

11986

No. _____

Supreme Court of Illinois

Tefft, Imp.

vs.

Ashbough.

Clerks Office of Kansas Territory
Circuit Court Genoa July 3rd 1852

Be it remembered that there was filed in the
Office of the Clerk of Kansas Territory Circuit Court
by the 27th day of October A.D. 1851. a ^{copy} of which the following is a true copy to wit:

State of Illinois

Kansas Territory Circuit Court
November Term A.D. 1851

Fredricks Ashbaugh plaintiff in this Suit
by Harrington his attorney complains of Erastus
Teff, Asa Heade Ebenezer W. Young Defendants
in this Suit in a plea of trespass

For that heretofore to wit on the first
day of October A.D. 1851. at and within the
County of Kansas aforesaid the said defendants
with force and arms assaulted the said plaintiff
and then and there seized and laid hold of the
said plaintiff and with force and violence
pulled and dragged about the said plaintiff
and also then and there forced and compelled
the said plaintiff to go from his residence situated
and being in the County of Kansas aforesaid into
the public Streets then. And then and there forced
him to go along divers public Streets to the Common
Fair of said County situated and being at Genoa
in said Kansas County and then and there impris-
-oned the said plaintiff and kept and detained
-ity or reasonable cause whatsoever for a long
Space of time to wit for the Space of ten days then

next following contrary to the Laws & Customs
of this Land. and against the will of the Said Plaintiff
whereby the Said Plaintiff was then and there not
only greatly hurt and wounded but was also
much injured in his Credit and Circumstances
And the Said Plaintiff was also then and there
Compelled to Expens and did expend large Sums
of Money to wit: One Hundred dollars in and
about procuring his discharge from Said impris-
onment to wit at Kansas County aforesaid.

And also for that the Said
defendants with force and arms to wit: on the
first day of October A. D. 1851. to wit at Kansas
County aforesaid again assaulted the plaintiff
and then and there ill treated him and there
and there imprisoned him and kept and detained
him in prison then without any reasonable
or probable cause whatsoever for a long time to wit
for the Space of ten days then next following
contrary to the laws and Customs of the Land
and against the will of the plaintiff

And also for that the defendants
with force and arms to wit at the County of Kansas
aforesaid on the first day of September A. D. 1851
again assaulted the plaintiff and again beat
and ill treated him and imprisoned him at
and within the County of Kansas of Kansas aforesaid
and other wrongs to the plaintiff then and there
did. By means of which Said several
premises the Said Plaintiff says that he has
Sustained damages to the amount of One Thousand

dollars and therefor he brings Suit and re &c
By A.M. Harrington
Plaintiff, Atty

Afterwards to wit; On the 12th day of November
A.D. 1851 was filed in said Clarks Office a plea
of which the following is a copy.

State of Illinois }
Kane County } November Term A.D. 1851. of the
Kane County Circuit Court

Erastus Tefft and Asa Heath
impleaded with E.W. Vining }

ad
Frederick Schaubach }

And now come the said
defendants Erastus Tefft and Asa Heath impleaded
with E.W. Vining by J. Wilcox their attorney and
deny the force and injury when &c. and
say that they are not guilty of the said supposed
trespasses above laid to their charge or any part
thereof in manner and form as the said plaintiff
has above complained. and of this they put them
selves upon the country

J. Wilcox

Deft. Atty

And the said plaintiff doth the like by

Harrington his atty

And for a further plea in this behalf as
to the assaulting the said plaintiff and com-
pelling him to go to the common jail and

imprisoning him, and detaining him in
prison for the said time &c as in the first
count of said declaration alleged and supposed
to have been done by the said defendants, they
the said defendants by leave &c say action now
because they say that before the said time when
&c to wit: on the 16th day of November A.D. 1850
the said Erastus Tefft recovered a judgment
before Ebenezer W. Tiring then an acting justice
of the peace within and for the said County
of Kane against the said plaintiff Frederick
Ashbaugh for the sum of One dollar and
Eighty three cents debt, and the costs of the
suit. that afterwards to wit: on the 9th day of
December A.D. 1850. the said justice of the peace
upon the said judgment (which was then
in full force and effect not having been
paid satisfied annulled or set aside) issued
an execution. and afterwards to wit on the
10th day of the month last aforesaid delivered
the same to Daniel Smith then an acting
constable within and for the County of Kane
aforesaid who served the same upon the said
plaintiff by seeking for and demanding of him
property and the said plaintiff refused to pay
said judgment or turn out any property to
satisfy said execution or any part thereof
whereupon afterwards to wit: on the 7th day of
March A.D. 1851. the said Smith as constable
returned into the office of the said justice of the
peace said execution wholly unsatisfied. that
afterwards to wit: on the 7th day of August A.D. 1851

