No. 11818

Supreme Court of Illinois

Bailey

vs.

Haidy

71641 7

Tazewell

Saml. P. Bailey
vs
J. E. Haidy & ux.

90

Orchard

11818

1851

Pleas to the Circuit Court of Tazewell County and State of Illinois to the September Term, in the year of our Lord, one thousand Eight hundred and fifty, before the Hon: David Davis Judge of the Eighth Judicial Circuit composed of the Counties of Sangamon, Tazewell &c &c

Be it remembered, that, on the Fifth day of September in the year of our Lord, one thousand Eight hundred and fifty, Samuel P. Bailey, R. H. Snell filed their transcript and Bond of Appeal, in the words and figures, as follows! to wit:

Transcript

J. Harper assignee of
" J. Pettyman
" R. H. Snell and
" Saml P. Bailey

amicable suit

" July 18th 1850 suit
" instituted on a note given by Defendants
" for $120 dated Oct 15th 1848 due 12 months
" after date with interest from date until
" paid on which is a credit of $18.85 also
" $12.50 Dec 15. Also a credit March 1st 1850
" of 15.00 also $25 Jany 8th 1850 July 18th
" 1850 Samuel P. Bailey entered his appear-
" ance and also appeared as Attorney
" for R. H. Snell, and also filed as an offset

[118/18-1]

" a statement of a Judgment against L. Turner
" for $104. July 18th 1850 one o'clock P.M. Judg-
" ment rendered for Plaintiff against said De-
" fendants for Fifty-nine dollars and Eighty-one
" cents debt and costs

" Justice &c

" August 5th 1850 a Bond for an Appeal
" to the Circuit Court approved by me

" M. Jackaberry J.P.

" Cost of Bond and Transcript 75cts

" State of Illinois
" Tazewell County } I certify that the foregoing
" is a correct transcript from my Docket of
" all proceedings had before me in the above
" entitled cause

" Given under my hand and seal this
" 13th day of August 1850

" M Jackaberry J.P. Seal

Appeal Bond

" Know all men by these Presents that
" we Samuel P. Bailey & Richard N. Snell
" & C. H. Earnest are held and firmly bound
" unto J. E. Harvey assignee of B. L. Turner
" in the penal sum of One hundred
" and Twenty dollars lawful money of the
" United States for the payment of which well
" and truly to be made we bind ourselves, our
" heirs and administrators, jointly severally
" and firmly by these Presents. Witness
" our hands and seals this 5th day of Au-
" gust 1850

" The condition of the above obligation
" is such that whereas the said J. E. Harvey
" did on the 18th day of July, A.D. 1850 before M-

" Jackaberry a Justice of the Peace for the County of Tazewell recover a Judgment against the above bounden Samuel P. Bailey and R. N. Snell for the sum of Fifty-nine dollars and Eighty one cents from which Judgment the said Samuel P. Bailey & R. N. Snell has taken an Appeal to the Circuit Court of the County of Tazewell aforesaid and State of Illinois. Now, if the said S. P. Bailey and R. N. Snell shall prosecute his Appeal with effect and shall pay whatever judgment may be rendered be the court upon dismissal or trial of said Appeal, then the above obligation to be void, otherwise to remain in full force and effect

Samuel P. Bailey Seal
R. N. Snell Seal
P. H. Barnett Seal

" Approved this 5th day of
" August 1850
" M. Jackaberry J. P. Seal

And now, afterwards, to wit; on the said Fifth day of September, AD. 1850, notice was issued to the Appellee in the words and figures, as follows, to wit;

" State of Illinois
" County of Tazewell, } ss. The People of the State of Illinois to the Sheriff of said County Greeting: —

" We command you to summon J. C. Harden, assignee of B. S. Pettyman, if he can be found in your County, to appear before your Circuit Court for said Tazewell County, on the first day of the next Term thereof

[11818-2]

" to be held at the Court House in the
" City of Pekin on the 3d Mondays day of the
" month of September next. then and there to pros-
" ecute his suit against Saml P. Bailey and
" R. H. Snell latter appealed from before m.
" Jackaberry Esqr

" And you hereof make due return with
" an endorsement of the manner in which
" you shall execute the same —

" Witness my hand and the Seal
" S.S. of said Court, at Pekin this Fifth
" day of September A.D. 1850 —

" J. A. Jones Clerk "

Ret " no such person as Jones R. Name to be
" found in my County
" Sept 7. 1850 R. T. Gill Sheriff P.C.

