No. 11998

Supreme Court of Illinois

Freeman.

vs.

Guyer.

71641 7

Peoria

Charles H. Freeman
vs
Lazarus L. Guyer

34

1852

11998

Prefaced

Charles H. Freeman } Supreme Court of the State
vs. } of Illinois Third Grand
Lazarus L. Gayer } Division, June Term A.D. 1852.

And now comes the said Charles H. Freeman by H.O. & A.L. Merriman his attorneys, and says that in the record and proceedings in this cause there is manifest error in this, to wit;—

1st. The judgment of the Court is contrary to the law and evidence.

2d. The finding of the Court is not sustained by the evidence.

3. The Court erred in refusing motion for new trial

H.O. & A.L. Merriman

And the said Deft. in error says that in the record & proceedings aforesaid there is no such error as the Plff. in error hath above alleged & Deft. prays judgt of circuit court be in all things affirmed &c

Onslow Peters
for Deft. in Error

[11998-1]

Be it remembered that heretofore, to wit, on the seventeenth day of September in the year of our Lord one thousand eight hundred and fifty, there was filed in the office of the clerk of the circuit court in and for the county of Peoria in the State of Illinois, a Summons in a suit before a Justice of the Peace, a transcript of the proceedings in the suit before the Justice of the Peace, and an appeal Bond taken in said suit, which are in the words and figures following, to wit.

J. P. Summons. "State of Illinois } The People of the State of Illinois,
Peoria County ss } To any Constable of said County Greeting:
You are hereby commanded to summon Charles H. Freeman to appear before me, at my office in Brimfield on the 17th day of Agst. at 1 o' clock, P. M. to answer the complaint of L. L. Guyer for a failure to pay him a certain demand not exceeding $100; and hereof make due return as the law directs. Given under my hand and seal this 9th day of August 1850. A Taylor J. P.
[endorsed as follows] Served the within by reading the same to him. August 9th 1850 — D. Stedman, const."

J. P. Transcript. "L. L. Guyer
vs } Action founded on balance due on
Charles H. Freeman } a note dated May the 12th 1846
Given to C. H. Freeman, signd by James H. Bishop for fifteen dollars, to said note was connected an article of agreement, bearing the same date signd by C. H. Freeman stating that the opinion of Curtis Cady, or Ezra Tucker should control the amount of said note; said note transferred without recourse and sued by L. L. Guyer — In which suit James H. Bishop

[11998-1A]

deft. brings Ezra Tucker to comply with the requirements of said article, and Tucker says the amount of said note should be ten dollars instead of fifteen, Judgment rendered against said Bishop for ten dollars and interest. Pltff. claims of Deft. the Ballance due on said note. Summons issued August 9th 1850, to appear on the 17th of same month at 1 o' clock (P. M.). Summons returned served by reading, so says const. Steadman. August 17th 1850 at the hour set after investigating Pltffs. claim and Deft. not appearing, judgment for Pltff. on default of Deft. for the sum of Six dollars and twenty eight cents with costs of suit. Deft. appeals.

I certify that the above transcript is a true statement of all the proceedings had before me. Brimfield Sept. 9th 1850.

A. Taylor J.P.

Appeal Bond = "Know all men by these presents, that We Charles H. Freeman and Hiram M. Barney are held and firmly bound unto L. L. Guyer in the penal sum Fourteen dollars $14.28 cents 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 twenty fourth day of August 1850. The condition of the above obligation is such that whereas the said L. L. Guyer did on the ___ day of August A.D. 1850 before Adonijah Taylor a Justice of the Peace for the County of Peoria, recover a judgment a judgment against the above bounden Charles H. Freeman for the sum of ($6.28) six dollars 28 cents, from which judgment the said Charles H. Freeman has taken an appeal to the Circuit Court of the County of Peoria aforesaid and State of Illinois — Now if the said

Charles H. Freeman shall prosecute his appeal with effect and shall pay whatever judgment may be rendered by the court upon dismissal or trial of said appeal, then the above obligation to be void, otherwise to remain in full force and effect.

