No. 11909

Supreme Court of Illinois

People, for school fund, Lake County

vs.

Haines, et al,

71641 7

No 1.

The People for School Fund Lake County

vs

Elijah M. Daniel et al.

1847

11809

The People of the State of Illinois, by the grace of God, free and independent

To all to whom these presents shall come or may concern Greeting:

Know ye, that we having inspected the records and proceedings remaining in the office of the ~~Circuit~~ Clerk of the Circuit Court of the County of Lake in the State of Illinois aforesaid, do find therein a certain record of a judgment of said court in the words and figures following, to wit:

"United States of America
State of Illinois Lake County } ss

Pleas before the Honorable Jesse B Thomas associate Justice of the Supreme Court of the State of Illinois, and presiding Judge of the Seventh Judicial Circuit of said State

At a special term of Court began and held for the County of Lake in said Seventh
2 judicial Circuit at Little Fort on the thirteenth day of November in the year of our Lord One thousand eight hundred and Forty Eight and of the independence of the United States the Seventy third

Said term of Court being held pursuant to a special order of the Honorable Jesse B. Thomas one of the associate Justices of the Supreme Court of said County of Lake bearing date the thirteenth
3 day of September A.D. 1848. calling said special term to commence on the second monday of November A.D. 1848. Due notice of said special term having been given by the Sheriff of said County according to the Statute in such case made and provided

Present the Honorable Jesse B Thomas, Judge aforesaid William H. Boardman States attorney. Henry M. Dorsett Sheriff of said County — Attest George Thomson clerk"

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4 Be it remembered that the people of the State of Illinois plaintiffs for the use of the common school fund of Lake County by Hoyt & Blodgett their attorneys filed in the office of the Clerk of the Circuit Court of Lake County on the twenty first day of August A.D. 1848 their precipe for a summons in the words and figures following, to wit,

"Lake Co. Circuit Court

The People of the State
5 of Illinois for the use of
the Common School fund
of Lake County
vs.
Elijah M. Haines
Leland Cook
Amos Wright
William Easton
George Thomson
Gilbert Gregg
Solomon Fox
Horace Butler
James McKay

Aug 21. 1848.

The clerk will please issue a summons to the above named defendants in debt — Debt $12,000. Damages $1,000 — returnable at next term

Yours &c
"Hoyt & Blodgett"
Plffs Atty "

6. "Geo. Thomson Esq
Clerk &c

And that afterwards, and on the said twenty first day of August A.D. 1848, a summons issued out of said Court, in the words and figures following, to wit,

"State of Illinois }
Lake County } ss

The people of the State of Illinois to the Sheriff of said County

Greeting We command you, that you summon Elijah
7 M. Manes, Leland Cook, Amos Wright, William Caston
George Thomson, Gilbert Granger, Solomon Foy, Horace
Butler and James McKay, If they shall be found in
your County, personally to be and appear before the
Circuit court of said County, on the first day of the
next term thereof, to be holden at the County House in
said County, on the, first Monday in September
8 next, to answer unto the People of the State of Illinois
for the use of the common school fund of Lake County
in a plea of Debt to the damage of the said plaintiffs
as they say, in the sum of Twelve thousand dollars Debt
and One hundred dollars damages. And have you
then and there this writ, with an endorsement thereon
in what manner you executed the same.

9 Witness George Thomson clerk
of said court, and the seal thereof at Little Fort in said County
this 21st day of August A.D. 1848,
"George Thomson clerk"

Seal

On the back of which said summons is an endorsement
made by the Sheriff of said County in the words and
figures following, to wit, "Personally served this writ by
~~reading~~ reading it in the hearing of the within named Elijah M.
Manes, Leland Cook, Amos Wright, George Thomson
10 Horras Butler, James McKay, this 23 day of August 1848
fees for summons $ 3.00
fees for 54 miles 3 37½
return 12½
$6.50
"H. W. Dorsett Sheriff"

"The within named Gilbert Granger
William Caston & Solomon Foy not found, therefore not
served "H. W. Dorsett Sheriff"

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And that afterwards, and on the third day of
11 November A.D. 1848, the said plaintiffs by Hoyt & Blodgett, their Attorneys, filed in the office of said Clerk their declaration in the words and figures following towit, "Lake County Circuit Court

Of the Term of September in the year of our Lord one thousand eight hundred and forty eight

Lake County ss.

The People of the State of Illinois
12 who sue for the use of the School fund of Lake County by Hoyt & Blodgett their Attorneys complain of Elijah M Haines, Leland Cook, Amos Wright William Caston George Thomson Gilbert Granger Solomon Fox Horace Butler and James McRay defendants who have been summoned to answer the said plaintiffs of a plea that they render to the said plaintiff the sum of twelve thousand dollars which they owe to and unjustly detain from them.

