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

# Supreme Court of Illinois

Benj.H.Williams

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vs.

Franklin County

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IN THE SUPREME COURT,

First Grand Division,---State of Illinois.

NOVEMBER TERM, A. D., 1865.

BENJAMIN H. WILLIAMS, *Appellant*,  
vs.  
FRANKLIN COUNTY, *Appellee*. } Appeal from Franklin.

Page

This was an Appeal, heard at the March Term, 1865, of the Franklin Circuit Court, before the Hon. A. D. Duff, Judge, and a Jury. The Appellant was successfully prosecuted under the 16th sec. of chap. 80, R. S., entitled Paupers.

SUMMONS AND SERVICE.

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March 13, 1865.—Motion by Appellee to dismiss appeal for want of appeal-bond. Motion overruled, and Jury impanelled and sworn. Caused heard, upon Evidence, and the following Instructions of the Court:

“The Court instructs the Jury: That if they believe from the Evidence that Benj. H. Williams, the def’t, brought from any other county in this state and left a pauper in Franklin co., Ill., knowing him to be a pauper at the time, the verdict should be for the pl’ff. A pauper, under our Statute, is a poor person, destitute of pecuniary means, and unable to earn a livelihood in consequence of any bodily infirmity, idiocy, lunacy, or other unavoidable cause.” “Given.”

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For the def’t. “The Court instructs the Jury: That although they may believe from the evidence that def’t brought the person in question from the railroad, out of this county, into this county, and at the time of bringing him into this county he was diseased and unable to labor, and had no means of supporting or maintaining himself, yet unless the Jury believe from the evidence def’t knew at the time he brought him that he was without money, or other means of support, the verdict must be for the def’t: and although the def’t in such case may have afterwards found out that he was without means, that would not make him liable.” “Given.”

Jury returned affidavit in a verdict for the pl’ff. Def’t moved for a new trial. Motion overruled, and Judgment upon the verdict for \$100 debt and the costs due thereon, &c. Def’t prays an appeal to the Supreme Court. Appeal allowed by filing appeal bond within thirty days from last day of Court, and giving Montreville Fitts or Walter S. Aikin as security.

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James Whittington testified for pl’ff as follows: “Know def’t; also Belshazer, the person said to be a pauper. Was at def’t’s last October, and helping def’t unload his wagon. He had been at DuQuoin on the railroad with his wagon. Whilst unloading wagon this man Belshazer came out of the house. When I saw him I said, Ben, what in the name of God are you doing with this man here. He said he had brought him out from the road. He looked very poor and badly. His skin was rather yellow and of a greenish cast; looked like he might be rotten; smelt bad; was not able to work; his clothing was dirty—common though not ragged. I saw him

Page

next day at my house. He was looking for a place to stay. I next saw him at old man Young's, about a quarter from my house. Next saw him at poor house, and the next time I saw him he was a corps at the poor house, about one week after I first saw him. It was Thursday or Friday when I first saw him at Williams'. DuQuoin is in Perry co. There is no railroad in this co.

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Moses Lamplly : I am acquainted with the def't. Was at his house at the same time spoken of by Whittington, I heard def't say he had brought Belshazer, the person said to be a pauper, from the road, or the railroad, or DuQuoin, I can't say for certain which. Belshazer looked very bad and appeared to be sick, and was badly clothed, and his clothes were dirty. I was almost blind at the time, and could not see a man more than twenty yards at that time, but heard Whittington ask def't what in the name of God he was doing with that man there.

Thos. J. Mooneyham : I saw the man at def't's who was called Belshazer. He looked like he was sick. His clothes were tolerably good. I have seen men with worse clothes on. I did not hear def't say anything about him. I don't know where def't got the man at.

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George L. Hall : Dr. Green and I are the Committee appointed by the county to examine applicants for the poor house. About the first of October last the def't came to me and said there was a man up in town who he wanted to have examined and sent to the poor house. He said that the man was sick and he thought he would soon be able to work if he was properly taken care of, and that that was the most proper place for him. That he brought the man with him from the railroad or DuQuoin, I am not certain which. DuQuoin is in Perry co., and there is no railroad in this co. Dr. Green and I examined the man. I think he said his name was Belshazer, or something like that. He was very feeble, his clothes were dirty, and he smelt so bad we could hardly stay in Dr. Green's office whilst we were examining him. He seemed about rotten. We sent him to the poor house in this county. I asked the man if he had any money or means of support. He said that he had none; said that he came from Helena, Ark., to Cairo, from Cairo to DuQuoin, and from DuQuoin here. I am well acquainted in this county, and don't think the man ever was a resident of this county. I don't know whether the man has any relation in this county or not. I was satisfied from my acquaintance in the county, knowing most of the people in the county, and from what the man said as to how he came here, and the fact of def't bringing here, that the man was a pauper. Judging from his appearance and the examination we made at the time, we gave him a certificate, which gave him admittance into the poor house, where he died and his burial expense paid by the county. I think it was Thursday after he was sent to the poor house that he died.