Approved by me at my office this 24th day of August 1850
A Taylor J.P.

Chs. H. Freeman (L.S.)
H. M. Barney (seal)

Whereupon the Clerk of said Court issued a summons or notice to said L. L. Guyer under the seal of said Court directed to the sheriff of Peoria county in the words and figures following, to wit.

"The People of the State of Illinois, To the sheriff of Peoria county, Greeting: We command you to summon L. L. Guyer if he may be found in your county, to appear before our circuit court on the first day of the term thereof to be held at Peoria within and for the said county of Peoria on the 3rd Monday of November next then and there in our said court to prosecute his suit against Charles H. Freeman lately appealed from before A. Taylor one of the Justices of the Peace of said county — and make return of this writ, with an endorsement of the time and manner of serving the same, on or before the first day of the term of the said court to be held as aforesaid.

(L.S.) Witness Jacob Gale, clerk of our said court and the seal thereof at Peoria, this 17th day of September in the year of our Lord one thousand eight hundred and fifty. Jacob Gale, clerk."

Which summons was by the sheriff of Peoria county returned endorsed as follows, to wit.

"State of Illinois, Peoria county ss: Served the within writ by reading the same to the within named L. L. Guyer — Oct. 7th 1850 — Wm Compher Shff P.C. By C. Cleaveland Depty."

Proceedings at a Circuit Court begun and held at the Court House in the City of Peoria in and for the County of Peoria in the State of Illinois on the second Monday of November in the year of our Lord One thousand Eight hundred and fifty one, it being the tenth day of said month — Present the Honorable William Kellogg, Judge of the Tenth Judicial Circuit in the State of Illinois, to wit.

Friday, November 14th A.D. 1851 —

trial - L. L. Geyer

vs appeal from J.P.

Charles H. Freeman

This day came the plaintiff by Onslow Peters his attorney and the defendant by H. O. Merriman his attorney, and waived a jury and agreed that all matters both of law and fact arising in this cause shall be tried by the court. The Court having heard the evidence and being fully advised in the premises do find that the defendant does owe to the plaintiff the sum of six dollars and sixty five cents, whereupon the defendant entered a motion for a new trial in this cause, and the court being fully advised in the premises overruled said motion.

Judgment = Therefore it is considered that the said L. L. Geyer have and recover of the said Charles H. Freeman the sum of Six dollars and sixty five cents his debt aforesaid, together with his costs and charges by him about his suit in this behalf expended, as well in this court as in the court below and that he have execution therefor.

And afterwards at the said November Term of said court there was allowed and signed by the Judge of said court a Bill of Exceptions in said cause in the words and figures following, to wit,

Bill of Exceptions= Lazarus L. Guyer
vs
Charles H. Freeman

Peoria Circuit Court
Nov. Term 1851.

Be it remembered that on the trial of this cause the plaintiff to maintain the issue on his part, read in evidence a note given by ——— Bishop to Charles H. Freeman in the words and figures following, to wit, (here insert it) On the back of which is the following endorsement, to wit, (here insert it) The Plaintiff then read in evidence, subject to objections a judgment and proceedings in a case in favor of said Guyer against said Bishop before A. Taylor a Justice of the Peace of Peoria county, which is in the words and figures following, to wit, (here insert it).
The plaintiff then called said Bishop, who testified that he was the defendant in said judgment, and that at the time of the trial thereof before the Justice said Freeman was present and appeared to be aiding in the prosecution thereof. The plaintiff here rested his case.
The defendant then proved by Ezra Tucker that he and others were present with said plaintiff, who at the time of said trial of the said case against said Bishop, and it was said by some one whom he did not recollect, in presence of the plaintiff, that said Freeman sold the said note in suit to Braman Bennett, and he understood from the conversation at that time, that plaintiff got the note from

Bennett, but from whom he understood this witness does not know.