Now, afterwards, to wit: at a Circuit
Court begun and held at Pekin, in and
for the County of Tazewell on the Third Mon-
day of the month of September in the year of
our Lord, one thousand eight hundred and
fifty, and, on the Fifth day of said Term be-
ing the 23d day of said September, the follow-
ing proceedings were had in said cause, to wit

" J. R. Wagoner Attorney
" & B. L. Pettyman
" Rychard H Snell
" Samuel P. Bailey
" Appellee

This day came
" the Appellee and enters his appearance
" herein —

And, now, afterwards, to wit: on the 6th day of said Term, being the 24th day of said September, the Defendants filed affidavit in the words and figures, as follows, to wit:

" State of Illinois }
" Tazewell County } ss

" Tazewell Circuit Court September Term 1850 —

" Harvey
" vs
" Bain & Snell } Appeal

" Samuel P. Bain being duly sworn on oath that he is not prepared to enter into the trial of the above cause for the want of a James A. Mulpro— a material witness. The said James left the City of Pekin for the City of Chicago on or about Eighteenth of September 1850, and that James Mulpro resides in the City of Pekin, he having examined the papers in this cause before the departure of said Mulpro and found that there was no service of process made on Appellee he neglected have the said James Mulpro Summoned believing that the said cause would not be tried this Court for the want of appearance of said Appellee in said cause — This affiant expects to prove by the said James McGraw, that that note sued on was in the hands and properties before bringing the said suit of one Clement Turner who held the said note by virtue of an assignment of Benj Pettyman who received the same of one Thos Mulpro, since decd & from

£11818-9

" said Shot not prior to the said Clement Turner,
" This affiant further states he knows of no other
" person by whom he can prove the said facts by
" This affiant further states that this appli-
" cation is not made for delay that justice
" may be done –

" Saml P Bailey

" Subscribed and Sworn to
" before me this 24th Sept
" 1850

" J. A. Jones Clk

" And, now, afterwards, to wit; on the said
24th day of September, the following pro-
" ceedings were had in said cause to wit;
" J. C. Harris, assignee
" & B. S. Patterson
" Appeal
" Richard H. Snell
" Samuel P. Bailey Appts.

" This day come
" the Parties by their Attorneys, and the De-
" fendants move the Court to continue the
" case, because the appearance of the Appellee
" was not entered until Monday. But, it
" appearing to the Court, that this was the
" first calling of this cause, and, that the
" appearance of the Appellee was entered
" before said cause was called on the Docket
" said motion is overruled, to which deci-
" sion of the Court the Defendant excepted
" Said, thereupon the Defendants file their
" affidavit and move the Court for a con-
" tinuance of cause, which is overruled by
" the Court. To which decision of the

"Court overruling said application for
"continuance the said Defendant excepted—
"And, then afterwards, the parties submitt
"the cause for trial to the Court, without
"the intervention of a Jury, and the
"Court after hearing the proofs is of opin-
"ion that the Defendants are the Plain-
"tiffs the sum of Seven dollars and seventy six
"cents, It is therefore, considered by the Court,
"that the Plaintiff recover of and from the
"said Defendants the said sum of Seven
"dollars and seventy six cents and the costs
"of this suit both in this Court and the
"Court below expended and that execution
"issue therefore, And, thereupon the De-
"fendants pray an Appeal to the Supreme
"Court which is granted on the Defen-
"dants filing their Bond in penalty of
"one hundred and fifty dollars with the
"Clerk of this Court in thirty days with
"Bernard Bailey as security conditio-
"ned as the law directs—

Now, afterwards; to wit; on the Twentieth day of October in the year of our Lord, one thousand Eight hundred and fifty, the said Defendants file their Bond of Appeal to the Supreme Court in the words and figures, as follows; to wit;

"Know all men, by these Presents, that
"We Samuel T. Bailey, Richard H. Snell
"and Bernard Bailey of the County of Page-
"well and State of Illinois, are held and
"firmly bound unto J. E. Harvey, assignee of B.

