No. 8675

# Supreme Court of Illinois

Thomas G.S.Herod, et al

vs.

Michael K. ~~Lamber~~ Lawler, Admr.

71641 7

1

State of Illinois }
Gallatin County } ss

, pleas before the Honorable Dawning Baugh Judge of the 12th Judicial Circuit (now the 19th) Judicial circuit of the State of Illinois, and presiding in the County of Gallatin at the court house in Shawneetown on the 28th day of December A D 1854 towit of which said court John E Hall was clerk & Thomas Wilson sheriff

Copy of Bill of Exception

| | |
|---|---|
| Thomas G S Herod & Edward C Colvard v John E Hall clerk of the circuit court of Gallatin county | In the Gallatin circuit court December Term 1854 Motion to quash fee bill |

Be it remembered that on this day this motion which was entered at the last term of this court came on to be heard and the said plaintiffs moved to quash the following fee bills towit

| | |
|---|---|
| State of Illinois } Gallatin county } ss | Circuit Court Illinois 3rd July Term A D 1853 |
| Herod & Colvard Vs Milton Bartley admr of Samuel Seaton Decd | plaintiff in Replevin Defendant |

[8675-1]

2

# Plaintiffs Costs

## Clerks fees

| | |
|---|---|
| filing 18 papers 90 | 90 |
| Entering pltffs attorneys appearance | 10 |
| Entering suit on Docket 3 times 30 & 2 continuances 40 | 70 |
| Issuing 5 subps 1,75, 4 Wit affts 40 | 2,15 |
| appeal Bond 50 Entg demurer to plea 20 | ,70 |
| Entg demurer to amended plea 20 | ,20 |
| Motion for new trial 20 overruling same 20 | ,40 |
| Entg order for appeal 20, Swearing 9 witnesses 45 | ,65 |
| Entering Judgment 25 Entering satisfaction of Judgt 15 | 40 |
| Issuing Execution 40 Docketing 10 Ent Return 10 filing 5 | 65 |
| Making & Entering Bill of Cost 30 certificates & seal 35 | 65 |
| | $7,50 |
| Witness Geo W Simons 15 days | 7,50 |
| S A Malcom 11 " | 5,50 |
| H. H. M Butt 13 " | 6,50 |
| Geo W Akers 1 " | 50 |
| Jas Overbee 23 " | 11,50 |
| Jas Bradford 15 " | 7 50 |
| | $39,00 |
| Barger Sheriffs Fees | |
| Serving subpenas Milage &c | $6,70 |
| Richeson shff fees service subpenas Milage &c | 3 20 |
| | $9.90 |
| | $56.40 |

State of Illinois }
Gallatin County } Set

In the name of the people of the State of Illinois I Hereby certify that the foregoing is a correct copy from

3

My Fee Book of the costs and charges taxed against the plaintiff in the foregoing case, and included in Execution of this date against said Defendant and which the Sheriff of said County is hereby directed to collect of said plaintiff

In testimony whereof I have hereunto set my hand and affixed the seal of the circuit court at Shawneetown this 1st day of Sept in the year of our Lord one thousand Eight hundred and fifty three

(LS)

J E Hall Clerk

State of Illinois } Gallatin circuit court
Gallatin County } set July Term AD 1853
Herod & Colvard plaintiffs
vs in Replevin
Milton Bartley admr
of Samuel Seaton decd Defendant

Defendants Costs

| | |
|---|---|
| Clerks Fees Ent Defendants attorneys appearance | 10 |
| Filing 15 papers 75, 8 Wit affts 80, | 1,55 |
| Entg appearance of admr 20 leave to amend plea 20 | 40 |
| Issuing 5 subpenas 1,75 Suggesting death of Deft 20 | 1,95 |
| Exception to Deposition 20 leave to amend plea 20 | 40 |
| leave to withdraw plea 20 order for writ return 20 | 40 |
| Order for detention damages 20 swearing 1 wit 5 | 25 |

4 Making and Entering Bill of Costs ,30
Certificate and Seal 35
$5,70

Barger Sheriff fees Serving 3 subpenas mileage &c 4,25
Richeson " " " 2 " " " 1,75
$6,00

Witness fees

Witness J J Kanada 14 Days 7,00
" Wm Coop 10 " 5,00
" J N Hamilton 15 " 7,50
" Elizabeth Harpool 7 " 3,50 23,00
$34,70

