

8837

No. _____

Supreme Court of Illinois

Taylor & Davis, Trustees,

vs.

Lewis W. Young

71641  7

The State of Illinois
City of Cairo
County of Alexander

vs.

Shas. before the Honourable Court of
Common Pleas, held at the Court House
in said City, on the 12th day of July,
A.D. 1836. Present, the Honorable Dehuw T
Haynes Judge of said Court.

Thomas S. Taylor and
Charles Davis Trustees of
the Cairo City property } In Assumpsit.
vs.
Lewis W. Young

Be it Remembered that heretofore, to wit,
on the 17th day of June A.D. 1836. came
the Plaintiff, by Cyrus G. Simons their attorney,
and sued out of the Clerk's office of said Court,
a writ of summons against the said Defendants
which said writ reads in the following words
and figures, to wit:

State of Illinois }
City of Cairo } §3
Alexander County }

The People of the State of Illinois
To the Town Constable of said City Greeting
We command you that you summon
Lewis W. Young if he may be found in said
City, or in Township Sorenton, South Range
one West of the third Principal Meridian, person-
ally to be and appear before the Court of Common
Pleas of said City on the first day of the next
Term thereof, to be holden at the Court House

in the City of Cairo on the first Monday in the month of July next to answer Thomas Saylor and Charles Davis Trustees of the Cairo City property of a Plea of Assumpsit. Damages \$500⁰⁰ and this you shall in no wise omit, under the penalty of the Law; and have you then and there this writ, and make appear thereon how you have executed the same, Witness John Q. Harman, Clerk of our said Court of Common Pleas, and the seal thereof hereunto affixed at office in Cairo this 17th day of June AD 1856

Seal

John Q. Harman

Clerk

Which said writ was duly returned with the following endorsement thereon, to wit: "Served by reading to the within named defendant - June 20th 1856."

D.C. fees. 50¢ Service James Kennedy
10¢ Return "Tavern Constable"
60¢

And afterward, to wit on the 27th day of June AD 1856, came the Plaintiff, by their attorney and filed herein the following Declaration to wit:

State of Illinois }
County of Alexander }
City of Cairo }
Plea of the }
Duly Term of }
the Court of Common Pleas, of the City of }
Cairo. In the Year of our Lord One thousand eight hundred and fifty six

in the sum of five hundred dollars
lawful money of the United States

Thomas S Taylor and Charles Davis Trustees
of the Cairo City property plaintiffs in this suit
by Cyrus G Simons their attorney complains
of Lewis M Young defendant in this
Case. being in Court by &c of a plea of Tresp
ass on the case on promises

That whereas the said defendant
heretofore to wit on the twentieth day of
April in the year of our Lord one thousand
eight hundred and fifty five at the
said City of Cairo County of Alexander
State of Illinois and within the jurisdiction
of this Court became and was indebted
to the said plaintiffs for the use and occup
- ation of a certain Messuage premises and
landing plan or wharf by the coal boat
of the said defendant with the appurtenan
- ces of the said plaintiffs by the said
defendant to wit a Landing place on
the Illinois bank of the Ohio River within
the limits of the said City County and State
aforesaid being part of that portion of
the Southeast fractional quarter of Section
twenty five in Township Seventeen South
Range one west of the Third Principal
Meridian which fronts on the said Ohio
River being two hundred feet front
of the water line of the Ohio River aforesaid
on the water slope of the Ohio River in the City
aforesaid commencing at a point fifty
feet South or below the lower extremity of the
Passenger depot grounds of the Illinois

Central Rail Road Company and
thence running two hundred feet Southwardly
along the water line or margin of the said
Ohio River, and within the jurisdiction afores-
-aid by the said defendant and at their
Special instance and request and by
the sufferance and permission of the said
plaintiff for a long space of time before
then elapsed, to wit: the space of one
year had held ^{used} and occupied possessed
and enjoyed, and being so indebted, he
the said defendant in consideration thereof
afterwards, to wit: on the day and year
last aforesaid at the said City of Cairo
County of Alexander, State of Illinois
and within the jurisdiction aforesaid, under
took and then and there faithfully promised
the said plaintiff to pay them the said last
mentioned sum of money when they the
said defendants should be thereunto after-
wards requested -

