No. 11823

# Supreme Court of Illinois

Eaton

vs.

Graham

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John T. Eaton
and
Saml. Graham

# Bureau Circuit Court

Pleas before the Hon.ble Theophilus L. Dickey Judge of the circuit court of the ninth judicial circuit of the state of Illinois at the April Term of the circuit court in and for the County of Bureau begun and held at the court house in Princeton in said county on Monday the first day of April in the year of our Lord One thousand Eight hundred and fifty

Present Hon.ble Theophilus L Dickey Judge
Justin H. Olds Clerk
Joseph Thompson Sheriff
D. C. C State atty

To wit on the 2d day of said term

Samuel Graham
vs
John L Eaton } Appeal

This day came the defendant by C. L. Kelsey his attorney and entered his motion for the dismissal of this suit as the same having abated by reason of the repeal of the act under which the same is brought

To wit on the 3d day of said term

Samuel Graham
vs
John L Eaton } Appeal

This day came the defendant

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by Kelsey his attorney, and in proper person and the plaintiff also came by Cook his attorney and in proper person and it is considered by the court that the said motion to dismiss be overruled and the said defendant by his said attorney filed his affidavit herein, and entered his motion for a rule on said plaintiff, for security for costs which said motion by the consideration of the court is overruled

To wit on the 5th day of said term

Samuel Graham

vs

John L Eaton

Appeal

This day came the parties by their attorneys and in proper person, D. C. Cook appearing as attorney for the plaintiff and Kelsey & Leland as counsel on behalf of the defendant, and the said parties being ready for trial, the court thereupon ordered that a jury be empannelled to try the matters in controversy herein arising between them; and there came a jury of twelve good and lawful men to wit: Andrew Lunery, William Lewis, James Wilson, David M Elwain John W Combs, S. B. Titcomb James Monson John Campbell, Benjamin Langworthy, James H. Bailey Enos Campbell & Caleb Moore, who being duly elected tried and sworn well and truly to try this cause

after hearing the testimony of witnesses and argument of counsel thereon have leave to retire to consider of their verdict — and the parties consenting and agreeing thereto the said jury have leave under the instructions of the court to disperse after they shall have agreed upon, signed and sealed their verdict and that the present the same at the opening of the Court tomorrow morning

To wit on the fourth day of said term

Samuel Graham
vs
John L Eaton } Appeal

This day appeared in open court the parties herein by their attorney and in proper person also the jurors of a jury as above named, and the said jury presented their verdict as follows to wit — We of the jury do find the issues for the Plaintiff & we find the debt to be the sum of Ninety Dollars — And the said Defendant by Leland entered a motion for an arrest of judgment herein, and the court here considers that the said motion be overruled — It was thereupon considered by the court that the said Plaintiff have and recover of the said defendant the said sum of Ninety dollars his debt as found by the jury as aforesaid together with all his costs and charges about his suit in this behalf expended both in this court and in

[11223-2]

the court below and that execution issue therefor.

And the said defendant by his said attorney comes and prays an appeal from this judgment to the supreme court of this State — And the court here granted the appeal prayed for subject to the following orders and provisions to wit: The defendant shall file his appeal bond with the clerk of this court. — The conditions of said bond shall be such as the law directs in cases of appeal to the supreme court of this State. The penalty therein to be inserted shall be two hundred dollars — It shall be signed and sealed by John Vaughan and Justus Stevens as securities, and filed as aforesaid within thirty days from the adjournment of the present term of this court

To wit on the 5th day of said term

Samuel Graham

vs

John L Eaton appeal

This day came the said defendant by Leland his attorney and filed his bill of exceptions herein as follows to wit:

Be it remembered that on the trial of the above cause the plaintiff introduced Egbert Cotton & Hiram Stannard as witnesses and that they testified that during the months of June and July 1849 the defendant resided in the county of Burian and during the said time was the owner of a large number of hogs - Ninety at

least — that the defendant then and there fed them and called them his, and that he, said defendant, permitted them to run at large in said Bureau County. The defendant introduced evidence tending to reduce the number of hogs owned by the defendant during the said months of June and July and tending to prove that the hogs were not permitted by defendant to run at large. This was all the evidence