State of Illinois }
Gallatin County } ss I hereby certify that the foregoing is a correct copy from my fee Book of the Costs and Charges taxed against the Defendants of whom the Shff of Said County is hereby directed to collect the Same

In Testimony whereof I have hereunto set my hand and affixed the seal of the Said circuit court at Shawnetown this 1st day of Sept in the year of our Lord one thousand Eight hundred and Fifty three

LS

J E Hall Clerk

and the plaintiffs offered in Evidence the following Execution and Returns thereon to wit

Fifa No 7611

5 State of Illinois }
Gallatin County } Set

The people of the State of Illinois To the Sheriff of Said County Greeting we Command you that of the Goods Chattles Lands tenements and Real Estate of Thomas G S Herod & Edward Colvard in your County you Cause to be made the sum of forty five dollars with Interest thereon from the 21st day of July A D 1853 until paid which Milton Bartley admr of Samuel Seaton lately in our circuit court for said County Recovered against them for Damages in an action of Replevin also ninety one Dollars and ten cents which was awarded by our said court to said Bartley admr &c for his costs and charges in that behalf Expended whereof the said Herod & Colvard is convicted as appears to us of Record and have you the money at the clerks office of our said court at Shawneetown in ninty days after the date hereof to Render to the plaintiff of Debt Interest and costs as aforesaid and have you then there this writ

Witness J E Hall Clerk of our said court and the Judicial seal thereof at Shawneetown this 28th day of June A D 1854

J E Hall Clk

[8175-3]

6

upon which Execution there appear the to be the following Endorsements to wit

Overbees Witness fee Receipted on fee Book

Received from E C Coldward $45.00 augst 10th 1854

Thomas Wilson Shff G.Co

Received payment in full 20th Oct 1854

Thos Wilson Shff G.Co

Received from Shff Wilson $3 50/100 in full of my wifes Witness fees

Fountain E his mark Harpool

Received 50¢ my fee from Shff Wilson

G W Akers

Received from Shff Wilson $7.00 my fees as witness

John J Kanady

and the plaintiffs offered and Read in Evidence the following order to wit

Monday 18th July 1853

Thomas G S Herod &
E C Coldward
vs
Milton Bartley admr
of Samuel Seaton
} Replein

This day Came the said parties and the plaintiffs file their demurer to the pleas of no property in the plaintiffs No 2, of property in the defendants No 3, and of property in James Sayton No 4, filed herein by the defendant and upon ~~argument~~ argument it is ~~considered~~ Considered by

the court the demurrers to the said pleas No 2 & 3 be Sustained with leave to the defendants to amend Said pleas and the demurer to said plea No 4 is disallowed and the defendant by leave of the court amends his said pleas No 2 & 3; and the plaintiffs demur to said amended pleas and upon argument ~~agreement~~ Said demurrer is disallowed by the court and by consent of parties and with the leave of the court Said plea No 3, is withdrawn

and the plaintiffs then asked the court to quash said fee bills for the following Erroneous charges to wit certificate and Seal 35 cts certificate & Seal 35 cts - Entering demurrer to plea 20 cts Entg demurrer to amended pleas 20 cts leave to withdraw plea 20 cts leave to amend pleas 20 cts

and the court thereupon entered the following Judgment to wit

Thursday December 28th 1854

Thomas G S Herod & Edward C Colward

vs

John E Hall Clerk circuit court

} motion to quash fee bill

on this day came the plaintiffs by Freeman their attorney and moved the court to quash the fee bills plaintiffs and defendants wherein the said Herod and Colward were plaintiffs and Milton Bartley administrator of Samuel Seaton deceased is defendant in

8 a action of Replevin and which fee bills are dated the first day of September 1853 and the court having inspected the said fee bills and the Items therein charged find that the Item of 35 cts for Certificate and seal charged therein is Erroneously charged and orders that said Hall clerk of the circuit court repay to the Said Herod and Lodward 35 cts the amount of Each certificate and seal making 70 cts for the certificate and seal on the two bills as aforesaid and the court further order that the said Hall clerk as aforesaid be fined in the Sum of 2$ and that the said plaintiffs Recover the said 70 cts and fine as aforesaid and the plaintiffs at the time Excepted to the opinion of the court in Rendering said Judgment and prays this his bill of Exceptions to be signed & Sealed by the court & made part of the Record which is done at the same time and the foregoing was all the Evidence in the case