2nd Count,

And also for that whereas, afterwards
to wit: on the day and year last aforesaid
at the said City of Cairo, County and State
and within the jurisdiction aforesaid the
said defendant became and was indebted
to the said plaintiff in the further
sum of five hundred dollars of like
lawful money of the United States for
the use and occupation of a certain other
land lying on the southeast fractional quarter
of section twenty five, in Township Number

South Range one west of the third principal
Meridian and the passage lineaments. Trees
embankments water slopes and premises ⁱⁿ con-
nection therewith had before that time suf-
fered and permitted the said defendant to
have, use, hold, occupy, possess and enjoy
of the said plaintiffs, and that he the said
defendant had, according to the said last
mentioned sufferance and possession
of the said plaintiffs had, holden used,
occupied, possessed and enjoyed the same
for a long space of time then elapsed
to wit for the space of one year, he the
said defendant undertook and then and
then faithfully promised in consideration
thereof afterwards, to wit, on the day and year
last aforesaid at the said City of Cairo, County
State, and within the jurisdiction aforesaid,
undertook and then and then faithfully prom-
ised the said plaintiffs to pay them so much
money as they the said plaintiffs therefore rea-
sonably deserved to have of the said defendant
when he the said defendant should be thereun-
to afterwards requested. And the said plaintiffs
aver that they therefore reasonably deserved
to have of the said defendant the further
sum of five hundred dollars of like
lawful money of the United States, to
wit at the said City of Cairo, County and
State aforesaid, and within the jurisdiction
aforesaid, whereof the said defendant after-
wards to wit on the day and year last aforesaid

had notice -
3^d Count And also for that whereas, afterwards, to wit
on the day and year aforesaid at the said
City of Cairo County of Alexander State of
Illinois and within the jurisdiction of this
Court the said defendant become and was
indebted to the said plaintiffs in the further
sum of Five Hundred dollars lawful
money as aforesaid for the mooring and
fastening of certain Coal Boats, barges
water crafts and other boats to the land
bank, ~~shore~~ levee and premises of the said
plaintiffs situate in a southerly direction
and down the river Ohio from the passenger
depot grounds of the Illinois Central
Rail Road Company commencing at a
point fifty feet southerly and below on
the waterline from said depot grounds,
thence two hundred feet from and down
the River from the point aforesaid and
being part of the southeast fractional
quarter of Section twenty five in Town
ship Seventeen South Range one west of
third principal meridian and within
the jurisdiction aforesaid, for a long space
of time to wit - for the space of one year
then elapsed moored anchored, spurred
& fastened by the said defendant to the said
shore bank levee, land and premises
of the said plaintiffs and by their permission
and sufferance and at the special
instance and request of the said defend-
-ant

And being so indebted he the said Defendant
in Consideration thereof, afterwards to wit on
the day and year aforesaid of the said
City of Cairo and within the jurisdiction
aforesaid undertook and then and thereafter
fully promised the said plaintiffs to pay
them the said last mentioned sum of
money when he the said Defendant
should be thereunto afterwards requested,
And also for that whereas the said Defendant,
afterwards to wit on the day and year last
said, at the said City of Cairo County, State,
and within the jurisdiction aforesaid, in con-
sideration that the said plaintiffs, at the
like Special instance and request of the said
Defendant, had before that time at the like
Special instance and request of the said Def-
endant permitted him to Moor, anchor
shun and fasten certain other coal boats
barges, water crafts and other boats to the
certain other bank shore levee and premises,
of the said plaintiffs in the Ohio River
aforesaid, in the said City of Cairo, County
and State aforesaid and within the juris-
diction of this Court, and that the
said Defendant by virtue of the said
permission and sufferance had before
then moored, anchored shored and fast-
ened the said Coal Boats, barges, water
crafts and other Boats to the said bank
shore levee and embankment, for a long
space of time then elapsed, he the said

McCormick

Defendant undertook and then and there
faithfully promised the said plaintiffs
to pay them so much money as they therefor
reasonably deserved to have of the said
defendant, when he the said defendant
should by hereunto afterwards requested.
And the said plaintiffs aver that they there-
fore reasonably deserved to have of the said
defendant the further sum of Five Hun-
dred dollars of like lawful money as
aforesaid, to wit: at the said City of Cairo
and within the jurisdiction of this Court
whereof the said defendant afterwards
to wit: on the day and year last aforesaid
then and there had notice.