13 For that whereas the said defendants Elijah M Haines heretofore towit, on the eighth day of January in the year of our Lord one thousand eight hundred and forty four, was duly elected to the office of School School Commissioner of Lake County by the qualified Electors of said County, and afterwards towit on the sixteenth day of January pursuant to the Statute in such case made and provided, made and filed in
14 the office of the clerk of the County commissioners Court of said County his Official bond with Isaac R Gavin Lyman H. Newell, Charles Hall and others as his sureties, and was duly sworn to support the constitution of the United States and of the State of Illinois and faithfully to perform all the duties required of him by law as school commissioner of said County and the said Elijah M Haines thereupon entered upon the

15 discharge of the duties of said office and so continued
for a long space of time, to wit, for the space of two years
School Commissioner of said County. And the said
plaintiff also says, that afterwards, to wit, on the
fourteenth day of September in the year last aforesaid
the said Ezra W. Newell and Charles Hall filed
with the clerk of said Commissioners Court notice
that they were unwilling longer to be security for
18 said Elijah M Haines. And such proceedings were
thereupon had pursuant to the Statute in such case
made and provided. that afterwards, to wit, on the
seventeenth day of September aforesaid, the said Elijah
M. Haines filed another bond with Securities in the
Office of said clerk and the same was thereupon duly
approved which said bond is in the words and figures
following to wit:

17 "Know all men by these presents that
we Elijah M Haines principal and Leland Cook,
Amos Wright William Caston, George Thompson Gilbert
Granger Solomon Fox Asaa Butler and James
McKay sureties all of the County of Lake and State
of Illinois are held and firmly bound to the People
of the State of Illinois (are held and firmly bound
to the People of the State of Illinois in the penal sum
18 of twelve thousand dollars for the payment of which
well and truly to be made we bind ourselves our heirs
Executors and administrators jointly severally and
firmly by these presents Signed with our hands and
sealed with our seals Dated at Little Fort in said County
this seventeenth day of September A.D. 1844."

"The condition of the above Bond is such
that Whereas the above bound Elijah M. Haines was
19 on the Eighth day of January A.D. 1844 duly elected
to the office of School Commissioner in and for the
said County of Lake, Now therefore if the said Elijah
M Haines shall faithfully perform all the duties of the
said office of School Commissioner according to the laws

"Now or which may hereafter be in force in relation
"thereto then this obligation to be void, otherwise to remain
20. "in full force and effect in Law and Equity."

"E. M. Haines" (L.S.)
"Leland Cook" (L.S.)
"Amos Wright" (L.S.)
"Wm Easton" (L.S.)
"George Thomson" (Seal)
"Gilbert Langer" (L.S.)
"Solomon Fox" (L.S.)
"H. Butler" (L.S.)
"James M'Kay" (L.S.)

And the said plaintiff says that afterwards, to wit,
during the continuance of the said Elijah M. Haines in
the office aforesaid, there came to his hands a large sum
21 of money to wit, the sum of five thousand dollars,
by virtue of his said office, belonging to the School fund
of Lake County, which it became the duty of said
defendant Elijah M. Haines as such School com-
missioner to loan out, pursuant to the statute in such
case made and provided, and the said Elijah M. Haines
afterwards to wit, on the thirteenth day of May in the year
one thousand Eight hundred and forty five did loan of
22 the aforesaid School fund to one Isaac R. Gavin a large
sum, to wit, the sum of fifty dollars, contrary to the
provisions of the Statute in such case made and provided
for the period of five years, without taking security therefor
by mortgage on real estate unencumbered as required by
law, but on the contrary thereof the said Haines took
from the said Isaac R. Gavin, as security for the afore=
said loan, a mortgage on Lot number seven in
25 Block, number Eighteen in the town of Little Fort
in the county of Lake aforesaid, and the said plain-
tiffs say that at the time of executing the aforesaid
mortgage the said Gavin had not a free and unen=
cumbered title in fee simple to said Lot, nor had he any

title thereto or interest therein either at that time
or at any time before the commencement of this suit
nor was there any other security whatever taken for said
24 loan by said Haines

