the said Plaintiff in this behalf
 hath not as yet paid the said several sums
 of money or any or either of them or any
 part thereof to the Plaintiff (Although often
 requested so to do) but the said Defendant
 to pay him the same hath hitherto wholly
 neglected and refused and still doth negl-
 ect and refuse. To the damage of the said
 Plaintiff of Several hundred and fifty dollars
 and therefore he brings his suit, &c

Paine & Griffith

Attys for Pltff

(Copy of acct sued upon)

State of Illinois }
 Warren County }

Clement Pierce

vs

Nathaniel B Wilcox

Nathaniel B. Wilcox

D

To Clement Pierce

Dec 1854 To Seventy five Shocks Corn West side
 of the road 50¢ per Shock

\$37.50

To pasture of Stubble field

1.50

" One Steer & Heifer

38.00

" One Yoke of Oxen

100.00

March 1855 To 100 bushels oats 25¢ per bu

25.00

" Three Shocks Corn 56¢ per Shock

1.68

" Three Aq from Orchard

1.68

" 80	do from Mr Manors	32,00
" 35	Bw Oats	6,25
" 3	Shocks from Griffin piece	1,00
"	Six Bw Seed Oats	1,50
"	1 Load of Corn borrowed from Bennett farm 20 Bw .50 per Bw	10,00
"	Cash to Mr Osborn for deed	50
July 12, 1855	To 6 Bw corn to feed horses while harvesting	3,00
"	1 1/2 Bw do do do	75
"	8 acres of Meadow 3 per a	24,00
"	loss of Oats by negligence of harvesting	40,00
"	To rent of 16 acres of ground 2 per a	32,00
"	33 Bw seed oats to sow same	8,25

1856

\$364.61

March 1 st	To 96 head Stock hogs \$4. per head	384.00
"	rent of house as per agreement	25.00
	To money paid for hauling 4 loads of stone which Wilcox agreed to haul	4.00
	To rent of 15 acres of ground as per Contract	30

\$807.61

June 6 th /55	Delivered as agreed 144 Bw .40 per Bw	47,60
" "	" " 32 Bw .40 " "	12,80
" 16	" " 30 " " "	12,00
" 25	" " 20 " " "	8,00
July 2 /55	" " 12 " " "	4,80

To food for 3 head of horses from
1st April 1855 to 1st July 1855 25.00

Damages for not delivering 96 head of

Hogs as per agreement	288.00
To failure in not delivering Stone to build 96p of Wall as per agreement	40.00
To Sundries	<u>\$1245.81</u>
Total	\$1257.00
To Acct Stated	\$1257.00
To Money paid	\$1250.00
" Money had received	\$1250.00
To Work & Materials	\$1250.00

Filed November 11th 1834

Wm Billings clk

And afterwards to wit on the 6th day of
December 1837 the following order was made

There being no further business
before the Court, It was ordered by the Court
that this Court be adjourned until the
next Term of this Court, in Course,

Pleas before the Honorable John S
Thompson Judge of the Tenth Judicial Circuit
of the State of Illinois, At a Circuit Court
begun and held at the Court House in
Mornmouth Within and for the County of
Haven and State of Illinois on the Third
Monday in the Month of March, In the
year of our Lord One thousand eight
hundred and fifty Seven, It being the
Sixteenth day of said month

Present Hon John S Thompson Judge
James H Stewart, States Attorney
William Laferty, Clerk
Charles M Mills Sheriff

And afterwards to Wit on second day of the
Term the following appears from the files in
said cause

State of Illinois, County of Haven
Clement Pierce } Circuit Court
vs } March Term AD 1857
Nathaniel B Wilcox } Attachment

And the said Plaintiff says the said
Writ and affidavit ought not to be quashed
as prayed by the Defendant in his said plea
of Abatement because he says that the said
Defendant was at the time of making said

affidavit and the suing out of said writ
about to depart from this State with the intent
to remove his property from this State as
alleged in his affidavit, and this he prays
may be inquired of by the County, and
that his he may recover his damages as in
& by said declaration is prayed &c

Paine & Griffith
Plff Attorneys

And the said Defs likewise puts himself
on the County.