5th Count

And whereas also the said defendant af-
terwards to wit: on the day and year last
aforesaid at the said City of Cairo and within
the jurisdiction aforesaid became and was
indebted to the said plaintiffs in the
further sum of Hundred dollars
lawful money as aforesaid, for divers goods
wares and merchandize by the said plaintiff
before that time sold and delivered to the
said defendant, and at the special instance
and request of the said defendant, and being
so indebted to the said plaintiffs the said
defendant in consideration thereof, after-
wards to wit: on the same day and year at
the place and within the jurisdiction aforesaid
undertook and then and there faithfully
promised the said plaintiffs well and

truly to pay unto the said plaintiffs the said
sum of money last mentioned when he the
said defendant should be thereunto afterwards
requested.

6th Count And whereas also the said defendant, afterwards
to wit, on the day and year last aforesaid at
the said City County, State and within the juris-
diction aforesaid, become and was indebted
to the said plaintiffs in the further sum
of Five Hundred Dollars lawful money
of the United States for so much money
before that time lent and advanced by
the said plaintiffs to the said defendant
and at the like special instances and request
of the said defendant, and for other money
by the said plaintiffs before that time paid
laid out and expended for the said defendant
and also at his like special instance and
request. And being so indebted, the said
defendant, in consideration thereof, aft-
-erwards to wit, on the same day and
year last aforesaid at the place and
within the jurisdiction aforesaid, undertook
and then and there faithfully promised
the said plaintiffs well and truly to pay
unto the said plaintiffs the said sum of
money in this Count mentioned when
he the said defendant should be there-
unto afterwards requested.

7th Count And whereas also the said defendant
afterwards to wit, on the day and year last
aforesaid, at the place and within the

jurisdiction aforesaid accounted together
with the said plaintiffs of and concerning
their other sums of money before that
time due and owing from the said defen-
dant to the said plaintiffs and then and
they being in arrear and unpaid, and upon
such accounting the said defendant was
then and there found to be in arrear
and indebted to the said plaintiffs in the
further sum of Five Hundred dollars
of like lawful money as aforesaid,
And being so found in arrear and
indebted to the said plaintiffs the said
defendant in consideration thereof
afterwards, to wit, on the same day and
year last aforesaid and at the place
and within the jurisdiction aforesaid,
undertook and then and there faithfully
promised the said plaintiffs well and truly
to pay unto the said plaintiffs, the said
sum of money last mentioned, when
he the said defendant should be thereunto
afterwards requested. Whereupon the
said defendant (although often requested
to do) has not as yet paid the said several
sums of money above mentioned, or any
or either of them, or any part thereof to the
said plaintiffs, but to pay the same or
any part thereof to the said plaintiffs, the
said defendant has hitherto altogether re-
fused, and still doth refuse to the damage
of the said plaintiffs of Five Hundred

Dollars wherefore they bring this Sub & C
Cyrus G. Simons
"Plaintiff's attorney -

Copy of the account sued on
Lewis M. Young.

In account with Thomas Taylor
and Charles Davis Trustees & C.
For the use and occupancy of the Ohio Seave
and Embankment along the waters edge
in S. 25. T. 17. R. 1. W. 1. & C.
For mooring boats and other vessels to the
Shore on S. 25. T. 17. S. R. 1. W. 1. from year of
The first mow and Merchandise sold and delivered
For money loaned, money paid laid out and
expended for plaintiff.

For money due on an account stated &
Cred afterwards to suit on the 5th day of
July A.D. 1856. the following order was made
by said Court herein to wit: "In this case
the time to plead is extended until to morrow
= morning 8 o'clock A.M.

