

12204

No. _____

Supreme Court of Illinois

Cunningham

vs.

Flanders

71641  7

Pleas before the Honorable John Mc
Wilson Judge of the Cook County Court
of Common Pleas within and for the County
of Cook and State of Illinois at a regular
Term of the Cook County Court of Common
Pleas begun and holden at the Court
House in the City of Chicago in said
County and State on the Second Monday
being the twelfth day of September in the
year of our Lord one thousand eight
hundred and fifty three and the In-
dependence of the United States the
Seventy eighth

Present the Hon: John Mc Wilson Judge

Daniel McIlroy Prosecuting Attorney

Cyrus P Bradley Sheriff

attest

Walter Kimball Clerk

Be it remembered that on the
thirteenth day of October in the year of our
Lord one thousand eight hundred and fifty
two the following Papers were filed in the
office of the Clerk of the said Court of Com-
mon Pleas to wit:

1 Samuel Flanders

vs

Debt \$68. 40

" Jas Cunningham

October 4th 1852.

1 Warrant issued returnable forthwith: or if
bail be given on the 9th inst at 9 o'clock AM
1 Gave to Wm Harrison Const.

1 Executed by arresting the within named
1 James Cunningham & taking special bail
1 October the 8th 1852 Wm Harrison Const.

1 Subpoena issued by Peff & 1 by defendant

2)

October 9th 1852, case called and Patrick Higgins
 James Vaughan D I Hood Senna John
 Sanders Wm Harrison & Ellen Hunt sworn -
 after hearing the proofs of all witnesses present
 ordered that the Plaintiff recover of the De-
 fendant Judgment for sixty eight Dollars
 & $\frac{40}{100}$ debt & six dollars & seventy eight cents
 costs & that Execution issue therefor October
 13th 1852 appeal taken to Cook County Court
 of Common Pleas

Debt \$68.40

Justice Cost,
 Docketing suit 12 $\frac{1}{4}$ oath for two 6 $\frac{1}{4}$ 18 $\frac{3}{4}$
 Warrant 18 $\frac{3}{4}$ 2 sub 18 $\frac{3}{4}$ ea 37 $\frac{1}{2}$ 56 $\frac{1}{4}$
 Seven witnesses 8 $\frac{1}{4}$ ea 44
 En jud 25 Execution 25 50
 \$7.68
 Const fees on Warrant 55
 Sub: 1.05 1.60
 Witness fees 3.50

En appeal 25
 Transcript 25
 Bond 50
 Paid \$1.00
 Judges fee 50 } paid
 \$1.50

State of Illinois }
 Cook County }

I the subscriber a Justice of
 the Peace in and for said County do certify
 the within to be a full & perfect copy of the
 proceedings & judgment from my docket in
 the within entitled cause

3) "October 13th 1852

"Ammon Moon Esqly
"Justice of the Peace

"State of Illinois }
"Cook County } ss

"The People of the State of
"Illinois to any Constable of
"said County Greeting

"You are hereby commanded to take the
"body of James Cunningham and bring him
"forthwith before me unless special bail be-
"entered; and if such bail be entered you will
"then command him to appear before me at
"my office in Chicago on the 9th day of October
"at 9 o'clock AM to answer the complaint of
"Samuel Flanders for a failure to pay him a cer-
"tain demand not exceeding one hundred dollars
"and hereof make due return as the law di-
"rects Given under my hand and seal, this
"14th day of October AD 1852.

"Ammon Moon Esqly

"Justice of the Peace"

which said warrant has the following endorse-
ments to wit:

"¹²¹³
"J. Flanders

"J. Cunningham

"Demand \$68.40.

"Costs 62

"I William H. Snowden acknowledge myself
"special bail for the within named James Cun-
"ningham Oct 5th 1852

"W H Snowden

4)

" Executed by arresting the within named James
" Cunningham and taking special bail as above
" Oct 3th 1852

Service 25

mile 5

" taking special bail 25

35

" Wm Harrison Constable

" Know all men by these presents that we
" James Cunningham & William H Snowden of
" the County of Cook in the State of Illinois are
" held and fully bound unto Samuel Flanders
" in the penal sum of one Hundred and forty
" nine dollars lawful money of the United States
" for the payment of which well and truly to
" be made we bind ourselves our heirs executors
" administrators jointly severally and firmly
" by these presents Witness our hands and seals
" this thirteenth day of October AD 1852.