And the said Plaintiffs for
assigning a further breach of the said writing Obligatory
according to the form of the Statute in such case made
and provided further say: that the said defendant
Elijah M. Haines, after making of the said writing
Obligatory, to wit, on the day and year last aforesaid
loaned to the said Isaac R Gavin a certain
other sum of money, to wit, the sum of fifty dollars
25 of the aforesaid school fund for the period of five years
and that no such security for the loan of the afore-
said sum of money was given by the said Gavin or
any other person as is required by section twenty
seven of chapter ninety eighth of the Revised Statutes
of the State of Illinois. By reason of which said
premises the said school fund has sustained dam-
26 ages to a large amount, to wit, to the amount of
one hundred dollars, by reason of which said breaches
the said writing Obligatory became forfeited. By
reason whereof and by the force of the Statute in such
case made and provided, an action hath ac-
crued to the said plaintiffs, to demand and
and have of and from the said defendants the
said sum above demanded. Yet the said defendants
(although often requested so to do) have not as yet paid
27 the said sum of money above demanded or any part
thereof, to the said plaintiffs or otherwise according to
the said writing Obligatory and condition, but to
pay the same have hitherto wholly neglected and
refused and still do refuse to the damage of the
said plaintiffs of one hundred dollars and therefor
they bring their suit &c — And the said
plaintiffs bring here into Court the said writing
[11909-4] Obligatory, sealed as aforesaid, which gives sufficient
28 evidence to the said Court here of the debt aforesaid

in form aforesaid, the date whereof is a certain day and year therein mentioned to wit, the day and year in that behalf above mentioned."

"Wm. H. Blodgett"
"Plffs. Atty"

And that afterwards, and on the fourteenth day of November A.D. 1848, the said last mentioned day being one of the days of the said November Special Term A.D. 1848, to wit, the second day thereof, the
27 said defendant Elijah M. Haines by Butler, Henry & Searles his attorneys, filed his plea and notice with the clerk of said court in the words and figures following, to wit,

"The Circuit Court for the County of Lake of the November Special Term A.D. Eighteen hundred and forty Eight

Elijah M. Haines et al
ads
The People of the State of Illinois

30

And the said Defendant by Butler Henry & Searles his attorneys comes & defends the wrong & injury when &c. and says that he does not owe the said sum of money above demanded or any part thereof in manner & form as the said plaintiff hath above thereof complained against him & of this the said defendant puts himself upon the country &c.

"Butler Henry & Searles"
Attys for Deft

31

"To the People of the State of Illinois whose use for the use of the school fund of Lake County & to Wm. H. Blodgett their attorneys"

County

Please take notice that upon the trial of the above entitled cause the above named defendant will give in evidence & insist upon the following matters as a defence. First that at a public sale of Lots in the
32 village of Little Fort County of Lake one Isaac R Gavin to whom this defendant loaned fifty dollars of the School fund of the County of Lake as School Commissioner of said County according to the provision of the Statue in such case made & provided, bid off the premises described in said declaration upon which security was taken & was at the time when the money was loaned by this defendant the reputed owner of said premises & believed to be such by the community
34 generally & believed to be the owner of said premises by this defendant at the time when the security was taken as charged in the said plaintiffs declaration & that there was no record at that time of any sale of or incumbrance on said premises & that the said Isaac R. Gavin represented himself to be the owner of the
35 same — Second that the said mortgage taken as security upon said premises was not and ~~was~~ at the time when the suit was commenced & is not yet due and that the interest upon said mortgage has been paid by Isaac R. Gavin or his representatives promptly at the time when the same became due up to the time when this suit was commenced

~~"United States of America~~
~~State of Illinois Lake County~~ } ~~Pleas before the Hon~~
~~orable Hugh T. Dickey Judge of the seventh and~~ ~~Circuit of the State of Illinois~~
~~At a circuit Court for the County of Lake~~

And that afterwards, to wit: On the twenty fourth
36 day of March A.D. 1849 the said plaintiffs by their attorneys aforesaid filed in the office of the Clerk of said Court their Exception to the said notice of the

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said Defendant Elijah M Haines in the words and figures following, to wit.

&c

Lake County Circuit Court

37 The People of the State of Illinois for use of Lake County

vs

Elijah M. Haines

et al.

March Term AD 1849

Debt

"And the said Plaintiffs as to the special matters contained in the said defendants notice to be insisted upon under said defendants plea of the general issue, saith that the said matter in said notice contained in manner and form as the same are therein set forth are not sufficient in law to bar or preclude the said plaintiffs from having and maintaining their aforesaid action thereof against the said defendants. And that said plaintiffs are not bound by law to answer the same

38 And this said plaintiffs are ready to verify wherefore by reason of the insufficiency of the said plea in this behalf the said Plaintiffs pray Judgment and their debt aforesaid together with their damages by them sustained by reason of the detention thereof to be adjudged &c

"Hoyt & Blodgett

"Plaintiffs"

"Attorneys"

said Defendant Elijah M Haines in the words and figures following, to wit.

