

11849

No. \_\_\_\_\_

Supreme Court of Illinois

Wheeler, et al.

vs.

Pomeroy.

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Willard Wheeler et al  
vs  
Dwight Pomeroy

1850

11849



State of Illinois, }  
 Supreme Court, } SS.

The People of the State of Illinois

TO THE SHERIFF OF Winnebago County.

Because in the record and proceedings, and also in the rendition of the judgment, of a plea which was in the circuit court of Winnebago county, before the Judge thereof, between Dwight Pomeroy plaintiff and Willard Wheeler & D. R. Lyon

defendants, it is said that manifest error hath intervened to the injury of the said Wheeler & Lyon

as we are informed by their 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 Dwight Pomeroy

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 second Monday in June next, to hear the records and proceedings aforesaid, and the errors assigned, if he shall think fit; and further to do and receive what the said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said Dwight Pomeroy notice, together with this writ.

WITNESS, the Hon. Daniel H. Treat  
 Chief Justice of our said Court, and the seal thereof,  
 at Ottawa, this 18<sup>th</sup> day of April  
 in the year of our Lord, one thousand eight hundred  
 and forty-fifty.

C. Ireland  
 Clerk of the Supreme Court.







Rock Island March 6, 1830.

I. Island: Dear Sir:

Yours of the 28<sup>th</sup> Jan. was recd. in due season. I have neglected the matter two or three weeks, having been absent part of the time on business.

Enclosed you will find the five dollars which you mentioned as a pre-requisite.

I suppose an assignment of errors will be necessary: what I state below, will be probably be sufficient. Should anything more formal, <sup>or particular</sup> be necessary, or should any thing further on my part be necessary, by dropping me a line if you will much oblige

Yours Respectfully  
C. P. Waite.

The errors relied upon by appellant are,  
1<sup>st</sup> That the Court erred in refusing the instructions marked (See record being those that were asked for by plaintiff's Counsel, and refused.)

2<sup>d</sup> That the Court erred in admitting the evidence which was objected to by defendant's counsel. See record.

3<sup>d</sup> That the Court erred in refusing the motion for a new trial. —



Rock Island Ill. Jan'y 31. 1850.  
Clerk of the Supreme Court:  
Ottawa, Illinois

Dear Sir:

I wish to prosecute a Writ of Error, in a suit lately decided in Winnebago County, wherein Dwight Tomeroy is Plaintiff and Willard Wheeler and D. A. Lyon are Defendants. Being unacquainted with the practice in the Supreme Court, and not being able to obtain information from the members of the bar, <sup>here</sup> none of them, as far as I can ascertain having prosecuted a Writ of Error, (being in the bad habit of resorting to the more common practice of taking appeals), I have concluded to write directly to you, trusting to your generosity to inform me if there is any thing for me to do in the premises, which I ~~can~~ <sup>am</sup> at-

I suppose that, in cases of this kind a writ issues from your office to the Clerk of the Circuit Court of Winnebago County directing him to send up a complete record of the case. If any particular form of a precept from me for that purpose is necessary, if you will have the kindness to inform me, I will send it. If not, you will please issue



the requisite writ, without delay.

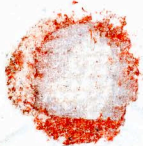
The case was decided at a special <sup>term of</sup> court held at Rockford, commencing on the 17<sup>th</sup> December; judgment was rendered on the 30<sup>th</sup> I believe. — O. Miller Jr. and myself for Defendants, and Wright and Marsh for Plaintiff. I suppose Miller has will have nothing to do with it further, as he appeared rather for the nominal steps. I attended to the case for a third party, defendant in equity, and it is for him I take the matter up. But the writs and papers must of course run in the name of the parties to the record. —

By acknowledging the receipt of this and informing me if any thing is necessary on my part, you will oblige,

Most Respectfully  
Yours &c

L. P. Waite  


C. B. Waite  
Jan'y. 21<sup>st</sup> 1850.



Illinois.

Wm. B. Waite  
Rock Island, Iowa

Filed Oct. 15, 1850.  
Ireland Oct.



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Ct



Rock Island Ill. Mar. 11. '50

Mr. Deland

Dear Sir:

I wrote you, a few days since, sending five dollars, and at the same time made an assignment of errors in the case of Emery vs Wheeler & Lyons. I wish to have the assignment of errors include the instruction of the plaintiff which was given, as well as those of the defendants which were refused. By making this correction you will oblige

Yours Respectfully  
L. B. Waite

P.S. If it be necessary you may file the following. If you will copy and put it in proper form I will be obliged - C.B.M.

### Assignment of Errors.

1. The Court erred in admitting the testimony of Breckenridge as to the price of the horse before the contract had been passed.
2. The Court erred in ~~also~~ refusing Defendants instructions marked "refused". see record.
3. In admitting giving to the jury the instruction asked for by plaintiff & marked "given".
4. An overruling Motion of Defts for a new trial
5. In ~~to~~ rendering judgment upon the verdict of the jury.



If any error was assigned in my last and not mentioned in this, please include it also. The fact is, not having the record before me, I had to be guided partly by memory. C.B.W.