D. Baugh (Seal)

State of Illinois }
Gallatin County } ss

I James Davenport Clerk of the circuit Court in and for Said County of Gallatin Do hereby certify that the foregoing Record of Eight pages is a true and correct transcript of the proceedings in the case ~~therein~~ therein Specified - as full and Complete as the same appears upon the Record and files in my office

In Testimony Whereof I have hereunto Set my hand and affixed the seal of Said Court at Shawneetown this 12th day of November A D 1857

James Davenport Clerk

Clerks fee making this Record $2,00

James Davenport Clerk

[P.15-5]

State of Illinois - In the Supreme Court -
1st Grand Division - to Nov. Term 1858 -

| | |
|---|---|
| Thomas G. S. Hood & Edward C. Colvard Plffs. in Error. vs. Michael K. Lawler. Admr. of John E. Hall decd. Deft. in Error | Error to Gallatin |

The said Plaintiffs in Error, by N. L. Freeman, their attorney and say that there is manifest Error in the record and proceedings in this cause - and assign for Error the following

1st The Court below erred in not quashing the fee bills therein mentioned, and in not entering a judgment against said Hall in favor of the plaintiffs, for the whole amount of said fee bills -

2nd The Court erred in not quashing said fee bills for the following erroneous charges - to wit -

Entering demurrer to plea - 20 cents -

Entering demurrer to amended pleas - 20 cts.
leave to withdraw pleas 20 cts.
Leave to amend pleas 20 cts.

3rd The Court erred in not fining said Clerk for Each of said Erroneous charges -

4th The Court Erred in not quashing said fee bills -

Wherefore the said plaintiffs in Error pray this Court to reverse said judgment &c

N. L. Freeman atty
for pltffs. in Error.

Joinder in Error.
Allen & Tarrant & Casey
for Defts in Error

A 5

Herod & Colvard

vs }

Lawler – admr
of S. E. Hall –

Error to Gallatin

Filed 28. Nov. 1857.
N. Johnston Clk
//

Prepaid $5.00 by N. L.
Freeman –

[E-0125]

STATE OF ILLINOIS, } ss. First Grand Division
SUPREME COURT.

# THE PEOPLE OF THE STATE OF ILLINOIS,

**To the Sheriff of** Gallatin **County,**

Because in the record and proceedings, and also in the rendition of the judgment, of a plea which was in the Circuit Court of Gallatin County, before the judge thereof, between Thomas G. S. Harris and Edward C. Colvin Plaintiffs- and Michael K. Lawler- Administrator of John E. Hall- Deceased ——

defendant, it is said that manifest error hath intervened to the injury of said Thomas G. S. Harris and Edward C. Colvin as we are informed by this complaint, the record and proceedings of which said judgment, we have caused to be brought into our Supreme Court of the State of Illinois, at Mt. Vernon, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said Michael K. Lawler- Admr. as aforesaid ——

that he be and appear before the Justices of our said Supreme Court, on the first day of the next term of said Court, to be holden at Mount Vernon, in said State, on the first Sunday after the Second Monday in November next, to hear the records and proceedings aforesaid, and the errors assigned, if he shall think fit; and further to do and receive what the said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said Michael K. Lawler- Ad —— notice, together with this writ.

**Witness**, the Hon. ~~Samuel H. Treat~~ John D. Caton, Chief Justice of our said Court, and the seal thereof, at Mount Vernon, this thirteenth day of April in the year of our Lord, one thousand eight hundred and fifty-eight.

Noah Johnston
*Clerk of Supreme Court.*

[8675-8]

Executed by leaving to the within named
Mr M Lawler in his tenement of
John Doe & Richard Roe Roe
good & sufficient sureties bail
writ dated Sept 1st 1858
John J Mallon
D S

Thomas G. S. Herod &
Edward C. Colvard
by } al. Sci fa

Michael A. Lawler
Admr of the estate of
John E. Hall deceased

| | |
|---|---|
| Serving | 50 |
| Returns | 10 |
| | 60 |

8675

| | |
|---|---|
| Thomas G. S. Herod & Edward C. Colvard – Plffs in Error vs. Michael K. Lawler Admr of John C. Hall Decd deft in Error | In the Supreme Court – Illinois – 1st Grand Division On motion to quash fee bill. Error to Gallatin – |

Will the clerk please issue writ of error and scire facias in the above entitled cause –

N. L. Freeman atty
for plffs in Error

[8675-97]