&c

Lake County Circuit Court

37 The People of the State of Illinois for use of Lake County

vs

Elijah M. Haines

et al.

March Term AD 1849

Debt

"And the said Plaintiffs as to the special matters contained in the said defendants notice to be insisted upon under said defendants plea of the general issue, saith that the said matter in said notice contained in manner and form as the same are therein set forth are not sufficient in law to bar or preclude the said plaintiffs from having and maintaining their aforesaid action thereof against the said defendants. And that said plaintiffs are not bound by law to answer the same

38 And this said plaintiffs are ready to verify wherefore by reason of the insufficiency of the said plea in this behalf the said Plaintiffs pray Judgment and their debt aforesaid together with their damages by them sustained by reason of the detention thereof to be adjudged &c

"Hoyt & Blodgett

"Plaintiffs"

"Attorneys"

39 United States of America
State of Illinois Lake County } ss. Pleas before the Honorable
Hugh T. Dickey Judge of the seventh
Judicial Circuit of the State of Illinois
At a circuit Court for the County of
Lake, in said circuit began and held at
Waukegan formerly called Little Fort in the
County aforesaid, on the twenty sixth day of
March in the Year of our Lord one thousand
40 eight hundred and forty nine. and of the
independence of the United States the seventy
third
Present the Honorable Hugh T. Dickey Judge
aforesaid — Alonzo Platt, States Attorney
Henry W Dorsett Sheriff of Lake County ss
"Attest Augustus B. Coles Clerk"

And that afterwards, to wit, on the twenty eight
day of March A.D. 1849, said last mentioned day
being one of the days of said March Term, the following
proceedings were had in said circuit court as
41 appears from a record thereof, in the words and figures
~~the~~ following, to wit,

CC

The people of the State of Illinois
for the use of the Common School
fund of Lake County
vs.
Elijah M. Haines, Leland Cook,
Amos Wright, George Thomson,
Horace Butler, and James McKay
impleaded with Solomon Fox
Gilbert Granger, & William Caston

Debt

And now come the plaintiffs
by their Attorney, and the defendants Leland
Cook; Amos Wright, George Thomson Horace
42 Butler, and James McKay having been severally
three times solemnly called come not, nor any one

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for them but herein fail and make default.

And afterwards, to wit, on the third day of April A.D. 1849, said last mentioned being also one of the days of said March term, the following proceedings were had in the Court aforesaid as appears by an entry upon the records thereof which is in the words and figures following, to wit,

11 43 The People of the State of Illinois
for the use of the common
School fund of Cass County
vs
Elijah M. Haines, Leland Cook,
Amos Wright, George Thomson
Horace Butler and James McCray
impleaded with William Easton
Gilbert Granger and Solomon Fox

Debt.

"Now come said parties by their respective attorneys and after arguments of counsel the court being fully advised as to the exceptions taken by
44 said plaintiffs to the notice of the said defendants given under the plea of the general issue by them heretofore pleaded herein, sustains the same, whereupon the said defendants ask and obtain leave to amend their said notice, and the same being amended, and issue being joined herein, by agreement of parties this cause is submitted to the court for trial without the intervention of a jury; and the court, having heard the
45 evidence and arguments of counsel, but not being fully advised in the premises, takes the same under advisement."

The following is a copy of the amended plea & notice filed with the clerk of said court on the third day of April A.D. 1849, by the said defendant Elijah M. Haines by his attorneys aforesaid, to wit,

46 "The Circuit Court for the County of Lake
Of the November special Term
Elijah M Haines A.D. Eighteen hundred and Forty Eight
Et al
ads
The people of the State of Illinois

"And the said defendant by Butler Ferry & Searls his attorneys comes & defends the wrong & injury when &c, and says that he does not owe the said sum of money above demanded or any part thereof, in manner & form as
47 the said plaintiffs hath above thereof complained against him, & of this the said defendant puts himself upon the country &c."

"Butler Ferry & Searls"
"Attys for Deft"

"To the people of the State of Illinois who sue for the use of the School fund of Lake County & to Hoyt & Blodgett their attorneys"

"Ments" "Please take notice that upon the trial of the above entitled cause the above named defendant
48 will give in evidence & insist upon the following matter as a defence. First that at a public sale of lots in the village of Little Fort, County of Lake one Isaac R. Gavin to whom this defendant loaned fifty dollars of the school fund of the County of Lake, as School Commissioner of said County according to the provisions of the statute in such case made ~~and~~ provided bid
49 off the premises described in said declaration upon which security was taken. And that said defendant Haines, made diligent search to ascertain in whom the title of said land was at the time of loaning said money & found by the records in the office of the Co. Com. Clerk of Lake Co. that the said Isaac R Gavin at the sale of said land by the County of Lake, bid off & purchased in his own name the said land