" L. Tillyman in the penal sum of one
" hundred and fifty dollars, good and law-
" ful money of the United States for the pay-
" ment of which well and truly to be made,
" we bind ourselves, our heirs, executors and
" Administrators, jointly, severally and firm-
" ly by these Presents. As witness our
" hands and seals this 20th day of October
" A.D. 1850

" The condition of the above obligation
" is such, that whereas the said J. C. Hardy,
" did on the 24th day of September, A.D. 1850,
" in the Circuit Court, in and for the County
" of Tazewell and State of Illinois recover a
" judgment against the above bound Samuel
" P. Bailey and Richard H. Snell for the
" sum of Sixty 66/100 dollars debt and costs of
" suit; from which said Judgment of said
" Court the said Samuel P. Bailey and
" Richard H. Snell have prayed for and
" obtained an Appeal to the Supreme Court
" of said State — Now if the said Bailey and
" Snell shall prosecute their said suit with
" effect, and shall moreover pay the amount
" of the Judgment, costs, interest & Damages
" awarded and to be awarded against
" them, in case the said Judgment shall
" be affirmed in the Supreme Court aforesaid,
" then the above obligation to be void, otherwise to remain in full force and virtue —

Samuel P. Bailey (Seal)
R. H. Snell (Seal)
Bernard Bailey (Seal)

" Taken and entered into
" before me, at my Office
" in Tiskilwa this 20th day of October A.D. 1850

J. A. Jones Clk

State of Illinois
Tazewell County } ss. I, John A. Jones
Clerk of the Circuit Court in and for
said County, do hereby certify, that the
foregoing Transcript of eight pages, con-
tains a full, true and perfect Exemplifi-
cation of the Record and proceedings in
the foregoing entitled cause of I. C. Harden
Assignee of B. S. Pettingman vs Samuel
T. Bailey and Richard H. Snell, as
fully and completely as the same
are of record in my said Office.

In Testimony whereof I have
hereunto set my hand and af-
fixed the seal of said Circuit
Court at Pekin this 24th day
of March, in the year of our
Lord, one thousand eight hun-
dred and fifty-one

J. A. Jones Clerk

[11818-5]

~~J. E. Hardy~~

Samuel P. Bailey } Sup. Court. June T/57

v

J. E. Hardy } Said Appellant comes and says that there is manifest error in the record of the proceedings and the Judgment aforesaid in this -

1. The circuit Court erred in overruling the Appellant's Motion for a ~~new trial~~ Continuance of the Cause

2. In rendering judgment in favor of Appellee & against the plaintiff in error

For this and other errors apparent on the face of the record said Appellee says that the said judgment be reversed & set aside & for naught estimed

H. O. Mommen
for Appellant

Filed June 9. 1857.
J. Kilian
Clk.

Fee $3.75

Tazewell

J. E. Hardy vs
Samuel P. Bailey
Transcript of P. J. Mackey
Filed June 9th 1857

Samuel P Baily
vs
I E Hardy } Supreme Court Jan Term 1851

I E G Johnson of counsel for Pltff in error in the above entitled suit do pose and say that I have examined the record of said suit as sent here by the Clerk of Tazewell County - and that the bill of exceptions is not contained in the record - left out as I believe by mistake - and that I cannot proceed to a hearing in said cause without an amendment of the record in the particular above stated

Subscribed & sworn to before me July 9. 1851
L. Leland Clk.