the said judgment then being in full force and wholly unpaid and unsatisfied - the said Justice Tofft made the requisite affidavit proscribed by the Statute for the issuing of a "capias ad Satis faciendum" before the said Justice of the Peace whereupon, afterwards to Wit; on the 5th day of August A. D. 1751. the said Justice of the Peace issued upon the said judgment a certain writ called a capias ad Satisfaciendum against the said plaintiff directed to any Constable of the said Hans County, Commanding him thereby to take the body of the said plaintiff and him safely keep to satisfy said judgment and costs and if the same were not forthwith paid to commit said plaintiff to the custody of the Sheriff or jailor of said County, which said writ afterwards and before the return day thereof and the said time when &c to Wit on the 5th day of August A. D. 1751. was delivered to the said Sea Heath then (and from thence until) and at and after the said time when &c has been) an acting Constable within and for the said County of Hans. to be executed in due form of Law by virtue of which said writ the said defendant Sea Heath as Constable as aforesaid afterwards and before the return day thereof to Wit on the day and year in the said Count in the said declaration mentioned, being the said time when &c at and within the said County of Hans took and arrested the said plaintiff by his body and (he not having paid said judgment) kept and detained him in custody, and committed him to the custody of the Sheriff of said County by virtue of said writ and for the cause therein specified for the said time in the said

declaration mentioned as he lawfully might do which are the said supposed trespasses in the introductory part of this plea mentioned and whereof the said plaintiff has above complained and this the said defendants are ready to verify wherefore they pray the judgment of the Court if the said plaintiff ought to have and maintain his aforesaid action against them

Silvanus Philcox
Def. attys

Afterwards to wit: On the 8th day of January A.D. 1852. was filed in the Clerks Office of said Kansas County, a Replication of which the following is a true copy to wit:

Erastus Jeff and
Asa Heath

at

Fredricks Ashbaugh

February Term

Kans Circuit Court

A.D. 1852

And the said plaintiff, ^{by consequence} as to ~~the said plea of the said defendants by them~~ ^{secondly above pleaded} saith that the said ~~plaintiff by reason of anything by the said~~ ^{defendants in that plea alleged} ought not to be barred from having and maintaining his aforesaid action thereof against the said defendants because he saith that Erastus Jeff One of the above named defendants did not recover a judgment on the 16th day of November A.D. 1850 before One Ebenezer W. Vining a Justice of the peace in and for Kansas County aforesaid. against Fredricks Ashbaugh plaintiff &c as aforesaid for the amount of One dollar and Eighty three

cents and costs of Suit. and that an Execution
was not issued by said Justice and delivered
to Daniel Smith then an acting Constable in
and for said County of Kane aforesaid. that
said Smith as aforesaid did not serve said
Execution to wit: at the time ~~there~~ ^{when} &c on the
plaintiff as aforesaid that the said plaintiff
did not refuse to turn out property at the time
when &c as is alleged in said plea mentioned
&c and that the said Justice Telford did not
on the seventh day of August A.D. 1857 make
the requisit affidavit prescribed by the Statute for
the issuing of a capias ad satisfaciendum to wit
at the time when &c and that the writ of capias
&c was not in due form of law. Commanding
said Constable &c to take the body of said plaintiff
and him safely keep &c and the capias was
not thereby delivered to said Constable to
be executed as is alleged in said plea mentioned
at the time when &c. and that said plaintiff
Ashbaugh was not delivered to the jailor by
virtue of said capias as is alleged at the time &c
alleged in said second plea mentioned. For
replication nevertheless in this behalf the
said plaintiff saith that the said defendants
at the time when &c in said declaration men-
tioned of their own wrong. and without the
residue of the cause in their said second plea
alleged committed the said trespasses in said
plea mentioned of their own wrong. and without
the residue in their second plea mentioned alleged
made the said assault in the said declaration
mentioned upon the said plaintiff. and pushed
and forced and throwed the said plaintiff

in to the said street therein mentioned hauld & dragged him for a great distance & wounded the said plaintiff & kept and detained him in prison for the said space of time in said declaration mentioned. in manner and form as the said plaintiff hath in & by the said declaration above complained against the said defendants. And this the said plaintiff pray may be required of by the Country &c