" The condition of the above obligation
" is such that whereas the said Samuel Flanders
" did on the ninth day of October AD 1852 by
" Armon Moon a Justice of the Peace for the
" said County of Cook recover a judgment against
" the above bounden James Cunningham for
" the sum of Seventy four dollars & 18/100 debt & costs
" from which judgment the said James Cun-
" ningham has taken appeal to the next Term
" of the Court of Common Pleas of the County of
" Cook aforesaid and State of Illinois Now if
" the said James Cunningham shall prosecute
" his appeal with effect and shall pay what-
" ever judgment may be rendered by the Court
" upon dismissal or trial of said appeal then

5) "the above obligation to be void; otherwise to
"remain in full force and effect
"Approved by me at my office
"this 13th day of October 1852 } James Cunningham (Seal)
"Ammon Moon } Wm W Snowden (Seal)
"Justice of the Peace }

And on the said thirteenth day of October
the following summons issued from the said
Court of Common Pleas: to wit:

"State of Illinois }
"Cook County } ff

"The People of the State of Illinois

"To the Sheriff of said County Greeting

"We command you that you summon Samuel
"Hlanders if he shall be found in your County
"personally to be and appear before the Cook
"County Court of Common Pleas of said County
"on the first day of the next Special Term thereof
"to be holden at the Court House in the City
"of Chicago in said County on the second
"Monday of November next to answer unto
"James Cunningham in appeal from a judg-
"ment rendered before Ammon Moon Esquire
"a Justice of the Peace in and for said County
"And have you then and there this writ with
"an endorsement thereon in what manner you
"shall have executed the same

"Witness Walter Kimball Clerk of our said
"Court and the seal thereof at the City
"of Chicago in said County this thirteenth
"day of October AD 1852.

"W Kimball Clerk:

6) which said Summons was on the fourteenth day of October AD 1852 filed in the office of the Clerk of said Court of Common Pleas with the following endorsement

"Executed by reading to the within named Samuel Flanders Oct 14 - 1852.

1 service	30
2 miles	10
Return	10
	70

" Wm L Church Sheriff
" by D I Wood Depy.

And at a Special Term of the said Court, held on the third Monday in May AD 1853 as aforesaid, the following proceedings were had in said cause, to wit:

" Samuel Flanders

" " } Appeal
" James Cunningham

" Thus day comes the Plaintiff by
" J T Lemaire his Attorney and on his motion
" founded on affidavit filed herein it is ordered that
" this cause be continued to next Term at costs
" of Plaintiff for this Term

" Therefore it is considered that
" said defendant recover of said Plaintiff his
" costs about his defense in this behalf at this
" Term expended and have Execution therefor."

And on the nineteenth day of September the same being one of the days of the said September Term of said Court held as first aforesaid the following proceedings in said cause were had, to wit:

7)

"Samuel Hlanders
 1044 vs
 "James Cunningham } Appeal

"And now upon this day
 comes the said Plaintiff by J^r L^r Moyné his
 "attorney and the said defendant being three
 "times called in open Court comes not nor any
 "one for him but herein fails and makes default
 "and on motion of said Plaintiff it is ordered
 "that the default of the defendant be taken
 "and entered of record Wherefore the said Plain-
 "tiff ought to recover of the said Defendant
 "his damages herein sustained by occasion of
 "the premises; And on motion of said Plaintiff
 "it is ordered that a Jury come to assess the
 "said Plaintiffs damages and thereupon came
 "the Jurors of a Jury of good and lawful men
 "to wit J^r Butcherdike, Samuel Sean Robert Wallace
 "H O Bell John Hullygan, John Becker Hamelton
 "Lopp David Clinger Charles Culver Wesley
 "Pelk Robert Patrick and William Justice:
 "who being elected and sworn diligently to
 "enquire of and true assentment make of the
 "said Plaintiffs damages after hearing the evi-
 "dence adduced on the part of the Plaintiff
 "and the instructions of the Court retire under
 "charge of an officer of the Court to consider
 "of their verdict and afterwards come into Court
 "and say we the Jury assess the said Plaintiffs
 "damages to the sum of one Hundred and
 "fifty five Dollars and eighty five cents.