And afterwards to wit. on the 10th day
of July A.D. 1856 came the Defendant
by his attorneys and filed herein the fol-
= owing Pleas to wit:

Lewis M. Young

vs
Thomas S. Taylor &

Charles Davis Trustees
of the Cairo City Property

And the said defendant comes and def-
=ends the wrong and injury when & C and

says he did not undertake and promise
in manner and form as the said plaintiffs
have above thereof complained against
him and of this he puts himself upon the
Country, and the said plaintiffs doth the
like *Ex Libris City for Plffs*

And for a further plea in this behalf
the said defendant says *actio non*
because he says that Cove and grounds
in the plaintiffs declaration mentioned
was not the property of the said plaintiffs
at the time of alleged occupancy of the
said grounds by defendant, but on the con-
-trary thereof they were the public property
vested in fee in the President and
Trustees of the Town of Cairo in the
County of Alexander in the State of
Illinois by act of dedication of the same
102" to the public use as a public boat land-
-ing and wharf for the use of the public
which said act of dedication bears
date on the AD 1853 and
this the said defendant is ready veri-
-fy wherefore he prays judgment &c
And for a further plea in this behalf
103. the said defendant says *actio non* be-
-cause he says that the Town of Cairo
in the County aforesaid, was at the
time in the said plaintiffs declaration
mentioned an incorporated Town
Auly and legally incorporated accor-
-ding to the laws of this State, and then
and there vested with power and legal

authority to grant licences to persons to occupy the grounds & close in the plaintiffs declaration to sell Coal upon, and the said defendant in fact further says that the said Corporation by the President and Trustees of the same duly elected and qualified and then and there invested with power as such President and Trustees of the said Town of Cairo did on the 5th day of May A.D. 1856, at the Town of Cairo, grant to the said defendant a Licence as agent of the Kentucky Coal Company to sell Coal upon the waters of the Ohio river within the Town of Cairo aforesaid in the jurisdiction aforesaid for the period of six months from the date of the said licence aforesaid granted as aforesaid. And the said defendant in fact further says that the close and grounds in the plaintiffs declaration mentioned are the same close and grounds upon the said defendant was authorized as aforesaid to sell Coal by the licence aforesaid granted as aforesaid, and not another or different close or grounds, and this the said defendant is ready to verify wherefore he prays Judgment &c

Smith. Aney & Davis
attys for Def

And afterwards, to wit, on the 11th day of July
1856. came the Plaintiffs and filed herein
the following Demurrer to wit:

Thomas S Taylor and
Charles Davis Trustees of
the Cain City property } Assumpsit
vs. } for use and occupation

Lewis W. Young

And the said plaintiffs by C. G. Simons
their attorney says as to the pleas of the said
defendant by him secondly and thirdly
above pleaded saith that the same and the
matters therein contained in manner and
form as therein secondly and thirdly above
pleaded and set forth are not sufficient in
law to bar or preclude them the said plaintiffs
from having and maintaining thereof
aforesaid action thereof against the said
defendant and that they the said plaintiffs
are not bound in Law to answer the same
and this they are ready to verify. Wherefore
by reason of the insufficiency of the said pleas
in this behalf, the said plaintiffs pray judg-
ment and their damages &c. C. G. Simons

Atty for Plff.

And the said plaintiffs according to the form
of the Statute in such case made and provided
States and shows to the Court here the following
Cause of special cause of demurrer to the said
second and third pleas. That debt does
not aver when the said debt was made
nor how, whether by gift or lapse of time, nor
otherwise