50

& that it was so entered upon the records of said County & that said Lavin at that time made the first payment on said land & that said Haines also made search in the office of the Recorder of said County & found nothing thereon in regard to said land believed to be the owner of said premises by this defendant
51 at the time when the security was taken as charged in the said plaintiffs declaration. & that there was no record at that time of any sale of a incumbrance on said premises & that the said Isaac R. Lavin represented himself to be the owner of the same Second that the said mortgage taken as security upon said premises was not, and at the time when the suit was commenced & is not yet due. and that the interest
52 upon said mortgage has been paid by Isaac R Lavin or his representatives promptly at the time when the same became due up to the time when this suit was commenced"

And that afterwards and on the said third day of April aforesaid said plaintiffs by their aforesaid attorneys filed with the clerk of said court their similiter in the words following, to wit,

"And the said Plaintiffs do the
53 like by "Hoyt & Blodgett"
Plffs attys"

And thus afterwards, to wit, on the fifth day of April A.D. 1849, said last mentioned being one of the days of said term the following proceedings were had in said court, as appears by a record thereof in the words and figures following, to wit,

"The People of the State of Illinois for the use of the Common School fund of Lake County
vs
54. Elijah M. Haines Leland Cook Amos Wright George Thomson Horace Butler and James McKay impleaded with William Easton, Gilbert Grange and Solomon Foy" Debt.

Now come the parties by their respective attorneys and the court being fully advised in the premises finds the issue for the plaintiffs, and assesses their damage at the sum of fourteen dollars and thereupon it is ordered and considered that said plain-
55 tiffs have and recover of the said defendants who are impleaded as aforesaid, the sum of twelve thousand
12000,00 dollars for their debt, and also the said sum of four-
14.00 teen dollars for their damages, together with their costs and charges in this behalf expended and that they have execution for their said debt, damages costs and charges and thereupon said plaintiffs by
56 their attorney, prays an appeal to the Supreme Court which is granted on condition that Charles Hall, and Michael C. Maguire, in behalf of the said plaintiffs, enter into bond before the clerk of this Court within thirty days in the penal sum of one hundred dollars"

And that afterwards, and on the same day said plaintiffs by their attorneys aforesaid filed with the clerk aforesaid their bill of exceptions
57 signed and sealed by Hugh T. Dickey the Judge of said Court, which is in the words and figures following: to wit,

"Yates County Circuit Court

The People of the State of Illinois
for the use of the Common School fund
of Yates County vs.
Elijah M. Haines, Leland Cook
Amos Wright, William Easton
George Thomson, Gilbert Granger
Solomon Fox, Horace Butler
and James McKay —

Debt.

"Be it remembered that on the trial of this suit, the plaintiffs introduced
58 the following evidence and called the following
witness viz. —

$11909-B

Amos S. Waterman. Who being duly sworn, testified that he was clerk of the County commissioners court of Lake County. Witness produced a report of the School commissioner of Lake County for the year Eighteen hundred and forty six signed E. M. Haines School commissioner filed in the office of the clerk of said commissioners court March second eighteen hundred and forty six from
59 which it appeared that said commissioner loaned to Isaac R. Gavin on the thirteenth day of May one thousand eight hundred and forty five the sum of fifty dollars of the school fund of said County in his hands for the period of five years at eight per cent interest and that the same was secured by mortgage executed by said Gavin on
60 Lot seven in Block Eighteen in the town of Little Fort

The plaintiffs then offered & read in evidence the Official Bond of said Haines of which the following is a copy which bond was duly executed & filed in the office of the clerk of the County commissioners court of Lake County & approved on the seventeenth day of September A.D. 1844. Viz

"Know all men by these presents that we Elijah
61 "M. Haines principal and Leland Cook Amos "Wright, William Caston, George Thomson, Gilbert Granger, "Solomon Fox, Horace Butler & James McKay sureties "all of the County of Lake and State of Illinois are "held and firmly bound to the people of the State "of Illinois (and held and firmly bound to the people "of the State of Illinois) in the penal sum of twelve "thousand dollars for the payment of which well and
62 "truly to be made, we bind ourselves our heirs execu-"tors and administrators jointly and severally, "firmly by these presents. Signed with our hands "and sealed with our seals Dated at Little Fort in "said County this seventeenth day of September A.D. 1844.