25

48

Thomas G. S. Herod &
Edward C. Colonel
Plffs in Error

vs } Pleas

Michael K Lawler
Adm.r of Geo. E. Stoll Dec.d
Deft in Error

Filed Nov. 13. 1857
N. Johnston Cl

Shannetown
Nov 11th 1857

Maj. Noah Johnston
Dear Sir

I inclose a praecipe for writ of Error & scire facias &c the writ of Error need not be sent out of the office as I will send up the record – but please issue the scire facias to this County as soon as possible – I will pay up on the $5 at Court

Yours truly
N. L. Freeman

[8675-10]

STATE OF ILLINOIS—IN THE SUPREME COURT—FIRST GRAND DIVISION—TO NOVEMBER TERM, 1857.

| | |
|---|---|
| THOMAS G. S. HEROD and EDWARD C. COLVARD, Plaintiffs in Error, | Error to Gallatin. |
| vs. | Abstract of |
| MICHAEL K. LAWLER, Administrator of JOHN E. HALL, deceased, Defendant in Error. | Plaintiffs in Error. |

Pages of Record.

1. This was a motion made in the Circuit Court of Gallatin County, against John E. Hall, as clerk of said court, to quash two fee bills, made out by said clerk, in a certain cause which had been determined in said court, wherein Herod and Colvard were plaintiffs, and Milton Bartley, administrator of Samuel Seaton, deceased, was defendant.

2. The fee bill of plaintiffs' costs contains the following items:

CLERK'S FEES.

| | |
|---|---|
| Filing 18 papers | 90 |
| Entering plaintiffs' attorney's appearance | 10 |
| Entering suit on docket 3 times 30, 2 continuances 40, | 70 |
| Issuing 5 subpœnas 1.75—4 wit. affidavits 40 | 2.15 |
| Appeal bond 50—entr'g demurrer to plea 20 | 70 |
| Entering demurrer to amended plea | 20 |
| Motion for new trial 20, overruling same 20 | 40 |
| Entering order for appeal 20, swearing 9 witnesses 45 | 65 |
| Entering judgment 25, entering satisfaction of judgment 15, | 40 |
| Issuing execution 40, docketing 10, entering return 10, filing 5, | 65 |
| Making and entering bill of costs 30, certificate and seal 35, | 65 |

To this fee bill is attached a certificate of the clerk and the seal of the court.

The fee bill of defendant's costs contains the following items:

3. Filing 15 papers 75—8 wit. affidavits 80 ..... 1.55
Entering appearance of administrator 20—leave to amend pleas 20 ..... 40
Issuing 5 subpœnas 1.75, suggesting death of defendant 20, 1.95
Exceptions to dep. 20, leave to amend pleas 20 ..... 40
Leave to withdraw pleas 20, order for writ return 20 ..... 40
Order for detention damage 20, swearing 1 witness 5 ..... 25
Making and entering bill of costs ..... 30
Certificate and seal ..... 35

4. To which is also attached a certificate and the seal of court.

The aggregate amount of said two fee bills is $91.10, for which an
5. execution issued.

6. The return on the execution shows the payment of the costs.

The order of the court, in the cause in which the fee bills and execution issued, shows that there is contained in one entry the following:

The plaintiffs file their demurrer to the pleas of no property in the plaintiffs No. 2, of property in the defendant No. 3, and of property in James Layton No. 4,—the demurrers to said pleas No.'s 2 and 3 sustained,
7. with leave to amend said pleas, and demurrer to plea No. 4, disallowed, defendant by leave amends pleas 2 and 3, and demurrer to said amended pleas, said demurrer disallowed, and plea No. 3 withdrawn.

The plaintiffs asked the court to quash said fee bills, for the following erroneous charges, to wit:

| | |
|---|---|
| Certificate and seal | 35 |
| Certificate and seal | 35 |
| Entering demurrer to pleas | 20 |
| Entering demurrer to amended pleas | 20 |
| Leave to withdraw plea | 20 |
| Leave to amend pleas | 20 |

8. The court at the December Term, 1854, found the item of 35 cents in each fee bill to be erroneous, and ordered the clerk to repay to plaintiffs the amount of such overcharges, 70 cents, and fined the clerk two dollars. The plaintiffs excepted.

N. L. FREEMAN, Attorney
for plaintiffs in error.

J. W. EDWARDS, PRINTER, SHAWNEETOWN.

Rev. Stat. 1845. p. 249 - sec. 27.
Acts 1849 - p. 78 - sec. 7.