The court instructed the jury for the plaintiff as follows in writing

"That if the jury believe from the evidence that the defendant at any time between the 15th day of April and the 15th day of October the time of the commencement of this suit resided in the county of Bureau and was the owner of any hogs shoats or pigs and permitted them to run at large in said county of Bureau they should find for the plaintiff the sum of one dollar for each one of the hogs, pigs or shoats so permitted to run at large not exceeding in all the sum of One hundred dollars"

Given

This was the only instruction asked for by plaintiff and given for him by the court, to the giving which said instruction the defendant by his counsel objected: and the court overruled the objection and the defendant excepted to the opinion of the court

The defendant asked the court to give the jury the three following written instructions:

1st Will the court instruct the jury

that they cannot render a verdict in this case for a larger amount than the sum endorsed upon the summons as the debt claimed by the plaintiff

Refused

2° That if there is no amount endorsed upon the summons as the debt claimed by the plaintiff he cannot recover no more than a nominal sum

Refused

3° That while the hogs were upon the land of the defendants and under his control they were not running at large

Given

The court refused to give the first and second and gave the third, and to the refusal of the court to give the said first and second instructions the defendant excepted

The summons in this case was in the words and figures following viz:

State of Illinois } The people of the State of Illinois
Putnam County } ss to any Constable of said County
Greeting:

You are hereby commanded to summon John L Eaton to appear before the undersigned a justice of the peace of the said county at his office in Princeton on the 22d day of October instant at one o'clock P.M. to answer the complaint of Samuel Graham of a plea of debt on the statutes to wit "An act to prevent swine from running

at large in certain counties, approved February 10th 1849, to his damage not exceeding One Hundred Dollars and Have you then and there this precept.

Given under my hand and seal of the said justice this 18th day of October 1849

Jos. Waldo (Seal)

And there were endorsed upon the summons the words and figures following

Graham vs Eaton

Summons

"Served by reading to the within named de-
"fendant this 16th day of October 1849

" Fees — Serving Summons 25
" Travel 3 miles 15
40

Charles Stevens
Constable

"to this sentiment would be useless — To say that
"any man's rights are compromitted, by having a
"darker skin than his neighbors would be saying
"what no decent or intelligent man would dare to say"

The jury rendered a verdict for plaintiff for Ninety Dollars, The defendant moved the Court to arrest the judgment, which motion was overruled, and to the opinion of the Court in overruling said motion in arrest of judgment the defendant excepted.

And said defendant prays the court to sign and seal this his bill of exception which is done

Theophilus L. Dickey (Seal)

To wit on the sixth day of May A.D. 1850
The said defendant filed his appeal bond in the words and figures following to wit:

Know all men by these presents that we John L. Eaton and Justus Stevens and John Vaughan of the County of Bureau and State of Illinois are held and firmly bound unto Samuel Graham also of the same County in the penal sum of Two hundred dollars current money of the United States for the payment of which well and truly to be made we bind ourselves, our heirs, executors and administrators jointly severally and firmly by these presents, Witness our hands and seals this sixth day of May A D 1850

The condition of the above obligation is such, that whereas the said Samuel Graham did on the fifth day of April A.D. 1850 in the circuit court in and for the County aforesaid recover a judgment against the above bounden John L. Eaton for the sum of Ninety dollars debt and twenty four & 45/100 Dollars Costs; from which the said John L. Eaton has prayed an

appeal to the supreme court of the said State:

Now if the said John L Eaton shall duly prosecute his said appeal with effect, and shall moreover pay the amount of the judgments, cost interest, & damages rendered and to be rendered against him in case the said judgment shall be affirmed in the said supreme court, then the above obligation to be void otherwise to remain in full force & virtue

John L Eaton (Seal)
Justus Stevens (Seal)
John Vaughan (Seal)

Taken and entered into before me at my office in Princeton in said county this sixth day of May A.D. 1850