Aug. M. Herington
Atty for Pltff

And the said defendants doth the like
J. Wilcox
Defendants atty

Afterwards to wit: On the 11th day of May A.D. 1852 it being one of the days of the May Term of the Kansas County Circuit Court for A.D. 1852 the following among other proceedings were had to wit:

Fredrick Ashbaugh

29
Erustus Left Ash Heath & Trespass
implt with E. H. Diving

This day comes the plaintiff by Herington his attorney. and the defendants by Wilcox their attorney also come. and on motion of the plaintiff it is ordered by the Court that a jury come whereupon come a jury of good & lawful men to wit:

Julius Alexander
Patrick Okano
A. S. White
Stephen Wait

Agnes W. Wood
James Todd
J. R. W. Kynley
Edwin Clark

Ferdinand Shepner
Lynnan Seman
George A. King
James C. Debbes

Being Severally elected tried and Sworn also come
and after hearing the evidence argument of Counsel
and instructions of the Court retire under Charge of
an Officer of the Court to consider of their Verdict
and it is agreed betwixt the parties to this Suit that
when the Jury agree they may reduce their verdict
to writing Sign & Seal up the Same and meet the Court
tomorrow Morning at 9 o'clock

afterwards to Wit: on the 12th day of May A D 1852
the following among other proceedings were had to Wit
Frederick Ashbaugh

29 2/ |
Erastus Jeff + A. Heath } Trespass
impl^d with E. W. Vining This day comes again
the parties to this Suit. and
the Jury heretofore impaneled herein also come and
for a verdict upon their oaths say that we the Jury
find the defendant Erastus Jeff guilty and assess
the plaintiff damages at the Sum of ^{Seventy} ~~Seventy~~ Three
Seventy five \$7100 Dollars: thereupon comes the
defendant by Wilcox his attorney and moves for
a New trial

afterwards to Wit: on the 22nd day of May A D 1852
the following among other proceedings were had to Wit
Frederick Ashbaugh

29 2/ | Trespass.
Erastus Jeff impl^d }
with E. W. Vining + A. Heath } This day comes
now to be heard the defendant's
Motion heretofore entered for a New
trial. the Court being fully advised overruled the
Same. it is therefore considered by the Court

that the plaintiff have and recover from the
defendants Erastus Tafft the sum of Seventy
Three 73/100 Dollars and his costs in this suit
expended and have execution therefor

afterward, to wit on the same day the following
proceedings were had to wit:

Fredricks Ashbaugh

29

Erastus Tafft implet

with E. M. Vining & A. Heath

} Tresspass

This day comes again
the defendant Erastus Tafft prays
an appeal to the Supreme Court
which is allowed by the court on conditions that
he enter into Bond with Demarcus Clark as
Surety in the penal sum of Three Hundred Dollars
to be filed in 40 Days

And heretofore to wit: on the 20th day of May
was filed in said Clerks Office. a Bill of exceptions
of which the following is a true copy to wit:

Fredricks Ashbaugh

Erastus Tafft & Asa Heath

impleaded with E. M. Vining

} New Circuit Court
May Term A. D. 1852

Be it remembered
that on the trial of this cause, the plaintiff called
as a witness Gulacio Dearborn who testified that
he was and had been for some time acquainted
with the parties to this suit. that some time last
fall, Sept or Oct Asa Heath one of said defendants
brought and delivered to him, as Sheriff the
said plaintiff, that he was then Sheriff and
Jailer of the County of Kane and that he as