"The Condition of the above obligation is such
"that whereas the above bound Elijah M Haines
"was on the Eight day of January A.D. 1844, duly
63 "elected to the office of School commissioner in
"and for the said County of Lake. Now, therefore
"if the said Elijah M. Haines shall faithfully
"perform all the duties of the said Office according
"to the laws now or which may hereafter be in force
"in relation thereto, then this obligation to be void
"otherwise to remain in full force and effect in law
"and equity"

"E. M. Haines" LS
Leland Coots LS
"Amos Wright" LS
64 "Wm Caston" LS
(Signed) "George Thomson" Seal
"Gilbert Mangus" LS
"Solomon Fox" LS
"H Butler" LS
"James McKay" LS

The Plaintiffs then called
Isaac H Smith, who being duly sworn testified that he was
the School Commissioner of Lake County and
Successor in office to Elijah M Haines that
said Haines was elected to said office in the
year one thousand eight hundred and forty
65 four, and continued in said office till the
witness was elected in the year one thousand
eight hundred and forty seven

Witness produced a note and mortgage
executed by Isaac R. Gavin to the School com-
missioner of Lake County of which the following is
a copy

"$50. 100 "Five years from date I promise to
"pay the School commissioner of Lake County
"Ill for the use of the inhabitants of Lake County the
66 "sum of (50) dollars with interest thereon at Eight (8)

"per centum per annum payable half yearly in
"advance for value received. Witness my hand this
thirteenth day of May"
"AD 1845" "I. R. Savin"
"In presence of"
"Leo Thomson"

And which said Mortgage was duly Executed
and acknowledged by said Isaac R. Savin
and by virtue thereof the said Savin mortgaged
67 to the School commissioner of the County of Lake
for the use of the County School fund of Lake
County Lot Seven in Block Eighteen of "the town of
Fort" for the payment of said sum of fifty dollars
and interest at the rate of eight per cent per annum
until paid, and in and by which the said Savin
covenanted to pay said sum of money in five years
from the date thereof and the interest thereon half
68 yearly in advance. Which mortgage bore date on
the thirteenth day of May one thousand eight
hundred and forty five. And the said witness
testified that said note and mortgage were delivered to
him by Elijah M. Haines his predecessor in the
office of School Commissioner of said county
together with the other books and papers per-
taining to said office. That the first and second
69 payments of advance interest on said note and mort-
gage had been paid, that the second payment was
made in November Eighteen hundred and forty five
and that no payments of interest thereon had
been made since that time. the plaintiffs then
offered and read in evidence a bond executed
by the County Commissioners of Lake County
on the 26th day of May AD 1841, to Catherine A. Savin
70 conditioned to convey to Catherine A. Savin Lot
number seven in Block number Eighteen of the
town of Little Fort on payment of the consideration
money to be paid therefor at the times in said

Bond specified; the execution of said which bond at the time when it bears date was duly proved by Isaac W Atkinson the subscribing witness thereto who was produced and sworn as a witness on the part of said plaintiffs. And the said
71 plaintiffs also produced and read in evidence a Warrantee deed of said lot seven in Block Eighteen, aforesaid and bearing date on the twenty sixth day of November one thousand eight hundred and forty two. Which deed was duly executed by the county commissioners of Lake County to said Catherine A. Savin and was duly acknowledged by them as appeared from the certificate of ~~endorsement~~ acknowledgement endorsed thereon.

The plaintiffs then called Samuel M Dowst
72 who being duly sworn testifie that he was the deputy recorder in & for Lake County and that he had examined the records of the recorders office of said County and that the title to said Lot seven in Block Eighteen as appeared from said records is in the County of Lake and that there was no record in said office of the conveyance
73 of said Lot by said County to Isaac R Savin or to any other person. That said Isaac R. Savin is now dead. that witness was acquainted with said Savin and his pecuniary circumstances for many years previous to his decease. that witness had his office in the same building with said Savin for three or four years previous to the death of said Savin. Witness thought that said Savin during said period could have paid a debt of fifty dollars if he had been inclined to do
74 so; but Witness knew of no property of said Savin liable to execution during that period, and witness thought ~~that~~ a debt of that amount could not have been collected from said Savin if he was not inclined to pay it — did not think him responsible

for that amount.

Plaintiffs Called

Thomas Magnire as a witness who being ~~ch~~ sworn testified, that he is the Probate Justice of
75 Lake County and was such at the time of the decease of ~~the~~ said Savin. That letters of administration had been granted upon the estate of said deceased, that said estate was insolvent their being no more property than was set apart to the widow of said Savin under the Statute for her portion.