Davidson, Harding et al
Atty for Defs

Filed March 17th 1887

Wm Laferty clerk

And afterwards on the same day (being the
second day of the term) the following record was
made in the above entitled cause,

Clement Pierce

vs

Nathaniel B Wilcox

} Attachment

This day came the parties
and their respective Counsel, and issue being
joined, the parties agree to suppress the depo-
sition of Jesse Talbot, Thereupon it is ordered
by the Court, that the deposition of Jesse Talbot
be suppressed

And Afterwards to Wth on the 4th day of said
term the following appears from the records in the
above entitled Cause,

Clement Pierce
v.
Nathaniel B Wilcox } Attachment

This day came the parties
and their respective Counsel, and Issue
being joined for trial they put themselves
upon the Country. Thereupon came a
Jury, to Wth, Avery Downes, John M. Butler
Thomas W Beers, Nathan Carr Jr, John C Butler
Maxamillian Jameson, Isaac, A. E. Allen,
J. W. Perdue, Wm Frymire, Peter Bruner
Spencer Rymear & Alex Sailor, who being
elected tried & sworn, well and truly to try
the issue joined herein, and after hearing
part of the evidence. Were by order of Court
permitted to separate,

And afterwards to Wth on the 5th day of
said term the following record was made
in the above entitled Cause,

Clement Pierce
v.
Nathaniel B Wilcox } Attachment

This day again this cause
coming on for a hearing, And by agreement

of Parties herein Elijah Hanon was released as Security on the Attachment bond and new Bond Executed as a Substitute, With William S. George as Security in the same amount as the original bond. And was approved of by the Court. And the Jury that was empaneled and sworn herein On Yesterday, Came into Court. And after hearing the Evidence And Argument of Counsel, retired to Consider of their Verdict, And returned into Court the following Verdict, to Wit, "We the Jury find for the defendant." Thereupon came the Plaintiff and enters his motion for a new trial herein,

And afterwards, to Wit, on the 8th day of said Term the following record was made in the above entitled Cause

Clement Pierce	}	Attachment
vs		
Nathanial B Wilcox		

This day again this cause coming on for a hearing on the motion made for a new trial herein, which said motion was overruled by the Court. Thereupon came the Plaintiff and prays an appeal to the Supreme Court, which is allowed by the Court, on the condition that he file a bond in the sum of Twelve hundred dollars with security to be approved by the clerk of this Court within thirty days from the date hereof. Bill of Exceptions in sixty days

Copy of Bill of Exceptions

Clement Pierce

vs

Nathaniel B Belcox

Be it Remembered that on the trial of this Cause on the Issues formed on the Plea in abatement, The Plaintiff on his part proved that in the Month of March 1886 the defendant removed from a farm owned by the Plaintiff & situate in the Township Eight North Two West in Manew County, that for some time previous thereto the defendant had been residing thereon as a tenant of the Plaintiff, that he proposed to remain another Year & an agreement in Writing to that effect was drawn up and signed by the Plaintiff but which the defendant declined to sign at the time, that the defendant sometime in February preceding proposed to trade some Cattle for horses & said that if he remained on the Plaintiff's place he would make the trade but that he had some idea of removing to Iowa & if he did he would not sell his Cattle & that the trade was never made, The Plaintiff further proved that the defendant's Son-in-law had Moved to Iowa & that the defendant had been over two or three times since his removal

from Plaintiff's place and worked for his son in law but did not remove there and was there only temporarily that a part of his goods was removed in the day time from the Plaintiff place, but the last loads went away about 9 o'clock at night & that he removed with his goods about six miles in the same County where he leased a house & small piece of land till the next fall & stated to the man of whom he leased, that he had some thoughts of going to Iowa, but would not go at any rate until fall; that he wished to stay in Waveren County, liked the country and would stay if he could buy him some land, The Plaintiff further proved that at the time of the removal of Deft from his place, he had on hands a lot of hogs that the Deft, drove these Hogs to Monmouth and sold them at the depot to a Hog buyer from Boston.