Such received the said plaintiff and retained
him in custody as his prisoner for the space
of six to eight days. that said Neath as con-
-stable of said County brought and delivered
the said plaintiff to him on a writ of capias
ad satisfaciendum, that the said plaintiff
was taken some six or eight days after his
delivery to witness on a writ of Habeas Corpus
before His Honor Isaac G. Wilson then judge
of the 13th Judicial Circuit and after a hearing
was by said Judge discharged from said im-
-prisonment. that A. W. Herington Esqr acted
as counsel for said plaintiff upon said hearing
that the said plaintiff was actually in the jail
only about two or three hours during said six
or eight days that he (witness) had subsequently
to said plaintiff, said imprisonment conversed
with said Eustace Jefft about the said plaintiff,
said imprisonment. that during said conver-
-sation said Jefft told him that he (Jefft) was
absent in New York City when plaintiff was
arrested & taken to jail. that said had had
plaintiff taken to jail. and had given or
sent to witness five dollars to pay the board
of the said plaintiff while in jail that he (witness)
did not recollect of said Jefft ever telling him
that he (Jefft) had ever ordered said plaintiff
to be arrested or taken to jail. that witness
subsequently had accounted to said Jefft
for the five dollars. that said said spoken
of was a clerk of said Jefft store - all of which
testimony was objected to by the counsel for
the defendants as being immaterial and irrele-
-vant to the issues joined in the case and ought

to be excluded - which objection was overruled by the court and allowed to go to the jury, to which said defendants excepted - the said plaintiff then called as a witness B. J. Haidley who testified that fifteen to twenty five dollars was about the worth of the services of an attorney for drawing a petition for a Habeas Corpus and arguing the case before the judge - A. M. Herington Esq attorney in this case for said plaintiff was then sworn as a witness for said plaintiff upon said trial and testified that he (witness) was employed by said plaintiff as an attorney to draw a petition for a Habeas Corpus for said plaintiff that he draw one, and argued the case before said judge and thus procured the discharge of the said plaintiff from said imprisonment. that his services were worth twenty five dollars. all of which testimony ~~all of which testimony~~ was objected to by the counsel for said defendants - which objections was overruled and the testimony suffered to go to the jury, to which ruling of the court the depts by their counsel excepted. The foregoing is all the testimony offered by the said plaintiff on his part on the trial of said cause - The plaintiff here rested his case.

The said defendants by their counsel then asked the court to instruct the jury to find as in case of a non suit against the plaintiff which request was refused by the court to which ruling the said defendant by their counsel excepted. The said depts by their counsel then asked the court to instruct the jury that the plaintiff has failed to adduce evidence sufficient to sustain his action and it is your duty to find defendants

Not guilty which instruction the Court refused to which
ruling the defendants excepted. Thereupon the
said defendants called E. W. Hining Esq. as a witness
who testified that the book which he produced was his
docket as Justice of the Peace of said County he then
turned to a page therein and said this (showing the
page in the said docket) is the minutes of a case
tried before me and a judgment rendered by me there
in at the time therein mentioned the following is a
true copy of said minutes to wit:

State of Illinois }
Hank County }
Erastus Telft }

vs } Assumpsit
Frederick Ashbaugh } November 10th 1850

Issued Writs returnable on
the 16th instant at ten o'clock A.M. and gave to D.
Smith Const which was returned personally served
on the within named defendant by reading the same
to him this 13th day of November 1850 fees 25^{cts}
D. Smith Const

November 16. 1850 Suit called parties come not
plaintiffs demand being a note of hand on which
there is now due the sum of One ³/₁₀₀ Dollars it is
ordered and adjudged by the Court that Erastus Telft
have and recover of Frederick Ashbaugh the sum of One
Dollar and Eighty three cents debt and costs of suit
E. W. Hining J. P.

That witness issued an Execution on said judgment on
the 9th day of December A.D. 1850 which was delivered
to Daniel Smith. A paper was then shown to wit-
ness who was asked if that was the Execution witness look-
ed at it and said it was that paper in the words
figures following:

State of Illinois } The People of the State of
Kane County } Illinois to my Constable of said
County Greeting:

We command you that of the Goods and Chattels of Frederick Ashbaugh in your County you make the sum of One Dollar and Eighty three cents debt and One Dollar and Twenty six cents cost which Erastus Tefft lately recovered before me in a certain plea against the said F. Ashbaugh and hereof make return to me within seven days from this date. Given under my hand and seal this 9th day of December 1850