And now, to wit, at the time and place
first herein aforesaid. This day this
Cause again came on to be heard upon
the Plaintiff's Demurrer to the 2nd and 3d
Pleas of the Defendant filed herein issued
on 1st plea and was argued by counsel
And the Court being fully advised in
the premises is of opinion that said
Demurrer is well taken, and that the same
ought to be, and is hereby sustained.
Thereupon to try the issue joined between the
parties came a Jury, to wit: John Howley
Charles Schmetsdorff, John Cotter, Charles
Lyrtz, George S. Rattenmiller, Jesse White,
J. Wagner, John Stewart, Martin Lufc
ovich, Samuel Guthrie, Peter Dowd and
C. M. Waterloo who being duly empannelled
and sworn according to Law, after having
heard the evidence, arguments of Counsel
and received the instructions of the Court,
Retired, and brought here unto Court the follo
-wing verdict, to wit: "We the ^{Jury} find for the Plaintiff
and his damages at Three Hundred dollars"
Thereupon came the defendant by J. A. Davis
Esq. his attorney and moved the Court for a
new trial. And the Court being fully advis
ed in the premises, is of opinion that the
said Motion ought to be, and the same
is hereby overruled, to which holding
of the Court said defendant excepts and
Prays for an appeal which is allowed on
entering into Bond within thirty days with
Gedden D. Frick and Bryan Shamessey

as securities or Kullen D Guich - or Charles
D Carter alone in the sum of Five hundred
dollars - Bill of Exceptions to be
presented and signed in Sixty days

Motion and Reason for New Trial, filed
by defendant, to wit:
"Thomas S Taylor and
Charles Davis Trustees of
the Cairo City Property.
Lewis W Young

In the Court,
of Common
Pleas of the
City of Cairo
July Term AD 1856.

Defendant moves the Court for a new
trial in this case for the following reasons
1st. Because the verdict is contrary to Law
and evidence - 2nd Because the evidence
in this case shows that the contract for
the use and occupation of the grounds
described in the plaintiff declaration
between the plaintiff and defendant was
and is a special agreement, written out
and signed by the plaintiff by their
attorney in fact S. Staats Taylor but
without a Seal, and that the same con-
tained Covenants for forfeiture upon non-
payment of rent reserved, and also a
covenant against reletting the whole or
any part of the premises without the consent
in writing the plaintiff - 3rd Because
the Court permitted the witness S. Staats
Taylor to use the written contract above men-
tioned to refresh his memory but refused

to allow it to be considered as any evidence
of the contract between the plaintiffs and
defendant, 14th. Because the Court
permitted the ^{plaintiff} S. Staats Taylor to contra-
dict the terms of the said written contract
and explain them away.

State of Illinois
City of Cairo
County of Alexander

} S.S.

I, John D. Harman clerk of the Court
of Common Pleas of the City of Cairo
do hereby certify that the above and fore-
going is true copy of the Proceedings had in
said Cause in said Court, taken and
Copied by me from the original papers -
and Records of said Court, now remaining
in my office. In Testimony whereof
as such Clerk have hereunto set my
hand and affixed the Seal of
the Court of Common Pleas
of the City of Cairo. At office
in Cairo this 10th day of
November A.D. 1856.

John D. Harman
Clerk

Taylor & Davis
Trustees &c.

vs
Lewis W. Young

Transcript of
Record.

8837

Filed 28th Apr. 1857.
N. Johnston Clk

Repaid by C. G. Sumner
\$500. 28. Apr. 1857-

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Copy of Appeal **And** filed in the office of
the clerk of the Court of Common Pleas
of the City of Cairo in the case of Thomas S.
Taylor and Charles Davis Trustees of the
Cairo City property, against Lewis W. Young
to wit:—

State of Illinois }
City of Cairo } S.S.
County of Alexander }

Know all men by these presents that
we Lewis W. Young and Cullen Frick
of the County of Alexander and State of
Illinois are held, and jointly bound unto
Thomas S. Taylor and Charles Davis Trustees
of the Cairo City property in the penal sum
of Five Hundred Dollars current money
of the United States, 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
Witness our hands and seals this 24th day
of July AD 1856.