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This was all the testimony in the case. After which the Jury returned and brought in a verdict in favor of the pl'ff. Def't moved for a new trial. 1st, Because the verdict was contrary to the evidence. 2d, That the verdict was contrary to law and to the instructions of the Court.

Motion overruled and Judgment rendered upon the verdict for \$100, debt and costs, &c. To which ruling of the Court the def't then and there by his counsel excepted. Bill of Exceptions signed, sealed, and made a part of the record.

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(Signed)

A. D. DUFF, [SEAL]

Judge 26th J. Ct. Ct.

Copy of appeal bond duly executed. Certificate as to records apropos

ASSIGNMENT OF ERRORS.

And the said Appellant, by Thomas J. Layman and Tanner & Casey, his att'ys, comes and for assignment of errors says that

The Court erred in giving instructions to the Jury on behalf of the Appellee.

The Court erred in overruling Appellant's motion for a new trial.

The Court erred in rendering Judgment for Appellee upon the verdict of the Jury.

For this and other manifest errors in the record in this cause, the pl'ff in error asks that the Judgment of the Court may be reversed.

*J. E. Flaminio*

THOS. J. LAYMAN, and  
TANNER & CASEY,

*Att'ys for Appellant.*

Page

2

IN THE SUPREME COURT,

First Grand Division,---State of Illinois.

NOVEMBER TERM, A. D., 1865.

BENJAMIN H. WILLIAMS, *Appellant*,  
vs.  
FRANKLIN COUNTY, *Appellee*. } *Appeal from Franklin.*

This was an action brought to recover the penalty provided in Sec. 16, Chap. 80, R S., entitled PAUPERS.

The section reads as follows:

"If any person shall bring and leave any pauper or paupers in any county in this State, wherein such pauper is not lawfully settled, *knowing* him or them to be paupers, he shall forfeit and pay the sum of one hundred dollars for every such offence to be sued," &c.

It is contended that the appellant is not liable under this Statute. To recover the penalty named, the appellee should have brought himself clearly within its provisions. *Edwards vs. Hill*, 11th Ills. p. 23.

To subject the appellant to the penalty in this case, it must clearly appear from the evidence that he knowingly and wilfully brought a pauper into the county of Franklin. *Whitcraft vs. Van Doren*, 12 Ills. 239. *Bachelor vs. Kelly*, 10 N. H. 436.

The evidence in this cause does not clearly and sufficiently show that the appellant knowingly and wilfully carried a pauper into Franklin county.

Hence the motion for a new trial should have been allowed. *Higgins vs Lee*, 16 Ills., 500. *Gordon vs Crooks*, 11 Ills., 142. *Hammond vs Wadham*, 5 Mass., 353.

The mere fact that the appellant brought into the county a person who was sick and had no money, is not sufficient evidence upon which to base a verdict. The person must have been without means and had some incurable disease or bodily infirmity by which he was permanently disabled from labor, and that this was known by the appellant at the time he brought him into county.

It is submitted in this case that the testimony must show before the plaintiff below was entitled to a judgment that the appellant with the intent to impose a pauper upon the pl'ff below, knowingly brought a pauper into the county.

The testimony in this case shows that the appellant supposed the person referred to would soon be able to work, precluding the idea that he was a pauper.

*S. C. Blinnigant* TANNER & CASEY, *Mulkey, Ball & Wheeler*  
Att'ys for Appellant.

Benjamin H Williams  
Appellant

Franklin County  
Appellee

Abstract & Brief

NOVEMBER TERM, A. D. 1862.

Alfred  
Robt

IN THE SUPREME COURT

STATE OF VIRGINIA

It is requested in this case that the testimony need show before the court.

The evidence in this case does not clearly and sufficiently show that the appellant knowingly and wilfully procured a person who was not a member upon the list below, knowingly procured a person into the county.

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Benjamin H Williams  
Appellant

Alfred

Robt