

No. 11907

Supreme Court of Illinois

Simpson

vs.

Bowman

71641  7

11907
J. R. Simpson et al.
vs.
Vincent Bowman

1849

11907

J. R. and J. B. Simpson } Sup. Court - June Term 1849
vs.
Vincent Bowman }

And the said Pffs. in error above say that in the record & proceedings aforesaid, & in the rendition of the judgment aforesaid, there is manifest error, in this, to wit, that the judgment of the court below was partly against the plaintiffs & partly against the deft. & partly in favour of the county of Marshall - whereas said judgment should have been wholly in favour of the plaintiffs & against the deft.

and for further errors, the said Pffs. assign the following, to wit,

- 1- The court below erred in reversing the same entering up a judgment, & sent a judgment as was entered at the March T. (1847)
- 2- The circuit court erred in sustaining the motion of Deft. at October 1847, to vacate & reverse the judgment rendered at March Term 1847, without notice to the Pffs. & without any evidence before the court that there was any error in said judgment
- 3- The circuit court erred in entering & reversing the judgment rendered aforesaid at the Oct. Term 1847
- 4- The circuit court erred in entering up a judgment in favour of the county of Marshall for any part of the amount found by the jury for the plaintiffs
- 5- The circuit court erred in apportioning the costs, & in adjudging that the plaintiffs pay any part of the costs of said suit, and that the deft. recover any costs of the Pffs.
- 6- The court erred in rendering as sent judgment for costs in said suit

wherefore, for the errors aforesaid, & for other errors, in the record & proceedings aforesaid, said Pffs. in error pray that the said judgments be reversed, annulled & for nought restored & they be restored to see they have lost by reversing thereof

By their atty, Caslow Peters

And said left in error, by J. L. Dickey his atty
comes & says that in the record & proceedings herein
there is no such error as alleged & pray that
said judgment may be affirmed

J. L. Dickey atty
for deft in error

A Record of the orders, decrees & proceedings of the Honourable Circuit Court of Marshall County began & held at the Court-house in the Town of Saxon in & for the County of Marshall & State of Illinois on the third Monday the fifteenth day of March one thousand eight hundred & forty seven

Present the Hon John Dean Eaton one of the associate justices of the Supreme Court of the State of Illinois & judge of the Sixth judicial circuit

Thursday Morning March 18th 1847 Present as before

J R & J B Simpson
vs
Bruce & Rowman } Appeal

Be it remembered that on the 25th day of February 1847 the plaintiffs filed in the said court the following Transcript with the accompanying Papers (to wit)

Justices fees			
Shocketing 12 ^{cts}		Demand three promissory notes & Book account	
2 ^{cts} for special summons 6 ^{cts}	1 st Note	drawn Magnolia Oct 12 th 1840 amount 40 ⁰⁰ / ₁₀₀	
sums 18 ^{cts}		at 12 per cent Int four several endorsements amounting	
2 subs 37 ^{cts}		to twentyseven Dollars	27 ⁷⁵ / ₁₀₀
affidit for cono 6 ^{cts}	2 ^d Note	drawn Magnolia January 11 th 1843 amt fifteen	
Cont 12 ^{cts}		Dollars & eight cents at 12 per cent Int trust	13 ⁸⁰ / ₁₀₀
Defts costs 93 ^{cts}		one endorsement December 1844 amount eight Dollars	
Const fees 3 ^{cts}	3 ^d Note	drawn Magnolia January 10 th 1846 amount 20 Dollars	
servg sums 25 ^{cts}		at 12 per cent Int trust Book account running from May	
travel 100 ²² / ₁₀₀		1843 to February 27 th 1846 amount 13 ³³ / ₁₀₀ fifteen Dollars	
serv subp 2 ^d thirtythree cents		special summons & two subs issued on the 30 th	
travel 20 ^{cts}		day of September 1846 made returnable on the 3 rd day of October at 12	
Defts case 3 ⁵⁰ / ₁₀₀		o'clock M put into the hands of D M Robertson Const Jonathan	
		Three wit clam & D Stort Dennis D Life Albert Rowman William Winger W W	
		oath for Const Rowman & Alston Rowman sub p for plffs	
cont plffs costs 12 ^{cts}		Summons & one subpoena returned duly served by D M Robertson	
18 ^{cts}		Const & one subpoena served by J & Simpson plff	
3 witness plm 1 ⁵⁰ / ₁₀₀		parties appear at the hour set for trial Silas Ramsey Counsel	
plffs costs		for plffs & J Deem Counsel for Deft	