Plaintiffs Called

Archimides B Wyntroop — Who being sworn testified that he knew Isaac K Savin for many years previous to his death. That he was not generally
76 considered responsible. Witness knew of his having no property liable to execution — Not knew of the loan being made to said Savin by said Haines, and that said Savin was not at the time the owner of said Lot seven. Witness himself applied for the loan of said money at the time it was loaned to said Savin. Did not recollect that he told said Haines that said Savin was not the owner of said Lot.

77 Cross Examined — Said lot was occupied by said Savin before his death.

Plaintiff recalled

Isaac H Hopkinson — who testified that he knew Isaac K Savin for many years previous to his decease had a good opportunity of knowing his pecuniary circumstances. Never heard of his having any property that was subject to execution, thinks he should have known it if such had been the case. Was not generally considered responsible to pay more than he could pay

78

Cross Examined — At the time of the sale of Lot seven in Block Eighteen, by the county commissioners a payment of one fourth was made, but Witness was thinking it was made by Butler, cant say a certain

The Plaintiff here rested and the defendant Haines recalled

Archimides B. Wyntroop — Who testifies that he had a memorandum of sales of lots made by the county commissioners of Cattle County in the year Eighteen hundred and forty one, in witnesses hand writing It was made at the time of the sale. It appears from said memorandum that Lot seven in Block Eighteen of the town of Little Hot was struck off to Isaac R Gavin for ten dollars, a part of the purchase money witness thinks one fourth was paid down. The memorandum
80 reffered to had been on file in the office of the clerk of the county commissioners court

Henry W Blodgett was sworn as a witness on the part of the defendants & testifies that Isaac R. Gavin was formerly clerk of the circuit court of Cattle County That he had recently examined the execution docket & fee book in said office by request of Mr Gavin for the purpose of ascertaining what amount of fees in said court remained due & unpaid to said Gavin. That there appeared to be due from the examination of said Books about
81 five hundred dollars, that is there was about that amount, that did not appear to have been paid on such books. Witness knew however of several instances when fees must have been paid or collected which did not appear from said books

Cross Examined Did not examine the executions or bills that had been returned in such cases. Know that many of the persons from whom fees appeared to be due were insolvent or had moved out of the County

82

Did not think judging from his own knowledge of the persons against whom there appeared to be fees their responsibility &c, that there could be one hundred dollars collected in all. Witness informed Mrs Gavin that such was his opinion. The collection of that amount would be attended with considerable labor and expense

Direct Resumed — Did not consider at the time that there was much of said fees available — told Mrs Gavin that according to his best judgment there was not one hundred dollars of them collectable

83

Defts Called

Michael Delanty who being sworn testified that in the year Eighteen hundred and forty five he rented a part of Lot seven in Block eighteen in the town of Little Fort for ten years from Isaac R Gavin. Gavin lived on the Lot at the time.

84

Cross Examined Witness knew at the time that the title of said Lot was not in Isaac R Gavin but in Catherine A Gavin —

Defendants then rested and Plaintiffs called Michael C Maguire who being duly sworn testified that he is one of the County Commissioners of Lake County. The bond offered in evidence by the Plaintiffs & executed by the County Commissioners to Catherine A Gavin, was taken from the files of the Clerk of the County Commissioners Court that morning by the witness the Original bonds when deeds had been given were on file in said Court

85

The above was all the evidence introduced in the trial of the above cause. The same having been submitted to the Court without the intervention of jury by agreement of parties on the third day of April at the March term of said

Circuit Court, was considered by the Court &
86 taken under advisement & afterwards, Court, on the
fifth day of April, at said March Term the
said Court decided to render judgments
for the plaintiffs, for the sum of fourteen dollars
damages being the amount of interest upon said
loan, remaining due and unpaid to which
decision the said plaintiffs then and there excepted
and judgment was thereupon entered for said
plaintiffs for said sum of fourteen dollars and
their costs of suit against said defendants
87 Haines and the defendants Leland Cook Amos
Wright, George Hanson, Horace Butler and
James McKay who had been served with
process in this cause

Whereupon the Plaintiffs prayed an
appeal to Hoyt & Blodgett their attorneys
which was granted and giving bond by
Charles Hall and Michael C. Maguire in the part
of the people in thirty days in the penal sum
88 of one hundred dollars.

And thereupon the said Court signed
and sealed this bill of exceptions"

"Hugh T. Dickey"
Judge &c.