45 5

Herod & Colvard

vs.

M. K. Lawler - admr
of J. E. Hall

abstract

For plff. Freeman

Filed 30. Nov. 1857.
A. Johnston Clk

STATE OF ILLINOIS } SS. 1st Grand Division WRIT OF ERROR.
SUPREME COURT, } THE PEOPLE OF THE STATE OF ILLINOIS;

*To the Clerk of the Circuit Court for the county of* Gallatin 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 Gallatin county, before the Judge thereof, between Thomas G. S. Harris and Edwin C. Calvert plaintiffs, and Michael K. Lawler Administrator of John E. Hall Deceased defendant it is said manifest error hath intervened, to the injury of the aforesaid Thomas G. S. Harris and Edwin C. Calvert as we are informed by their complaint, and we being willing that error, should be corrected if any there be, 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 Count, 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 Mount Vernon, in the county of jefferson, on the 1st Tuesday after the 2d Monday of this Month ~~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:

John D. Caton

Witness, the Hon. ~~WALTER B. SCATES~~ Chief Justice of our said court, and the seal thereof, at Mount Vernon this Thirteenth day of November in the year of Our Lord One Thousand Eight Hundred and Fifty-Seven

Noah Dshuster
Clerk Supreme Court.

[8475-13]

48

Hood & Calvert

vs

Lawler Adams & C

Mot of Error

Issued & filed 13 Nov 1857

N. Johnston Clk

STATE OF ILLINOIS—IN THE SUPREME COURT—FIRST GRAND DIVISION—TO NOVEMBER TERM, 1857.

| | |
|---|---|
| THOMAS G. S. HEROD and EDWARD C. COLVARD, Plaintiffs in Error, vs. MICHAEL K. LAWLER, Administrator of JOHN E. HALL, deceased, Defendant in Error. | Error to Gallatin. Abstract of Plaintiffs in Error. |

Pages of Record.

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| Entering demurrer to amended plea | 20 |
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3.

| | |
|---|---|
| Filing 15 papers 75—8 wit. affidavits 80 | 1.55 |
| Entering appearance of administrator 20—leave to amend pleas 20 | 40 |
| Issuing 5 subpœnas 1.75, suggesting death of defendant 20, | 1.95 |
| Exceptions to dep. 20, leave to amend pleas 20 | 40 |
| Leave to withdraw pleas 20, order for writ return 20 | 40 |
| Order for detention damage 20, swearing 1 witness 5 | 25 |
| Making and entering bill of costs | 30 |
| Certificate and seal | 35 |

4. To which is also attached a certificate and the seal of court.

The aggregate amount of said two fee bills is $91.10, for which an

5. execution issued.

6. The return on the execution shows the payment of the costs.

The order of the court, in the cause in which the fee bills and execution issued, shows that there is contained in one entry the following:

The plaintiffs file their demurrer to the pleas of no property in the plaintiffs No. 2, of property in the defendant No. 3, and of property in James Layton No. 4,—the demurrers to said pleas No.'s 2 and 3 sustained,

7. with leave to amend said pleas, and demurrer to plea No. 4, disallowed, defendant by leave amends pleas 2 and 3, and demurrer to said amended pleas, said demurrer disallowed, and plea No. 3 withdrawn.

The plaintiffs asked the court to quash said fee bills, for the following erroneous charges, to wit:

| | |
|---|---|
| Certificate and seal | 35 |
| Certificate and seal | 35 |
| Entering demurrer to pleas | 20 |
| Entering demurrer to amended pleas | 20 |
| Leave to withdraw plea | 20 |
| Leave to amend pleas | 20 |

8. The court at the December Term, 1854, found the item of 35 cents in each fee bill to be erroneous, and ordered the clerk to repay to plaintiffs the amount of such overcharges, 70 cents, and fined the clerk two dollars. The plaintiffs excepted.

N. L. FREEMAN, Attorney
for plaintiffs in error.

J. W. EDWARDS, PRINTER, SHAWNEETOWN.

Authorities cited by pltffs in Error
Rev. Stat. 1845 - p 249 - sec 27.
acts of 1849. p. 78 - sec. 7 -

Herod & Colvard

vs.

M. R. Lawler admr
of J. E. Hall

abstract

Filed 30. Nov. 1857.
N. Johnston Clk