Ebenezer W. Nimney Justice
Justice of the Peace

Witness then stated that said Smith was at the time of the delivery to him of said Execution an acting Constable in and for said County of Kane that he was acquainted with the hand writing of said Smith and that the endorsement or return upon the back of said Execution is in the hand writing of said Smith that he saw said Smith write said return the return is in the words & figures following: Come to hand this

10th day of December 1850 at 9 o'clock A.M. No property to be found in the County this 10th day of February 1851
Property demanded and refused fees 50 cts
(signed) D. Smith

August
That on the 7th day of ~~February~~ 1851 the said defendant Tefft made an affidavit before him for a capias ad satisfaciendum upon said judgment a paper was here ~~shown~~ ^{shown} to the witness who stated that it was the affidavit ~~of~~ ^{of} the said debts then offered

the said affidavit which was in the words & figures following:

Erastus Tapp being first duly sworn says that he holds a judgment against Frederick Ashbaugh rendered by E. W. Tinning, a Justice of the Peace in and for the County of Kane and State of Illinois on which an Execution has been issued and returned by the proper officer no property to be found. And that said Ashbaugh refuses to surrender his property in satisfaction of said judgment, or Execution issued thereon.

Subscribed and sworn

before me this 4th day
of August 1851

E. W. Tinning J.P.

E. Tapp

in evidence to be read to the jury to which the plaintiff by his counsel objected which objection was sustained by the Court and the evidence thus offered was excluded and not allowed to go to the jury it being admitted by the defendant that there was no other affidavit made to procure the Ca. Sa. in question except the affidavit offered in evidence to which the decision of the Court the depts by their Counsel excepted the said Depts then by their Counsel offered in evidence the Capias ad satisfaciendum which is in the words & figures following:

State of Illinois } The People of the State of
Kane County }
Illinois to any Constable of said
County Greeting:

Whereas in a certain Suit lately before me the undersigned, a Justice of the Peace in and for the County of Kane aforesaid depending wherein Erastus Tefft was plaintiff and Frederick Ashbaugh was defendant, and wherein the amount of debt claimed and in controversy did not exceed One Hundred Dollars, judgment was rendered by me in said Suit, in a plea of assumpsit in favor of said plaintiff, and against said defendant for the sum of One dollar and Eighty three Cents besides costs of suit which are hereon endorsed and taxed at two dollars and One Cent

And Whereas Also, the said plaintiff hath caused execution to be issued on said judgment for the collection of said One \$100 dollars and costs, as provided by Law, which said execution has been duly returned by David Smith a Constable of said County, no property of the defendant found whereon to levy; and the said execution, plaintiff having made before and filed with said Justice an affidavit setting forth that said defendant refuse to surrender his estate, lands, tenements, goods or Chattels for the satisfaction of an execution against the property of said defendant but refuses to surrender his property so that the debt cannot be levied.

You are therefore hereby commanded that you take the body of the said Frederick Ashbaugh and him safely keep so that you have him to satisfy unto the said plaintiff the debt and costs aforesaid, and if the same be not forthwith paid then you will commit

Said defendant to the custody of the Sheriff or
jailer of said County, there to remain until
the said debt and costs are fully paid and
satisfied, or he becomes otherwise legally
discharged. And hereof make due service
and return, as the law directs, within Seventy
days from the date hereof. Given under my hand
and seal, this Eighth day of August A.D.
1851

E. H. Vining Seal
Justice of the Peace

Copy of return on le a da

By virtue of the within le a da I did on the
4th day of October A.D. 1851 deliver the body of
the within named Frederick Ashbaugh to
to the custody of the Sheriff of Kaw County
Illinois

A J Heath Court
mentioned in their then second plea
to which the plaintiff by his counsel objected
which objection was sustained by the Court
and the evidence offered excluded from the
jury to which debts by their counsel excepted
the defendants themselves rested. The above
is a full and true statement of all the testimony
- only received and offered on the trial of said
Cause

The Court was then asked on the part
of the plaintiff to instruct the jury as follows to wit
That the defendants plea of Justification is not
sustained by the evidence

That if the jury find the defendants
guilty or either of them, in assessing the plaintiffs
damages they have a right to take into con-
- sideration the pecuniary circumstances of the

Given
2d
Given

parties and may give exemplary damages
not only to compensate the plaintiff, but to
punish the defendant according to the circumst
ances of the case as shown by the evidence

3.