The condition of the above obligation is
such, that whereas the said Thomas S.
Taylor and Charles Davis Trustees of the
Cairo City property on the 15th day of
July AD 1856 in the Court of Common
Pleas ^{in and for} of the City of Cairo, County and
State aforesaid, recovered a judgment
against the above bounden Lewis W. Young
for the sum of Three Hundred Dollars (\$300)
and \$4⁵⁰/₁₀₀ for dollars Cents, from which
said Judgment of the said Court of Common

And the said Lewis H Young has prayed for and obtain-
-ed an appeal to the Supreme Court of said State
And if the said Lewis H Young shall duly prosecute
his said appeal with effect and shall moreover pay
the amount of the Judgment Costs interest, and
damages, rendered and to be rendered against
him, in case the said judgment, shall be affirmed
in the said Supreme Court, then the above oblig-
-ation to be void otherwise to remain in full force
and virtue"

L H Young Seal

C D Quick Seal

Taken and entered into before me at my
office in Cairo this 24th day of July
AD 1856,

Teste John D Harmon Clerk of the Court
of Common Pleas of the City of Cairo

I hereby certify the above and
proving to be a true copy of
the original, and in said cause
now remaining on file in my office

In witness whereof I have
hereunto set my hand officia-
lly and affixed the seal of
said Court at Cairo this
10th day of September AD 1856

John D Harmon
Clerk

Taylor & Davis Trustees
vs

Genl M Young,

Copy of

Appeal Bond

Filed July 2nd 1886

John S Harmon
Clerk

STATE OF ILLINOIS,
CITY OF CAIRO,
ALEXANDER COUNTY. } ss.

Court of Common Pleas of the City of Cairo, *July* Term, A. D. 1856

Taylor & Davis
Trustees of the Cairo VS. *Lewis M Young* IN *Appropriat*
City Property *Offs Dfts*

For filing precipe, 5, Docketing suit, 10, Entering appearance of attorney, <i>200</i>	25	10
" Entering appearance of party, 5, Issuing original writ and filing same, <i>400</i>	45	.05
" Issuing and filing subpœnas,		
" Filing precipes for witnesses,		
" Filing <i>A</i> papers in progress of suit, <i>3rd Sept 1st Pp</i>	15	.15
" Filing papers on appeal from J. P.,		
" Taking appeal bond, and issuing supersedeas, Taking bond for costs,		
" Entering <i>verdict motion &c</i> orders for continuance, &c.	20	
" Bringing record into court, — Calling and swearing jury, — 100	15	
" Swearing 1 witnesses, 5, Swearing to affidavits,	05	
" Receiving and entering verdict of jury, 15, Entering final judgment or decree, 25	40	
" Ordering clerk to assess damages,		
" Assessing damages on note and making report, Entering special bail,		
" Making list of jurors, Swearing constable to take charge of jury,		
" Issuing execution, docketing and entering return of same,		
" Entering satisfaction of judgment, Entering report of commissioners, &c.		
" Bond in attachment or injunction, Making bill of costs and copy of same,	30	
" Copy of cost bill when requested, Taking each recognizance in court,		
" Arraigning prisoners at bar, Entering judgment of conviction,	1.85	.30
" Copy of indictment, Entering dismissal of recognizance,		

Taking appeal bonds
John W. Norman Clerk's fees: *1.85*
John Constable Kennedy fees: *2.65*
On mepre Precep *.60*

Docket fee *1.25*
Transcript of Record & Bond, etc. W. Norman *4.50*
5.00
9.50

STATE OF ILLINOIS,
City of Cairo,
ALEXANDER COUNTY. } ss.

John W. Norman Clerk of
the Court of Common Pleas in and for said City of Cairo, do hereby certify that the above is a true copy
from my Fee Book of Costs in the above entitled cause.

Given under my hand and Seal of office
at *Cairo* this *24th* day
of *July* A. D. 1856
John W. Norman Clerk.

28 837-267

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Taylor & Davis
Traders of the Cairn
City Property

vs
Lewis W. Young

Cost Bill

Dismissed with
5 per cent Damages -

Cost Bill made out
Ann Page 247 -

ALEXANDER COUNTY
CLERK OF THE CIRCUIT
CITY OF ILLINOIS

vs

Clerk of Common Pleas of the City of Cairo

Term 1843

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ILLINOIS

[Faint handwritten notes and signatures]

[Faint handwritten notes and signatures]

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