Justices fees Deft filed an account as ~~off set~~ also affidavit for continuance
 Subp 18³/₄ requiring the depositions of two nonresident witnesses
 Swearing 12¹/₂ 75 Trial thereupon continued till Saturday the 31st day of October
 Deposition 75 at 12 O'clock M at Defendants Costs Jonathan L Stout & Hannus
 Judt 25 p^o Life & Wm Younger claiming their fees for attendance
 Deided costs 193
 Notice for appeal 25 Parties appeared on the 31st day of October at the hour of
 Transcript 25 trial with their Counsel J D Simpson Plff made oath that
 Bond 50 he could not safely proceed to trial for want of two important
 plffs costs not 50 included in Judt Witnesses who were unavoidably detained Trial thereupon
 Court fees continued until Saturday the 7th day of November at 12 O
 Serving Subp 12¹/₂ clock M at plffs costs Hannus p^o Life Wm Bowman & Alstyn
 Travel 8⁰/₀ Bowman claim their fees for attendance
 Deided costs 92 Subp issued for plffs for Jonathan L Stout & Wm H
 Dea witnesses 300 Made returnable on the 7th at 12 O'clock M put into the
 L J Smith the 50 deided costs 50 hands of J M Robertson Court Subp returned duly
 Served Parties appeared at the hour appointed for trial
 after having the proofs & allegations in the case it was decided
 that the plaintiffs recover the sum of sixteen (16) Dollars
 (64) & three fourths of the costs in the trial of this suit
 It is therefore considered that the plaintiffs have
 judgment for the said sum of sixteen Dollars & sixty
 four cents Damages & ten Dollars & Seventy one cents
 their costs about this suit expended & that they have
 execution therefor & further it is also adjudged & decided
 that the Defendant recover of the plaintiffs the sum
 of three Dollars & Eighty eight cents for the use of
 the county of Marshall the said plaintiffs having
 forfeited & laid themselves liable in that said sum
 according to the 5th Chapter & the 4th Section thereof of the
 Statute in wrongfully suing for an undue amount of
 Interest on one of the notes in this suit & also the sum
 of three Dollars & twenty eight cents for his costs &
 charges about this expended & that he have execution
 therefor Hannus p^o Life Wm Younger Wm Bowman
 Alstyn Bowman Jonathan L Stout & Simpson claiming

therefor for attendance

Wm J R Simpson appeared on the 26th day of
November & give notice of appeal & filed his bond
with security

State of Illinois } I the subscriber a Justice of the peace
Marshall County } in & for said County do certify that
the foregoing Transcript & the papers
accompanying contain a full & perfect Statement
of all the proceedings & of the Judgment before me
in the foregoing entitled cause

Dated the 18th day of February A D 1877

Geo Snyder J P

Among the papers filed in said cause, sent up from the justice of the peace with said transcript were the notes following, to wit,

"Magnolia January 11th 1843

"For value received I promise to pay J. B. Simpson
"on order Thirteen dollars & eight cts, with twelve
"per cent interest - Vincent Bowman
"\$13.08

on which are the following endorsements

"1844 Dec^r 20th - Received on the within eight
"dollars"

"I assign the within to S. M. & J. B. Simpson"
"J. B. Simpson"

"Magnolia January 16th 1846

"For value received I promise to pay S. M. &
"J. B. Simpson or order the sum of twenty
"dollars with twelve per cent interest from
"date - P. S. the above note given for cash lent -
"Vincent Bowman"

"\$40.50 Magnolia Oct. 12th 1840

"one day after date for value received I promise
"to pay J. B. Simpson or order the sum of forty
" & $\frac{50}{100}$ dollars - with twelve per cent interest -
"witness my hand - "Vincent Bowman"

on which note are the following endorsements

"to wit" Oct. 31st 1841 Received on the within five
"five dollars"

"Nov. 1st 1841 - Received on the within three
"dollars"

"April 9th 1842, Received on the within \$28 $\frac{33}{100}$ "

"Received wheat \$18.94" "Recd on the within

"note six dollars, July 17th 1844"

"I assign the within note to T. M. & J. B. Simpson"

J. B. Simpson"

Also the following account -

"Vincent B. Bowman


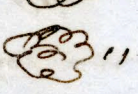
Part of T. M. & J. B. Simpson

			\$	cts.	
"	"	May 22 nd 1843 -	To 2 Meats boxes	25	50
"	"	July 11 th "	To one bbl. of Apples	3	00
"	"	18 -	one Gall. Molasses		50
"	"	"	one two gal jug		50
"	"	"	one Plug Tobacco		10
"	"	June 1845	one Gall Molasses		50
"	"	"	one Bottle of whiskey		35
"	"	15 th	2 Gal. whiskey	1	00
"	"	"	55 lbs. butter gotten at the home house	8	92
"	"	"	one Gall whiskey		50
"	"	"	one Gall. jug		13
"	"	June 19 th 1846	2 1/4 lbs sugar		25
"	"	July - 7 th "	3 lbs Coffee		33
"	"	10 "	one Lt. whiskey		13
"	"	"	one Gall Molasses		56
"	"	"	1/4 lb Spice		06
"	"	27 th	1/2 the price of one piece Boots \$4.00	2	00
"	"	"	as gotten by Rev ^d Strong		
				"13	33"