Given

If the jury believe from the evidence
proof that the defendants or either of them im
prisoned the plaintiff as complained of in said
plaintiff's declaration they must find a verdict
for the plaintiff

Given

If the jury believe from the proof that
defendants or either of them, either actually
imprisoned the plaintiff or gave directions
to imprison or aided in any manner in such
imprisonment, such as the furnishing of money
or otherwise, they ~~should~~ ^{should} find such def or defa
guilty they have the right in assessing the
damages to take into consideration not only
the expense which the plaintiff was truly
subjected to but the time lost in consequence
of said imprisonment And also the injury
done to his feelings from being deprived of his
liberty. All of which instructions were given
by the Court to jury - to which def by their Coun
cil & accepted

The def then asked the Court to
instruct the jury as follows.

Refused

The Court is asked to instruct
the jury that the plaintiff has failed to
adduce evidence sufficient to sustain his
action and it is your duty to find the defendants
not guilty, which the Court refused to give
to which def ~~accepted~~

Isaac G. Wilson (Seal)
Judge &c

afterwards to file on the 18th day of June A.D. 1852
was filed in said clerk's office. & Bonded which the
following is a true copy to wit:

Know all men by these presents
that we Erastus Jefft and Demarius Black
of Kane County, State of Illinois are held and
firmly bound unto Fredericks Ashbaugh of the same
place in the sum of three hundred dollars to be
paid to said Ashbaugh his heirs or assigns for
the which payment well and truly to be made
we bind ourselves our heirs executors admin-
-istrators and assigns jointly, severally and firmly
by these presents, Witness Our hands and Seal
this 3rd day of May A.D. 1852

The Condition of the above oblig-
ation is such that whereas the said Fredericks
Ashbaugh did at the May Term A.D. 1852 of
the Kane County Circuit Court recover a jud-
-gment in said Court against said Erastus
Jefft who was impleaded with Asa Heath
and Ebenezer W. Vining in an action of trespass
for the sum of seventy three dollars and seventy
five cents and costs of suit from which judgment
the said Jefft has taken an appeal to the
Supreme Court of the State of Illinois. Now if
the said Erastus Jefft shall prosecute his said
appeal diligently and with effect and shall
pay the judgment costs, interests and damages
in case the said judgment shall be affirmed
then the above obligation to be void. Otherwise
to remain in full force

Signed in presence of
Erastus Jefft Seal
D. Clark Seal

State of Illinois
Kane County, ss

I Charles B. Wells Clerk of
Kane County Circuit Court do hereby Certify
that the foregoing is a true and perfect copy
of the Plea. Replication. all orders. Bill of
Exceptions. and Bond in the foregoing enti-
-tled Cause

In Witness Whereof I have hereunto
set my hand and affixed the
Seal of said Court at Geneva
this 3rd day of July A D 1852

Chas
C. B. Wells
Clerk

And now comes the said Erastus Tappan and
says that in the record and proceedings aforesaid
there is manifest error in this to wit

1st The Court erred in admitting the testimony of the
witness Scarborough which was objected to

2^d The Court erred in refusing to instruct the
Jury that the plaintiff had failed to introduce
sufficient evidence to sustain his action,
when requested so to do by defendant

3^d The Court erred in admitting the testimony
of ^{Winn} Amilly and the witness Harrington which
were objected to by depts.

The Court erred in excluding the affidavit of Jeffs which was offered in evidence

The Court erred in excluding the copias ad satisfaciendum offered in evidence

The Court erred in giving each of the instructions asked for by plaintiff

The Court erred in giving the 3^d instruction asked by pl^{ty}

The Court erred in refusing the instructions asked for by defendant

The Court erred in overruling the motion for a new trial

Blown & Cook

Attys for pl^{ty} in error.

Revised
improved & de.
Erastus left, et al.

Fredrick Ashbaugh

28 Record

1852

Edward
Blown & Cook

Filed July 17. 1852

v. de laud et al.

11986

Prepared

State of Illinois, ss.

Clerk's Office of the Supreme Court—Third Grand Division:

I HEREBY CERTIFY, That a Writ of Error hath issued from this office, for the reversal of a Judgment obtained by *Fredrick Ashbaugh* against *Erastus Vefft* who was impleaded with *Asa Heath & Ebenezer W. Vining* in the Circuit Court of *Keane* county, at the *May* Term, in the year of our Lord one thousand eight hundred and *fifty two* in a certain action of *Trespass* which Writ of Error is to operate as a Supersedeas, and as such is to be obeyed by all concerned.