Justin H Olds
Clerk of circuit court

State of Illinois
Bureau County } I Justin H Olds clerk of said court in and for said county do hereby certify that the foregoing is a true and correct copy of all the orders of the court in the above entitled cause, and also the defendants bill of exceptions including the instructions of the court to the jury and the summons originally issued in said cause with all the endorsements thereon, & also the appeal bond filed by said defendant as the same appear of record and on file in my office In witness whereof I have hereunto set my hand and the seal of said court at Princeton this Eleventh day of June in the year of our Lord One Thousand Eight Hundred and Fifty

Justin H. Olds Clerk

[1823-5]

John L Eaton } Supreme Court of Illinois
vs } 3d division June Term 1850
Samuel Graham }

And now comes the appellant & saith that there is manifest error in the record & proceedings in this cause in this to wit

The court erred in rendering judgment for the plaintiff below

The court erred in overruling the motion of the defendant below to dismiss the suit

The Court erred in overruling the motion of the defendant below for a rule upon the plaintiff for security for costs

The court erred in overruling the motion ~~for~~ to arrest ~~overruling~~ the judgment

The court erred in giving Pl'ffs instructions

The court erred in ~~giving~~ refusing defendants instructions

C. S. Leland for Appellants

And the same appellee says that in the matters above assigned for

error in the record of said case
to honor the prays of said Leigh & Tazewell

Gloucester

for appellee

~~The Court erred in refusing defendants instructions~~

Clerks fees
Copy of Record 18 fol. @ 10c 1.80
Cert. & seal .25
$2.05

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John L. Eaton
vs
Samuel Graham

Record

Filed June 12. 1850.
L. Leland Clk.

John L. Eaton
vs
Samuel Graham } Appeal from Duncan.

E. S. Leland Counsel for appellant.

Glenn & Cook Counsel for appellee.

John L. Eaton
v
Daniel Graham } Appeal from Bureau

1st There is nothing in the record showing that Bureau county ever did organize under the general Township law. The court can not take judicial knowledge of that fact.

2d The statute under which this suit is brought is not a form statute within the meaning of the last section of the general Township law, for it does not operate until sixty days after its passage.

3d The Township law enacts nothing inconsistent with the hog law, unless it is the power given to towns to lay a tax on this subject. This is a future power & certainly until towns have this power the law is not repealed.

[1823-8]

4th

It is not insisted that this hog law was not in full force until the county voted to organize under the Town law. How then can it be insisted that it is operative upon the organization of the Town?

5th

But did the delegation of the power to legislate to the towns ipso facto repeal all laws heretofore existing in relation to matters about which towns may legislate? Why are not sovereign States so? The rule in them does not negative all right in the State

6th

If the construction contended for be correct then from the time of the passage of the township law all laws in relation to the running at large of Jacks & Stallions & all laws in reference to fences

7th

~~The Jaw~~

When the provisions of a revising statute due to take effect at a future day are the statute

contains a clause repealing a former statute upon the same subject the repealing clause will not come into operation unless the other provision comes into operation

Spalding v Alford 1 Pick 33. 37

2 Blackf 249 { Statutes enacted at the same Session of the Legislature are to be taken in Pari Materia & should receive a construction which will give effect to each

Ludlow v Johnson 3 Ham 553. Crunch quistion v Jeffries 4 Burrow 2460 } Both Statutes are to stand if possible

2 Pick 126 2 Monroe 80

Bouce v Schuyler 4 Gilm 221

As to the endorsement on the back of the Summons

1 Southard 88

As only to form of ~~subs~~ summons

Swift v Woods 3 Blackf 97

It was too late to make the objection after the trial for the 1st time

as to the rule for security for costs

When was security for costs the record dont show that there was not

Besides it is waived
Robertson v M. Co. 5 Gilm. 559

Besides the defendant appealed this suit, & this Court has decided that a defendant cannot himself appeal & the circuit court rule the plaintiff to give security for costs,

Tuesday & Wednesday = no part of the record

Graham v Cotton
Brief
Geo ~~Plaintiff~~
defendant in
error.