"Therefore it is considered that
 "the said Plaintiff do have and recover of
 "the said defendant his damages of one

"Hundred and fifty five Dollars and eighty
 "five cents in form aforesaid by the Jury here
 "assessed and also his costs and charges by
 "him in this behalf as well in this Court as
 "in the Court below expended and that he
 "have execution therefor"

And on the twenty eighth day
 of September being still ^{one} of the days of the
 said September Term of said Court the fol-
 lowing affidavit and Motion were filed in
 said Court to wit

"State of Illinois,
 "Cook County, S^{ps}:"

"Personally appears this day George
 "I Pearson who says upon oath that he is the
 "attorney for Cunningham in the suits entitled
 "Cunningham vs Flanders and Flanders vs
 "Cunningham instead of Geo W Gardiner
 "whose names appears on the Record; but that
 "Mr Gardiner was such attorney; but when he
 "removed from the City of Chicago he spoke to
 "said deponent concerning said suits as has
 "Cunningham also since and requested De-
 "ponent to act as attorney in them and before
 "this last sitting of this Court: but Mr Gardiner
 "to the best of this Deponents belief and recol-
 "lection stated that these cases were in the
 "Circuit Court and Mr Cunningham ac-
 "quiesced in such statement And Deponent
 "did not know that said suits were in this
 "Court until the 26th day of this present Sep-
 "tember when he discovered that such was the
 "case from an inspection of the Bar Docket

9) "And Deponent further says that said
 "Cunningham has in his opinion a just
 "and equitable cause of action in one of said
 "suits and a sufficient and valid defence
 "to the other; and further that this motion is
 "not made for delay but that justice may be
 "done in the premises; and that he has been
 "and still is ready upon reasonable notice
 "to pursue the one and to meet the
 "other as he would have done had himself
 "or this Deponent been aware that they were
 "in this Court."

Sworn & subscribed to before
 me this 28 day of Sept 1853
 W Kimball Clk } Geo T. Pearson

Cunningham }
 Flanders } "And now comes said Cun
 "ningham by Geo T. Pearson his atty and moves
 "this honorable Court to set aside the default
 "in this case & verdict and that a new trial
 "be had thereon

" Sept. 28-53. } Geo T Pearson
 atty for Cunningham

AD 1853 And on the third day of
 October the same day being still of the Sep
 tember ^{Term} of the said Court the following further
 proceedings were had in said cause to wit:

"Samuel Flanders
 104 vs } appeal
 "James Cunningham }

"This day

" comes the said Defendant by George S Pearson
" his attorney and enters his motion founded
" on affidavit filed herein to set aside the de-
" fault entered in this cause which after
" being heard by the Court is overruled.

State of Illinois }
County of Cook }

S. S.

Walter Kimball Clerk
of the Cook County Court of Common Pleas within
for the County State aforesaid. Do hereby certify that
the foregoing is a true transcript of all the papers
filed in the above entitled cause, and also of the
Record Orders and proceedings had in said cause
as appears from the Records of said Court now
on file in my office,

In testimony whereof I have here-
unto set my hand, and affixed
the Seal of said Court at the City of
Chicago in said County this fifth
day of November A.D. 1853.

Walter Kimball, Clerk

James Cunningham
Plaintiff in Error

vs

Samuel Flanders De-
fendant in Error

Error to the Cook
County Court of Common
Pleas; September Term
AD 1853

And now comes the said Plaintiff in Error by P Ballingall his Attorney and says that there is material and manifest error in the foregoing Record to his prejudice and in the rendering of the judgment therein and that that the said judgment ought to be set aside and reversed And thus he is ready to verify Wherefore he prays judgment & & And for causes of error shows

1st The said Court of Common Pleas had no jurisdiction.

2^d The Court of Common Pleas on receiving and entering the verdict of the said Jury ought to have dismissed the suit for want of jurisdiction in the Court below.

3^d The Judgment in the said Court of Common Pleas ought to have been in favor of the Defendant for Costs.

4 The said Court of Common Pleas erred in not dismissing the suit and rendering judgment for the defendant for costs.

5 The Court erred in rendering judgment for \$87.45 more than was originally demanded by the Plaintiff in the Justice's Court

6th The Court erred in not setting aside the said verdict & judgment and in not reversing the judgment of the said Justice.

P. Ballingall

att^y for Plff in error

Let a supersedeas issue in the above cause upon the Plaintiff in Error filing in the office of the Clerk of the Supreme Court a bond in the usual form in the penal sum of three hundred dollars with Patrick Ballingall as his security J. D. Carter

And now comes the defendant in error and says that in
the record of proceedings aforesaid there is no error and
that he is ready to verify wherefore he prays Judgment
that the Judgment aforesaid be in all things affirmed

B. G. Cook atty pro defor
in Error

12
~~Supreme Court~~
Supreme Court

Plaintiff in Error

vs

Samuel Handers

Record

Filed Apr. 9. 1853.
L. Leland Clk.

fee \$300 paid

Now all men by these presents that the James
Cunningham and Patrick Ballingall of the County
of Cook in the State of Illinois are held and firmly
bound unto Samuel Handus of said County in the
penal sum of Three hundred Dollars which sum
well and truly to be paid to the said Samuel Hand-
us, his heirs executors or administrators, or to his
executors, heirs executors and administrators
jointly and severally. Witness our hands and
Seals this tenth day of November AD 1853