The defendant proved that Plaintiff and he could not agree about the terms of lease for the next year, and that he declined to sign the new lease, drawn up by Plaintiff on that account, that he had rented a place for more than ten days before he removed, that he was two or three days in removing his goods & chattels, that he borrowed a neighbors Wagon, to help move, that he farmed the leased farm during the next season, and that he went to Iowa to help his son-

Because he had no team sufficient to work
much land at home, the Plaintiff having taken
it away in this suit. The defendant proved
that his family had never been out of the
County since his removal and that he had
been in the County except when he went to
his Son-in-law's. That at the time the Attach-
ment Writ Issued he was moving from Plaintiffs
farm to a farm four miles off which he had
leased for the succeeding year, that the Plaintiff
had notified him to leave Plaintiffs farm before
he left, that he moved all his property from
Plaintiffs farm to his new place, that he
removed the said hogs there, and that he did
not sell them for more than two weeks after
the Attachment Writ Issued, that the Plaintiff
saw him in the evening moving and told the
Constable who served the Attachment, that there
was no hurry about serving it, until the next
morning. That Plaintiff said after the Writ had
Issued that he did not believe that defendant ever
intended to leave the State, that the Plaintiff had
been imposed upon by the stories of some of his
lying neighbours about the defendant, and was
sorry he had Issued it.

The Plaintiff offered and read in evidence a
Contract in writing between the parties, which
reads as follows to wit,

9
(Copy of Contract)

This agreement made this fifteenth day of January AD 1855, between Clement Pierce of the first part and Nathaniel B Wilcox of the second part Witness as follows to Wit, that the said Pierce has this day Rented & agrees that said Wilcox shall have seventy acres of Broke ground upon the N W 35. 9 & 2 W for the season 1855 it is further agreed that on the first day of March 1855, the said Pierce is to furnish as his portion of Stock and deliver the same to said Wilcox eighty head good Merchantable Stock hogs and to weigh on an average one hundred pounds or more gross weight from ten to fifteen and to be breeding Sows and it is further agreed that the said Wilcox will furnish as his portion of Stock, Twenty head of as good hogs as those that the said Pierce furnishes making in all One hundred head of Stock hogs and the said Pierce further agrees to lend or loan said Wilcox four hundred bushels of Corn to feed said one hundred head of hogs with through the Spring and fore part of Summer. The said Wilcox agrees on his part to plant enough of said Seventy acres in Corn to raise Corn enough to fat said One hundred head of Hogs, and to raise and Winter One hundred head of Stock hogs and to repay said Pierce the Corn that is borrowed at the

rate of one & half bushels for every bushel borrowed
the said Wilcox agrees to plant said Corn in due season
and good order and to plow the same after it is planted
four times the three first plowings to be two furrows
in each Row the fourth plowing to be three furrows
in each Row, or in Case said Wilcox should think
it best he may harrow said Corn with an Iron
tooth harrow in lieu of the first plowing to be harrowed
at least two furrows in each Row, and said Wilcox
further agrees to take good care of said One hundred
head of hogs, Raise the Corn and feed and fat the same
and when they are fat enough to be fit for Market
said Wilcox is to notify said Pierce that he is ready to
make a division of said fat hogs. Giving said Pierce
one half of said One hundred head of fat hogs, to be
an equal division between both parties said Wilcox
further agrees that on the first day of March 1856 he
will deliver to said Pierce Eighty head of good Merc-
hantable stock hogs and all of them to be spade sows
and barrows none of them to weigh less than eighty
pounds and to average One hundred pounds or more
gross weight and to repay as many pounds kept as the
Pierce furnishes and also on the first day of March 1856
said Wilcox agrees to repay the Corn that he borrows to
feed said hogs on at the rate of one bushel and a half
for every one bushel furnished, Said Pierce agrees
not to charge rent for the ground as far as it takes
ground to raise the Corn to fat said One hundred
head of hogs, to winter One hundred head of stock