Given under my hand, and the Seal of the said Supreme Court, at Ottawa, this *twenty third* day of *July* - A. D. 18 *52*!

S. Leland Clerk of the Supreme Court.
By *P. W. Leland* Esqy.



511986-12

State of Illinois, set.

The People of the State of Illinois,
To the Clerk of the Circuit Court for the County of *Koane* — 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 *Koane* — county, before the Judge thereof, between

Fredrick Ashbaugh plaintiff, and *Erastus Jefft* — who was impleaded with *Asa Horath & Ebenezer W. Vaning*,

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

Erastus Jefft —
as we are informed by *his* 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 *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 *twenty third* day of *July* — in the year of our Lord one thousand eight hundred and fifty *two*.

S. Seland Clerk of the Supreme Court.
By *P. K. Seland* Esqy.

Roane

Erastus Vefft. in p^lca
vs,
Frederick Ashbaugh

Filed July 23^d 1852,
J. Seland Clerk,
By P. K. Seland Depy.

This writ of error is made
a supersedeas & as such
is to be obeyed accordingly
by all concerned.

J. Seland Clk.,
By P. K. Seland Depy.

Know all men by these presents that we
Erastus Telft and DeMarcus Clark of Kane
County State of Illinois are fully and firmly
bound unto Frederick Ashbaugh of the same
County in the sum of three hundred dollars
to be paid to said Ashbaugh his heirs and
assigns for the which payment well and truly
to be made we being ourselves our heirs
executors and administrators jointly severally
and firmly by these presents Witness our hands
and seals this 5th day of May A.D. 1852

The condition of the above obligation
is such that whereas the said Frederick
Ashbaugh did at the may Term A.D. 1852 of the
Kane County Circuit Court recover a Judgment
in said Court against said Erastus Telft who
was impleaded with Aza Weath and Ebenezer W
Wining in an action of trespass for the sum of seventy
three dollars and seventy five cents and costs of suit
to reverse which Judgment the said Erastus Telft
has ~~prosecuted~~ ^{sued out} a writ of Error from the Supreme
Court of the State of Illinois and whereas on motion
of said Erastus Telft it has been ordered by said
Supreme Court that said writ of error be made
a supersedeas upon the said Erastus Telft filing
in said Court a bond in the sum of three hundred
dollars conditional as the law directs with
DeMarcus Clark as surety conditional as the
law directs now if the said Erastus Telft shall
prosecute said writ of Error with effect and shall
pay the Judgment costs interest and damages
in case the said Judgment shall be affirmed
then the above obligation to be void otherwise to remain
in full force

Erastus Telft
DeMarcus Clark

Seal
Seal

Name

Jeff. & Ashbaugh

Band

Filed July 23^d 1852
Melan Ohs

Lefft
vs
Ashbaugh

S. Wilcox for Plff in error made the following points. Referred to the authorities follows -

The legal construction of the Replication puts nothing in issue but admits to be true the facts set up in Defts Special Plea - 3 Chitty Plea. 1203-4
Quote - 1 Chitty Plea - 237. 544. 592-3 & 616.

The affidavit is sufficient - substantially in the language of the Constitution & Statute - R. S. 282 § 1
Session Laws 1846. P 22 § 15 -

In Ohio when the statute & language of the affidavit is substantial the same as our Statute & this affidavit. It was held sufficient 16. Ohio R. P 304-509

The evidence not sufficient to sustain the verdict against Lefft.

The 2^d instruction as applied to the case is erroneous - Exemplary damages not allowed
Leagwick on Measure of Damages P 39. 494-6-
2^d Gre. Evd. - P 276 § 272 -

1 Ban 195 -

No evidence as to the pecuniary circumstances of the parties was offered -

The affidavit & ca. sa. were admissible as evidence in mitigation of damages -

Emastus Left. unpleas
with others

^{vs}
Frederick Ashbaugh

Error from Kane

28-1852

S. Miles for
Plf in error

Points & authorities

~~The~~ Reporter

Filed July 29th 1852.

J. Seligman Clk.

By J. N. Seligman Depy.