Whereas the said James Cunningham has
prayed a writ of Error from the Supreme Court of
said State to the Cook County Court of Common Pleas
in said State, and that the same be made a
Superseas, upon a Record of a Judgment obtained
in said Court of Common Pleas at the September Term
AD 1853 in favor of said Handus and against
said Cunningham for the sum of one hundred and
fifty five Dollars and eight⁵/₁₀₀ Cents besides costs
which said Record has been filed in said Supreme
Court in which Record the said Cunningham is
Plaintiff in Error and the said Samuel Handus is
Defendant in Error which Superseas has been granted
upon condition that this Bond shall be filed according
to Law. Now if the said James Cunningham shall
duly prosecute his said writ of Error, and in case the
said Judgment shall be affirmed shall pay the
Judgment costs, interest and damages then the
above obligation to be void otherwise to be in

12

James Cunningham et al

L.

Samuel Glanders

Bond
— " —

Filed Nov. 12, 1853.
A. Keland Clk.

59 Clarke Street
Chicago 7th Nov 1853

Hon J D Catton

Dear Sir

I send you a
Petition for a Supersedeas, founded on the ac-
companying Record - It seems the suit was
commenced before a Justice where \$68 40 were
claimed & Judgment there rendered - An appeal
was taken to the Common Pleas, where it seems
Judgment was rendered for \$155. 85 by default.

I enclose you \$5 the usual fee
for the Clerk of the Supreme Court which I will
feel obliged by your handing to him.

very respectfully yours
T. W. Ballingall

Chicago 7th Nov 1853

Dear Sir

I have your

Hon John D. Catron

Judge

To the Hon: John D Catton one of the
Judges of the Supreme Court of the
State of Illinois

James Cunningham
Plff in error

vs
Samuel Flanders
Deft in error

} Error to the Cook
County Court of Com-
mon Pleas - Sep: S. 1853

Your Petitioner, the Plaintiff in
error, shews to your Honor the Record
of the Cook County Court of Common Pleas
in the State of Illinois herewith produced
marked A; and prays that a writ of
Error issue thereon and that the same may
operate as a supersedeas in the above
entitled cause

V. Ballingall
atty for Plff in error

^{\$ 12}
In the Supreme
Court

Jos. Cunningham
Plff in error

v

Saml. Hlanders
Deft in error

Petition for
Habeas corpus & Super-
seas

Filed Nov. 9th 1883.
L. Leland Clk.

STATE OF ILLINOIS,

Supreme Court,

ss.

The People of the State of Illinois,

To the Clerk of the ~~Circuit Court~~ ^{Cook County Court of Criminal Just.} for the county of *Cook* Greeting:

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which was in the ~~said~~ ^{said} court of *Cook* county, before the Judge thereof, between

Samuel Flanders

plaintiff, and

James Cunningham

defendant it is said manifest error hath intervened, to the injury of the aforesaid *defendant*

as we are informed by *his* complaint, and we being willing that error, should be corrected if any there be in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint, aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the *2^d Monday in June* next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law;

WITNESS, the Hon. **SAMUEL H. TREAT**, Chief Justice
of our said Court, and the Seal thereof, at Ottawa, this *9th* day of *November*
in the Year of Our Lord One Thousand Eight Hundred and Fifty-*three*.

A. Leland

Clerk of the Supreme Court.

¹²
Jas. Cunningham
vs
Samuel Handes
Writ of Error

Filed Nov. 9, 1853.
Leland Ctk.

This writ of error is made
a Supersedeas & as such is to
be obeyed accordingly by all
concerned - Nov. 12, 1853.
Leland Ctk.

STATE OF ILLINOIS,

The People of the State of Illinois,

WILL CO. 1853.

MISSISSIPPI, vs. SAMUEL H. TRIST, and others.

Chief of the Supreme Court.

This is to Certify, That the annexed notice was published in the
CHICAGO JOURNAL, a *Daily* Newspaper, printed in the city
 of Chicago, County of Cook, and State of Illinois, times,
 to wit, for *Four* successive weeks, as follows:

The first insertion on the *12th* day of *April*
 1855 in Vol. *14* No.