Also an appeal bond in the words & figures following, to wit,

"Know all men by these presents that we T. M. & J. B. Simpson & Andrew Beers of the county of Marshall and State of Illinois, are held & firmly bound unto Vincent Bowman in the penal sum of twenty too

"Dollars lawful money of the United States, for the
"payment of which well & truly to be made, we &
"each of us, bind ourselves, our heirs, executors &
"Administrators, jointly & severally & firmly by these
"present, sealed with our seals & dated at Lacon this
"26th day of Nov^r Anno Domini, one thousand eight
"hundred & forty six. -

"The condition of the above obligation is such,
"that whereas the said J. N. & J. B. Simpson did on
"the 7th day of Nov^r 1846 before Geo. Snyder Justice
"of the Peace for the county of Marshall receive a
"judgment against the above named Vincent Bow-
"man for the sum of sixteen dollars & sixty four cents
"from which judgment the said J. N. & J. B. Simpson
"has taken an appeal to the circuit Court of the
"county of Marshall aforesaid & State of Illinois -
"Now if the said J. N. & J. B. Simpson shall pro-
"ceed said appeal with effect - & shall by whatever
"judgment may be rendered by the court upon
"the dismissal or trial of said appeal, then the above
"obligation to be void, otherwise to remain in full
"force & effect - J. N. & J. B. Simpson 
"approved by me as "Andrew Bevan" 
"my Officer, this 26th
"day of Nov. 1846

"Geo. Snyder J. P."

And on the 18th day of March 1849, and during the
same term of said court, the following proceedings were
had, to wit,

"J. N. & J. B. Simpson }
"vs. } Appeal -
"Vincent Bowman } This day comes the parties

by their attorneys, and issue being joined & jury comes to try the ~~issue~~, to wit, Levensford Brodders, William B. Green, George H. Llew, James Thomp-son, John Strawn, John Mears, William Heentz, Daniel Hallenbeck, Cornelius Heent, Christopher Brodders, James H. Long & James S. Eeyford, who being sworn well & truly to try said issue say, we the jury find the said issue for the plaintiffs for the sum of sixteen dollars & thirty three cents - and we the jurors further say upon our oath that we find for the county of Marshall, the sum of six dollars & sixty cents usury upon a note given by the said Defendant to the said plaintiffs - It is there fore considered by the court that the plaintiffs have a recovery of the defendant the sum of twenty two dollars & ninety four cents aforesaid, & that six dollars & sixty cents of the same go to be paid into the county Treasurer of Marshall county, & that the plaintiffs have a recovery of the defendant their costs & charges by them expended, as well in this court, as in the court below, & that they have Exem- tion therefrom.

And on the 18th day of October in the year of our Lord eighteen hundred & forty seven, being the Octo-ber Term of said court, the following proceedings were had, to wit,

J. N. & J. B. Simpson

vs.

Virant Bowman

} Appeal

Now come again the parties by their attorneys at this term and on motion of

Defendant it is ordered that the record made in
this cause at the last term of this court be amended
so as to affirm the judgment therein entered,
and it is further ordered by the court that the
plaintiffs recover of the defendant the sum of
sixteen dollars and thirty four cents, and one half
of their costs & charges, by them in their suit in
this behalf expended in the court below & that they
have execution therefor. And that the defendant
have & recover of the plaintiffs, herein, his costs
& charges by him in his behalf, ^{in this court} expended, and one
half of his costs by him expended in the court below,
& have execution against the plaintiffs therefor.
And it is further ordered that the court shall
recover of the said plaintiffs the sum of six dollars
and sixty cents, the amount of the rescission interest
reserved by the said plaintiffs upon a note given
by the Defendant to the plaintiffs and that execution
issue therefor whenever the plaintiffs pay an
appeal to the Supreme Court of this State, which
is granted upon condition that they file herein
within thirty days from the adjournment of this
court a bond conditioned as the law directs in such
case, with Thomas Patterson or David Myers
as their surety herein the penalty of one
hundred dollars - and it further orders that
the decision of the court in allowing the judgment
of the former Term in this cause to be affirmed
& amended, & affixes to the rendition of this judgment

State of Illinois

Marshall County ss. I, John Beem, Clerk of the
Circuit Court of said County
of Marshall, do hereby certify that the foregoing is a
true & correct transcript of the record & papers on
file in the above entitled case of T. H. & J. B. Simpson
against Vincent Bowman, as appears by the
record & papers thereof in my office.