hogs and to repay the Corn borrowed to feed the hogs as above stated, but the said Wilcox agrees to pay said Pierce two dollars per acre for all of the ground there is left after feeding and fattening the hogs and repaying the Corn as above stated payable on the first day of January 1886, It is further agreed and expressly understood that the said Wilcox is not to have any control of the Stock field after the Corn is gathered nor of the ground no farther than to raise his crops and gather the same, The said Pierce further agrees to furnish Rails and land to make a lot for said hogs on the branch near the S.E. corner of said quarter, the rails to be at or near the place said Wilcox to have them and lay them up and to stake and rider the same, The said Pierce expressly reserves the house and from one to five acres of ground out of the N.E. corner of said quarter, And the said Pierce further agrees to remove the house that Mr Judah Griffin now lives in down on the knoll near where the said Pierce contemplates on building a barn and said Pierce is to repair said house so as to make it comfortable as soon as convenient after it is moved and further agrees to rent said house to said Wilcox from the first day of March 1885 until the first day of March 1886 throwing in a suitable dooryard and a garden spot of a quarter of an acre, The said Wilcox agrees to pay said Pierce twenty five dollars as rent for said house payable on the first day of January 1886 and to receive possession of

said house to said Pierce on the first day of March 1856 to be in as good repair as it is when he receives the possession of it except the natural wear and decay of the premises. The said Wilcox is to have the privilege of cutting up corn for the purpose of wintering his stock cattle, if said Wilcox should cut up corn to be taken from the portion that said Wilcox pays rent for. Said Wilcox has the Privilege of sowing a piece of said Seventy acres in oats to turn the hogs on for early feed. Said Pierce agrees to furnish rails to make a yard and materials to make a tuble and said Wilcox is to fix them to suit himself. If said Pierce should furnish poles in the timber to make the stable said Wilcox to have them. It is further agreed that if said Wilcox shall move away from said premises before the expiration of his said term that such removal shall be held and considered and held by the parties hereto, that such removal shall be an abandonment in law and thereupon said Pierce shall have the right of reentry and shall hold all and any personal property of said Wilcox for the rent due or to become due under this Contract, and shall also hold the crops growing or grown on the premises for the same purpose. It is further agreed that the said Pierce reserve the right of setting his barn where he thinks best and putting a yard around the same. Also said Pierce has the right of setting out apple trees or any other trees he may desire North of where the house is to sit and said Wilcox agrees in plowing the corn, to plow it himself and take special care not to injure the trees. Witness said Pierce to dig a well near the house and said Wilcox to haul the rocks. Clement Pierce

Nathaniel B Wilcox

Refused

or within any limited time, in order for them to find that he was about to leave

4. Although the jury should believe from the evidence that the defendant intended to remain in the state himself & keep his family here, yet if they further believe he was about to remove his property from the state they will find for the Plaintiff.

Refused

5. If the jury believe from the evidence that the defendant was about to remove his property from the state to the injury of the Plaintiff, then they will find for the Plaintiff.

Refused

To the decision of the Court in refusing said instructions the Plaintiff then & there excepted

And the Court gave the following instructions on the part of the Defendant, to wit,

Unless the jury believe from the evidence that the defendant at the time of suing out the Attachment, was about to depart the state with the intention of removing his effects from this state, the jury will find for the defendant,

Given

Unless the jury believe from the evidence that the defendant at the time of suing out

Given
the Attachment, was about to depart the State with the intention of removing his effects from the State, or by his fraudulent Conduct Caused the Plaintiff to believe that he so intended. The Jury will find for the Defendant.