This was all the material evidence given in the cause.

The Court found the issue for the plaintiff and assessed his damages against said defendant for the sum of six dollars and sixty five cents, to which finding the said defendant then and there excepted. The defendant then moved the court for a new trial, which was overruled by the court, and the court rendered judgment on said finding against said defendant, to which decisions of the Court in overruling said motion and rendering said judgment, said defendant then and there excepted and prayed the court to sign and seal and make of Record this his Bill of exceptions.

Wm Kellogg (seal)

State of Illinois
Peoria County } ss

I Jacob Gale clerk of the Circuit Court in and for said County do hereby certify that the foregoing is a full, complete & correct transcript from the Record of the proceedings in a certain cause in said court of L. L. Geyer plaintiff against Charles H. Freeman defendant, as the same remain of Record and on file in my Office.

I further certify that the "note" "Endorsement" and Justice "judgment & proceedings &c." referred to in the Bill of Exceptions & directed to be inserted therein are not on file in my office nor under my control or power and therefore not inserted in the record as directed.

In testimony whereof I hereto set my hand and the seal of said Court at Peoria this twentieth day of January

in the year of our Lord one thousand eight hundred and fifty two.

Jacob Gale. clerk.

Clerk's fees: for transcript ~~certificate~~ & seal $2.00

Received payment of defendant Freeman

Jacob Gale. clerk

Let a supersedeas issue in the above case upon the plaintiff in Error filing a bond conditioned as the law directs in the penal sum of one hundred and fifty dollars with Hiram M Barney as his surety

Ottawa March 17. 1852

S D Caton

Peoria Co.

Charles H. Freeman

vs

Lazarus L. Geyer

Recd & apt. of errors

Filed March 17, 1852,

L. Leland Clk.

State of Illinois

Supreme Court
June Term AD 1852

Charles H. Freeman
vs } Error to Peoria
Lazarus L. Guyer

It is agreed that the transcript of A. Taylor appearing in the record of said cause be considered as included in the bill of exceptions therein, and that all statements and recitations in said transcript be taken and considered as a part of the evidence given on the trial of said cause in the court below

Merriman & Manning
for plffs in Error
C Peters for Dft. in error

C. H. Freeman

L. L. Guyer

Cr. to Peoria

Filed July 14th 1852.

L. Leland Clk.

By P. H. Leland Dep.

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 Lazarus L. Guyer in ——— against Charles H. Freeman in ——— in the Circuit Court of Peoria county, at the November Term, in the year of our Lord one thousand eight hundred and fifty one in a certain action appealed from Justice of Peace, 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 Seventeenth day of March A.D. 1852.

L. Leland *Clerk of the Supreme Court.*

By P. W. Leland Dep'y. Clk.

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Freeman vs Guyer
Supersedeas

Filed Apl. 1st 1852
Sheland Clk.

State of Illinois, sct.

WRIT OF ERROR—FREE TRADER PRINT.

The People of the State of Illinois,

To the Clerk of the Circuit Court for the County of Peoria — **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 Peoria county, before the Judge thereof, between

Lazarus L. Guyer plaintiff and Charles H. Freeman

defendant it is said manifest error hath intervened, to the injury of the aforesaid Charles H. Freeman 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 distintly 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 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 Seventeenth day of March in the year of our Lord one thousand eight hundred and fifty two.

[11998-7]

L. Leland Clerk of the Supreme Court.
By P. K. Leland Depy. Clk.

Charles H. Freeman
vs
Lazarus L. Geyer —

Writ of Error —

This writ of Error is made a Supersedeas. & is to be obeyed accordingly

L. Leland Clerk.
By P. K. Leland Dep. Clk.

Filed March 17. 1852.

Charles H. Freeman } Supreme Court
vs. }
Lazarus L. Guyer } June Term A.D. 1852.
Error to Peoria.

This was originally an action before a Justice of the Peace of Peoria County.