STATE OF ILLINOIS, } Supreme Court thereof, in and
 for Third Grand Division, to
 June term, A. D. 1855.
 James Cunningham, } Error to Cook County Court of Com-
 mon Pleas.
 vs.
 Samuel Flanders, }

IT APPEARING FROM AN AFFIDAVIT

on file in the office of the Clerk of said Supreme Court,
 that said defendant in error, Samuel Flanders, is not a resi-
 dent of said State, and a writ of error having been duly sued
 out herein, and a scire facias having been duly issued herein

Notice is therefore hereby given to said defendant in er-
 ror, to be and appear before said Supreme Court, at said term
 thereof, to be held at the Court House in Ottawa, in the
 county of LaSalle in said State, on the second Monday in
 June next, (when and where the process herein is returna-
 ble,) and answer unto said plaintiff in error in said cause.

April 12th, 1855. L. LELAND, Clerk.

of said paper.

Dated at Chicago, *June 26* 1855

Fees \$6.00

R. L. Wilson & Co
 Publisher Chicago *Daily* Journal.

State of Illinois }
Cook County } I Patrick Ballingall
of the City of Chicago in said County do hereby
certify on the 13th day of April A.D. 1855 I deposited
in the Post Office at Chicago aforesaid a letter
addressed to "Samuel Gladders Chicago" which said
letter contained a copy of the authentic printed
notice attached to the within certificate of publication
and I further swear that the residence of the said
Gladders was then and still is unknown

Subscribed & sworn to this
3rd day of July 1855 before
me E. B. Fawell
Clerk of the
County Court
of Cook County
Ill.

P. Ballingall

Filed July 6. 1855.
J. W. Allen Clk.

5-
Kearney
Gladders
Ver of Publication

STATE OF ILLINOIS,

Supreme Court,

} ss.

The People of the State of Illinois,

To the Sheriff of the County of Cook — Greeting:

BECAUSE in the record and proceedings, and also in the rendition of the judgment of a plea which was in the ~~circuit court of Cook County~~ ^{Common Pleas} ~~court of county~~, before the Judge thereof, between

Samuel Flanders, plaintiff

and James Cunningham

defendant, it is said that manifest error hath intervened, to the injury of the said

Cunningham

as we are informed by *his* complaint, the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the state of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said

Samuel Flanders

that *he* be and appear before the Justices of our said Supreme Court, at the next term of said court, to be holden at Ottawa, in said state, on the *2nd* Monday in *June* next, to hear the records and proceedings aforesaid, and the errors assigned, if *he* shall see fit; and further to do and receive what said court shall order in this behalf; and have you then there the names of those by whom you shall give the said

Flanders

notice, together with this writ.

WITNESS, the Hon. Samuel H. Treat, Ch. of Justice of our said Court, and the Seal thereof, at Ottawa, this *12th* day of *October* in the Year of Our Lord One Thousand Eight Hundred and Fifty-*Three*.

L. Leland

Clerk of the Supreme Court. Dr

James Cunningham
vs
Samuel Flanders
Sci. Fa.

To June Term 1854

Served by the defendants
Attorney accepting
Service on this writ as
herein endorsed
June 5th 1854

Services 30
Fees 5
Return 10
85

Cyrus P. Bradley Sheriff
By W. P. Regan Deputy

Filed June 6th 1854.
L. Leland Clk.
By P. K. Leland

Served by the defendants
Attorney accepting
Service on this writ as
herein endorsed
June 5th 1854

Services 30
Fees 5
Return 10
85

Cyrus P. Bradley Sheriff
By W. P. Regan Deputy

Filed June 6th 1854.
L. Leland Clk.
By P. K. Leland

James Cunningham vs Samuel Flanders
Sci. Fa.
To June Term 1854
Served by the defendants
Attorney accepting
Service on this writ as
herein endorsed
June 5th 1854
Services 30
Fees 5
Return 10
85
Cyrus P. Bradley Sheriff
By W. P. Regan Deputy
Filed June 6th 1854.
L. Leland Clk.
By P. K. Leland

Supreme Court.

James Cunningham }
2.
Samuel Flanders }

State of Illinois }
Circuit Court } p

James H. Hays

Very your duty sworn deposes and swears that as
sounded he is informed & truly believes - the above
named defendant Samuel Flanders is a
non resident of this State - resides out of the
limits of this State so that he cannot be
served with process from this Court and that
the writ of Error issued herein has been returned
not served - I further swear and

Subscribed and sworn to before

me this 22nd day of June

A.D. 1834

L Leland Clerk
By P. K. Leland Depy.

J. H. Hays

James Cunningham
vs.
Samuel Flanders
Aff^d -

Filed June 23 1854
L. Leland Clk.
By P. K. Leland depy

~~RES~~ 5

James Cunningham
vs
Samuel Flanders

5

12209
~~James Cunningham~~

1855