Given
The Jury in judging of the intention of Wilcox in being about to depart from the State of Illinois with the intention of removing his effects from this State, must take into Consideration all the circumstances and acts of Wilcox about the time of the suing out said Writ, together as shown by the Evidence.

So the granting of which the Plaintiff then and there excepted.

And upon the return of the Verdict the Plaintiff moved for a new trial & assigned in support thereof the following Reasons, to wit.

- 1st The Verdict is against the Evidence
- 2^d The Court refused to grant proper Instructions as prayed by Plff.
- 3^d The Court gave improper instructions in behalf of Deft.
- 4th By the law & Evidence the Verdict should have been for Plff.

But the Court overruled the motion to which decision the Plaintiff then & there excepted.

And forasmuch as the said facts do not
appear of record the said Plaintiff pray,
that this his Bill of Exceptions be signed
and sealed by the Court & made a part
of the record which is accordingly done,

John S Thompson *(Seal)*

Filed May 23^d 1857 at 5 P.M.

Wm Lafutz *clerk*

By L O Santellotti Deputy

(Copy of Bond)

Know all men by these presents that we Clement
Pierce and George Baton of the County of Hannu
and State of Illinois are held and firmly bound
unto Nathaniel B Wilcox in the penal sum of
Twelve hundred dollars, for the payment of which
well and truly to be made, we and each of us
bind ourselves, our heirs, executors and Adminis-
trators jointly and severally, and firmly by these
presents, Sealed with our Seals, and dated at
Monmouth this 22^d day of April Anno Domini
One thousand eight hundred and fifty seven.

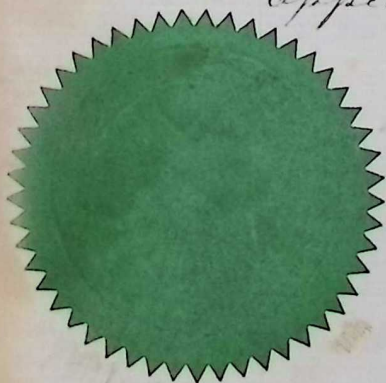
The Condition of the above Obligation is such
that whereas the said Nathaniel B Wilcox
did on the 20th day of March 1857 in the
Circuit Court within and for the County of
Hannu and State of Illinois obtain a judgment
against the above bounden Clement Pierce

for the sum of Four hundred & Eighty two
Dollars and 17 cents Costs of Suit from which
judgment the said Clement Pierce has prayed, ^{for} and
obtained an appeal to the Supreme Court of
said State. Now if the said Clement Pierce
shall duly prosecute said appeal and shall
moreover pay the amount of the judgment, Costs,
Interest and Damages, rendered and to be rend-
ered against him the said Clement Pierce in
Case the said judgment shall be affirmed in
the said Supreme Court, then the above obli-
gation to be null and void, Otherwise to
remain in full force and virtue.

Approved by me this Clement Pierce (Seal)
22nd day of April AD } George ^{mark} Clayton (Seal)
1857 Wm Safety clk } his

Filed April 22nd 1857 Wm Safety clk

State of Illinois
Harrison County } William Safety Clerk of the Circuit
Court for said County do hereby certify that the
 foregoing is a full and complete Copy of all the
proceedings in the foregoing case as the same
appears from the files & records now in my office
In testimony whereof I have hereunto set
my hand and affixed the Seal of said
Court at my office in Mossmouth this
25th day of November AD 1857
Wm Safety Clerk



State of Illinois, 3^d Grand Division
Supreme Court April Term 1858

Clément Pierce } appeal from Warren
vs
Cathaniel B. Wilcox }

And the said Appellant says
that manifest error hath intervened in the
proceedings whereof the foregoing is a record
and for error therein he prays

That the Circuit Court order in
refusing a new trial

Wherefore he prays judgment re.

Gandy, Judd

Appellants Attorney

87
Gandy & record

Clément Pierce

vs

A. B. Wilcox

Transcript of
court papers

Filed April 22. 1858
L. L. Leland
clerk

Recd \$10.00