Supreme Court  
Willard Wheelan  
David R Lyon  
vs  
Swight Pomeroy

Writ of Error to Winnebago  
County Circuit Court

Winnebago County vs. Willard Wheelan and David R Lyon  
the above named plaintiffs in Error being duly sworn  
deposed and says that the <sup>of Error</sup> writ in the above case  
was sued out without their knowledge or consent  
that they never authorized any person to sue out  
the same that they did not wish the same sued out  
that they were satisfied with the judgment in this  
case as the same was rendered in the Court <sup>below</sup> that they  
are unwilling that said writ of Error should be per-  
mitted but wish the same to be dismissed at the costs  
of the attorney who sued the same out of the said  
Supreme Court without any authority from them.

And these deponents further say that the  
said suit is founded on a promissory note made by  
these deponents to one Andrew Clark and which  
had been assigned by said Clark in blank that  
an action was originally commenced on said note before  
a justice of the peace of the County of Winnebago and  
judgment rendered thereon for the defendant in Error  
above named, that an appeal was taken from said  
Justice Judgment to the Circuit Court of Winnebago Coun



ty and judgment again rendered for the defendant in  
error who was the plaintiff in said Court.

And these deponents further say that they had no defenses against the note in question in this cause but that one Samuel S. Waite alleged that he was the owner thereof a short time before the commencement of suit thereon in Justice Court, that the same was lost from his possession and had wrongfully come to the possession of the defendant in error, and these deponents consented to litigate the respective rights of the said defendant in error and the said Waite in the Courts below upon the express condition that said Waite should fully indemnify them against all costs and liabilities, for costs in said suit, and that except for such assurances, <sup>of indemnity</sup> they would not have permitted the same to have been contested in the manner it was contested and that after judgment was rendered therein for the defendant in error against these deponents the said Waite refused to make good his promise of indemnity and although <sup>judgment was rendered against them</sup> for costs amounting to nearly fifty dollars yet the said Waite neglected to pay the said costs or give them such security for their indemnity as they deem necessary in that behalf and they have good reason to fear that unless this writ of error is dismissed, they will be obliged <sup>to pay</sup> another bill of costs



which may accrue in this Court -

And these deponents further say that they have been informed and believe that one Charles B. White an attorney of this Court has sued out the writ of Error in this cause, and they further say that said White has never consulted these deponents in respect to said writ or asked their thin permission to sue out the same that they have never given any such permission or authority and are unwilling that the said writ should be further prosecuted, and ask that the writ of Error <sup>bein</sup> may be dismissed at the costs of the said White

Sworn before me this }  
25<sup>th</sup> day of March 1850

William Brown  
Justice of the peace

Subscribed & sworn to before me  
this 26<sup>th</sup> day of March A.D. 1850  
by Willard Wheeler

William Brown  
Justice of the peace

D. K. Lyon  
Willard Wheeler



Supreme Court

Willard Wheeler

vs  
David E. Lyon

vs

Swright Pomeroy

off the

Filed June 11. 1850.  
C. C. C. C.



STATE OF ILLINOIS, }  
Winnebago County. } SS.

*I, William Austin,*

I, ~~BENJAMIN A. ROSE~~, Clerk of the COUNTY ~~COMMISSIONERS'~~ COURT, for said County, do hereby certify that *William Brown* Esq, whose name is subscribed to the annexed certificate, was, on the day of the date of said certificate, a *Justice of the Peace* for said County of Winnebago, duly appointed, commissioned and qualified, as appears of record in my office; and that, as such, full faith and credit are due to all his official acts. I further certify, that I am acquainted with the hand writing of said Justice, and verily believe that the signature to said certificate, purporting to be his, is genuine.

Given under my hand and the seal of said Court, at ROCKFORD, this *first* day of *June*, A. D. 18*50*.

*William Austin, Clerk.*



State of Illinois, Sect.

The people of the State of Illinois,

To the Clerk of the circuit court for the county of *Winnebago*—Greeting:

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of *Winnebago*—county, before the Judge thereof, between *Dwight Pomeroy*—

*J. K. Lyon*

plaintiff and *Willard Wheeler &*

defendant & it is said manifest error hath intervened to the injury of the aforesaid *Wheeler & Lyon*

as we are informed by *their* complaint, and we being willing that error, if any there be, should be corrected 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 *second 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. *Danuel H. Treat*  
 Chief Justice of our said Court, and the  
 seal thereof at Ottawa, this *15<sup>th</sup>*—day of  
*March*—in the year of our Lord  
 one thousand eight hundred and ~~forty~~—*fifty*—

*J. Ireland*

Clerk of the Supreme Court.



21  
Supreme Court -

Willard Wheeler et al.

Dwight L. Poweroy

Writ of Error

Winnepago County.

Wm. C. Bennett

By direction of the Plaintiff in Error named within  
I hereby Return this writ without the Bonds crised

In witness whereof I herewith

Subscribe my name and affix the  
Seal of said Court at Rockford  
this 14<sup>th</sup> Day of June A.D. 1850

W. H. Spafford

Filed June 20. 1850.

Winnepago Co. Ill.

W. H. Spafford