In witness whereof, I have
hereunto set my hand & affixed
the seal of said court, at Ligon
in said county of Marshall on this
twelfth day of June in the year of
Our Lord eighteen hundred &
fifty nine.

John Beem Clerk

^{4H}
J R + J B Simpson
vs

Vincent Rowman

Transcript

Filed June 13. 1849.
St. Land Clk.

\$1. paid on this.

State of Illinois, Oct.

The people of the State of Illinois,

To the Clerk of the circuit court for the county of *Marshall*—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 *Marshall* county, before the Judge thereof, between *Thomas R. Simpson et al.*

plaintiff and

Vincent Bowman

defendant it is said manifest error hath intervened to the injury of the aforesaid *T.R.S.*

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 of 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 *13th* day of
June in the year of our Lord
 one thousand eight hundred and forty-*nine*.

Beland

Clerk of the Supreme Court.

Chief of the Supreme Court

one thousand eight hundred and forty-
in the year of our Lord
and thereof at Ottawa, this 13th day of June 1849
of
WITNESS, the Hon. *James Wilson* Chief Justice of our said Court, and I the

42
T. K. Simpson et al

Vincent Rowan

Writ of Error

Filed June 13. 1849.
S. C. and C. C.

the Judge thereof, between *Thomas K. Simpson et al*
judgment of a plea which was in the Circuit Court of *Ottawa* county, before
BECAUSE in the record and proceedings, as also in the rendition of the
To the Chief of the circuit court for the county of *Ottawa* County:
The people of the State of *Illinois*, etc.

J. B. & J. B. Simpson }
vs. } Error to Marshall
Vincent Bowman }

Abstract of the records

This suit was originally commenced before a justice of the Peace upon the following causes of action, to wit,

1. A promissory note dated Oct^r 12th 1840 for \$40 ⁵⁰/₁₀₀ at 12 per cent. interest, by Deft. to Plffs. —
2. Another note by same to same date January 11th 1843 for \$13.08 & 12 per cent. interest —
3. Another note of same by same, dated January 16, 1846 for \$20 & 12 per cent. interest —
4. Also an account —

A judgment was rendered by the justice in favour of the plffs. for \$16.64 damages & \$10.17 costs — Also that Deft. recover of plffs. \$3.83 for the use of Marshall County, forfeiture for usury on one of said notes, & \$3.28 costs — From this judgment the plffs. appealed to the Circuit Court —

On appeal, at the circuit court, March Term 1847, the case was tried by a jury, who rendered the following ~~verdict~~ verdict, to wit, We the jury find for the plffs. for the sum of \$16.33; & we the jurors further say upon our oaths, that we find for the county of Marshall the sum of six dollars & sixty cents, usury upon a note given by said Deft. to the plaintiffs. —

The court on this verdict rendered judgment, that Plffs. recover of Deft. \$22.94, & that \$ six

dollars & sixty cents of it be paid into the Treasury of the County of Marshall, & that Pffs. recover their costs in the circuit & justices court -

At the Oct. T. 1847, the defendant appeared in court, and on his motion the record was so amended as to affirm the judgment aforesaid -

The court then rendered a judgment, that the pffs. recover of Deft. \$16.34 & one half of their costs & charges - That Deft. recover of pffs. his costs in the circuit court, & one half of the costs before the justice - and that the County of Marshall recover of the pffs. the sum of \$6.60 the amount of usurious interest, reserved by Pffs. upon a note by Deft. & Pffs. -

To the several decisions of the court, & the rendition of the judgments as aforesaid the Pffs. excepted, and sued out their writ of error -

The Pffs. assign for error,

- 1- In entering the judgment at March 7/47 -
- 2- In sustaining the motion to affirm said judgment
- 3- In rendering the judgment of Oct. T. 1847
- 4- In entering a judgment in favour of Marshall Co -
- 5- In apportioning the costs, & in adjudging costs against the plaintiffs -
- 6- In rendering said judgment for costs -

Onslow Peters -
for Pffs. in error -

Simpson vs.

vs.

Bowman

Abstract

Robertson

vs.

~~Col. James J. Robertson & Co.~~

Abstract

~~C. J. Robertson & Co.~~

Filed June 14, 1849
Holland Ch.