E G Johnson

Saml P Baily vs I E Hardy } Sup Ct of S 1851

In the above cause Pltff in error suggests a diminution of the record, and moves for a certiorari to the Clerk of Tazewell County - commanding him to perfect the record by inserting in the same in this court the bill of exceptions allowed in the circuit court on the trial of said cause in said court and that said cause may be continued in this court till the order be complied with

G Merriman & Johnson
Pltff's attorneys

[11818-b]

Saml P Bailey
vs
J. E. Hardy

Affidavit of E G Johnson
& Motion for Certiorari
& for continuance —

Filed July 9. 1857.
R. Leland Clk.

Samuel P. Bailey
vs
J. E. Hardy } Abstract.

This was an action brought by the appellee before a Justice of the Peace, in Tazewell County in July 1850, and the Deft. in error recovered judgment before the Justice against the plaintiff in error, the pltffs. in error claiming a set off against one C. Turner claiming that Turner was the owner of the note at the time it fell due-

The pltffs. in error appealed to the Circuit Court.

Summons was issued on the appeal on the 5th day of Sept. 1850, on which day the Bond was executed.

The Summons was returned 7th Sept. 1850 "that no such person as the appellee to be found in my County."

The Sept. Term of the Circuit Court A.D. 1850, commenced 18th Sept. 1850.

The appellee entered his appearance on the 5th day of term 23rd Sept.

On the 24th day of Sept. 1850, 6th day of the Term the appellant filed his affidavit for a continuance & moved thereon for a continuance of the cause, which was overruled and exception taken, and judgment given against appellant.

The affidavit states in substance

that James A. McGrew material witness for appellants - who left Pekin for Chicago 18th Sept. 1850, and that he resided in Pekin - appellant examined papers before McGrew left & found that appellee was not served with process, neglected having him McGrew summoned as witness, believing the Cause would not be tried at that Court for want of appearance of appellee - that appellee could prove by said witness that the note sued on was in the hands of & property of Clement Turner, acquired by assignment, & before suit brought &c,

The assignment of error questions the correctness of the Court in overruling the motion for a continuance.

H. C. Merriman
for appellant

[11818-8]

Bailey
vs.
Hardy &c.

Abstract.

Filed June 27th 1847.

650
12500

Filed June 27th 1851

Samuel P. Bailey
vs.
J. E. Hardy } Abstract.

This was an action brought by the appellee before a Justice of the Peace in Tazewell County in July 1850, and the Deft. in error recovered judgment before the Justice against the plaintiff in error, the pltffs. in error claiming a set off against one E. Turner claiming that Turner was the owner of the note at the time it fell due.

The pltffs. in error appealed to the Circuit Court.

Summons was issued on the appeal on the 5th day of Sept. 1850, on which day the Bond was executed.

The summons was returned 7th Sept. 1850 "that no such person as the appellee to be found in my County."

The Sept. Term of the Circuit Court A.D. 1850 commenced 18th Sept. 1850.

The appellee entered his appearance on the 5th day of Term 23rd Sept.

On the 24th day of Sept. 1850, 6th day of the Term the appellant filed his affidavit for a continuance & moved thereon for a continuance of the cause, which was overruled, and exception taken — and judgment given against appellant —

The affidavit states in substance

[11818-9]

that James A. McGrew, material witness for appellants, who left Pekin for Chicago 18th Sept. 1850, and that he resided in Pekin. Appellant examined papers before McGrew left & found that appellee was not served with process, neglected having him McGrew summoned as witness, believing the cause would not be tried at that Court for want of appearance of Appellee — that appellee could ~~not~~ prove by said witness that the note sued on was in the hands & property of Chiment Lumm, acquired by assignment, & before suit brought &c.

The assignment of Error questions the correctness of the Court in overruling the motion for a continuance —

H. C. Merriman
for appellant.

[11818-1D]

Bailey
vs.
Hardyne.

Abstract.

Filed June 27th 1857.