Judgment rendered against the Plff. in error — he appealed to the Circuit Court where judgment was rendered against him for the sum of $6,65 and costs.

The cause was submitted to the Court for trial without a jury.

The proper evidence offered below is not copied into the record, and supposed to have been taken from the files — but by an agreement on file here the recitals and State-ments in the transcript of the justice are made to supply the proper omissions in Bill of Exceptions.

The suit was founded on a note given by James Bishop, payable to C. H. Freeman dated 12 May 1846, for $15,00" to said note was con-nected an article of agreement

bearing the same date signed by C. H. Freeman. Stating that the opinion of Curtis Cady should control the amount of said note.

Said note was endorsed without recourse to plff. in error.

The deft. in error (subject to objections) proved that a suit had been instituted on said note against Bishop, and Ezra Tucker's opinion reduced the amount of the note to ten dollars — and judgment was rendered against Bishop for that amount. That Freeman was present at the trial against Bishop and appeared to be aiding in the prosecution thereof.

The plaintiff also introduced evidence, tending to prove that the plaintiff in error assigned the note to one Braman Bennett & he to the deft. in error.

The Plff. in error excepted to the opinion of the Court, moved for a new trial which was overruled.

The assignments of error call in question the correctness of the finding of the Court below, on the evidence offered.

H. O. Minimen
for Plff. in error.

Provin

C. H. Freeman
vs.
Lazarus L. Guyer.
Abstract

Filed July 17th 1852

~~WRIT OF ERROR.~~—FREE TRADER, OTTAWA,

State of Illinois, } SS.
Supreme Court, }

The People of the State of Illinois

TO THE SHERIFF OF Peoria 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 Peoria county, before the Judge thereof, between Lazarus L. Guyer plaintiff, and Charles H. Freeman

defendant it is said that manifest error hath intervened to the injury of the said Charles H. Freeman as we are informed by his 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 Ottawa, 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 Lazarus L. Guyer

that he be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the Second Monday in June 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 Lazarus L. Guyer notice, together with this writ.

WITNESS, the Hon. Samuel H. Treat Chief Justice of our said Court, and the seal thereof, at Ottawa, this 17th day of March in the year of our Lord, one thousand eight hundred and ~~forty~~-fifty two.

T. Leland Clerk of the Supreme Court.
By P. W. Leland Dep. Clk.

[11998-10]

State of Illinois
Peoria County

Recep

I have served the within on Lazarus L. Geyer the within named by reading to him ~~to him~~ the within writ and by giving him notice of its contents for him to appear at the time and place as he is required and as I am commanded. Peoria March 25th A.D. 1852

James L. Hays
Sheriff P.C. Ills

Charles McDiarmid
vs.
Lazarus L. Geyer
Trespass

Serving	50
Return	10
Mileage 90	160
	1.60

Filed Apl. 1st 1852
Wm. Carr Clk.

Clk. pd. 50 cts postage

Charles H. Freeman
Appellant

L. L. Geyer
Appellee

} In Supreme Court of the State of Illinois —
Error to Peoria Co.

Hiram M. Barney the security on the Bond filed by said plaintiff in Error being first duly sworn deposes and says that he is a resident of the County of Peoria in said State of Illinois, and that over and above all debts owing by him he is worth at least the sum of $500 — Hundred Dollars including real estate and personal property.

Subscribed & sworn to before me this 11th day of March A.D. 1882
Jacob Gale Clerk

H. M. Barney

State of Illinois
Peoria County } ss

I Jacob Gale, clerk of the Circuit Court in and for the said County hereby certify that Hiram M. Barney of said County this day came before me and subscribed the foregoing affidavit and made solemn oath that the same was true. Witness my hand and the seal of said court at Peoria this 11th day of March A.D. 1882 — Jacob Gale, clerk —

In Sup Court

Charles H. Brunson
Pltff in Error

vs

L. L. Geyer
Deft in Error

Affr of Bail

Filed Oct. 17. 1862
Cleland Clk.