And also afterwards, to wit, on the fifth day of
May A.D. 1849, the said plaintiffs by Hoyt
and Blodgett their attorneys, filed in the office of
the clerk of the Circuit Court a bond which is in the
words and figures following, which said bond was
87 approved and filed by said clerk of the Circuit Court
the same day "

"Know all men by these presents,
that we Charles Hall and Michael C. Maguire
of Lake County ~~and~~ in the State of Illinois

for and on behalf of the people of said State, are
held and firmly bound unto Elijah M. Haines
Leland Cook Amos Wright George Thomson Horace
Butler and James McKay in the penal sum of
one hundred dollars lawful money of the United States
140 which payment 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 5th day of May
A.D. 1849

Whereas heretofore, to wit, at the March
Term of the Lake County Circuit Court in the
year one thousand Eight hundred and forty nine
in a certain action of debt pending in said court
wherein the people of the State of Illinois suing
91 for the use of the common school fund of Lake
said County were plaintiffs and the above named
obligors impleaded with William Easton, Gilbert
Hanger and Solomon Foy were defendants
by the consideration and judgment of the said
Court the said plaintiffs recovered judgment
in such action against said above named obli-
gors for the sum of twelve thousand dollars debt
and fourteen dollars for their damages together
92 with costs of suit from which judgment said
plaintiffs prayed an appeal to the Supreme Court
which was granted. Now therefore the condition
of the above obligation is such that if the said
plaintiffs shall duly prosecute their said appeal
and well and truly pay such judgment costs
interest and damages as shall be awarded
against them on the trial or dismissal of said
appeal then the above obligation to be void
93 otherwise to remain in full force and ~~effect~~
virtue

"Michael C. Maguire" Seal
Charles Hall Seal

"Approved by me at my office May 5th 1849
A. B. Cotes Clerk"

State of Illinois
Lake County } I, Augustus B. Cotes, Clerk of the Circuit Court in and for said County of Lake, do hereby certify the foregoing to be a true transcript from the Records of my office and the papers on file therein, in a certain action of debt lately pending in said Court, wherein the people of the State of Illinois for the use of the Common School fund of Lake County were plaintiffs and Elijah M. Haines, Seland Cook Amos Wright, William Easton, George Thomson, Gilbert Granger, Solomon Foy, Horace Butler and James McKay were defendants.

In witness whereof I have hereunto set my hand and seal of said Court, at Waukegan, formerly called Little Fort, in said County, this 28th day of May A.D. 1849

A. B. Cotes, Clerk

[11909-13]

Supreme Court

The People of the State of Illinois for use &c
v.
E. M. Haines et al.

} Appeal from Lake

And now comes the Plaintiffs by Hoyt & Blodgett their attys and say that there is error in the foregoing record and proceedings in this cause and the judgment rendered therein, in this court.

1st The Court erred in ~~the~~ assessing the damages in this cause without the intervention of a jury the judgment being by default as to part of the defendants —

2d The ~~Pltf~~ plaintiff should have had judgment for a much larger sum if at all under the pleadings & evidence in the case, to wit: for the amount of money loaned and the legal interest due thereon ~~June 9th 1849~~ Wherefore they pray that said judgt may be reversed &c

Hoyt & Blodgett Attys for Plffs

June 9. 1849 —

Lake County Ct Court
The People of the State of Illinois
Who sue for use of Lawrence & others
vs
E. M. Haines
Appeal & Error
Filed June 9 1849
Wilson Clk

Spencer Wright
William Clifford
George Thomson
Nancy Hutton
Lewis McKinney
Wm. McKinney
William Clifford
Milton Gaige &
Solomon Fox

Forwarded

Supreme Court

The People of the State of Illinois for the use of Common School fund of Lake Co

vs

Elijah M Hainsett et al — Defs

Debt — Appeal from Lake Cir Court

It is hereby mutually stipulated that the above cause shall be passed without any motion or other step being taken therein till Tuesday after the second week of the next Term of the Supreme Court and without prejudice to either of the parties.

Waukegan Lake Co
June 9 1849

Norph H Blodgett
Attys for Plffs

Henry & Leach
Attys for Defts

Sup Court

The People for
use &c appellants
vs.
E M Harris
et al

Stipulation

Filed June 14, 1849.
S Leland Clk.

Supreme Court

E. M. Haines & others
appellees

vs

The People of the
State of Illinois
appellant.

Appeal from Lake.

And now comes the
said, E. M. Haines & others appellees by Arnold
their attorney & say that there is
no Error either in the record & proceedings
aforesaid or in the giving the judgment
aforesaid & they pray the Supreme Court
now here may proceed to examine
as well the record & proceedings aforesaid
as the matters aforesaid, above assigned
for Error. and that the judgment
aforesaid in form aforesaid given,
may be in all things affirmed &c.

J. N. Arnold
Atty for appellees.

Supreme Court

E. M. Haines & others
ads appellees

The People of the
State of Illinois

Joinder in Error

Filed June 12. 1849.
S. Leland Clerk

17.12½
7.34