

8545

No. _____

Supreme Court of Illinois

Daniel Bain

vs.

C. C. Hopkins

71641  7

No. 1

Samuel Baird vs G. Hopkins in the Wayne Circuit Court

Summons State of Illinois }
Wayne County } SS

The People of the State of Illinois
to the Sheriffs of said County Greeting. We
command you that you summon Clinton G.
Hopkins if he shall be found in your County
personally to be and appear before the Circuit
Court of said County on the first day of the
next Term thereof to be holden at the Court
house in Springfield on the second Monday
of September ^{next} to answer to Samuel Baird of
a plea of trespass on the case to his damage
one hundred and fifty dollars. as he says and
have you then there this writ. and make return
thereon in what manner you execute the said



Witness Joseph G. Barkley Clerk of our
said Court and the Seal thereof at
Springfield this 9th day of August AD 1855

J G Barkley Clerk

Which summons is endorsed as follows

Endorsement served by Reading to the within named
Clinton G Hopkins this 18th of August 1855

A Campbell Sheriff W.C.

[2545-2]

Daniel Davis

vs

Case

Johnston & Hopkins

Declarations

In the Circuit Court of Wayne

County September Term AD 1855

1. Daniel Davis Plaintiff in this Suit complains of Johnston & Hopkins Defendant in this Suit summoned to answer the said Plaintiff of a plea of Trespass on the case to the Plaintiff Damaged of \$150. as he says for that when as here to fore to wit: on the 4th day of December 1854. at the County of Wayne and State of Illinois. the said Plaintiff at the Special instance and request of the said Defendant. delivered to the said Defendant a certain instrument in writing for the payment of Money. Made by one Morris Williams. as Principal and one Justice A. Drake and the said Plaintiff as Securities in favor of the School Commissioned of Franklin County. State of Illinois. to be taken by him the said Defendant to Langsam sub County to be collected by him the Defendant for the use of him the said Plaintiff for a certain reasonable amount to be there for paid by the said Plaintiff to the said Defendant in that behalf. Which said Instrument was for the payment of the sum of \$15 and with the interest due there on amounted to a large sum of Money to wit: the

Sum of \$94. Subject to a credit of \$8.50 cents
 or thereabouts, and the said Plaintiff avers
 that at the time of the delivery of the said
 Instrument to him the said defendant the same
 was over due and was of great Value to wit:
 of the Value of \$86.50 being the amount due
 on said instrument after deducting said
 credit and it thereupon became and was the
 duty of him the said defendant to collect the
 said sum of Money in said instrument speci-
 fied and the interest due thereon from him
 the said Menorris Williams for him the said
 Plaintiff and to pay over the amount thereof
 or return the said instrument to him the said
 Plaintiff in case he failed to collect the
 amount due thereon (when he the said defendant
 should thereunto afterwards be requested) within
 a reasonable time, from the delivery thereof
 to him the said defendant as aforesaid
 but the said Plaintiff in fact saith that
 the said defendant hath not collected of
 him the said Menorris Williams and paid
 over the amount due on said instrument
 to him the said Plaintiff or returned the
 said instrument to him the said Plaintiff
 altho a reasonable time hath long since
 elapsed since the delivery thereof to him as
 aforesaid and although he the said defendant

Was afterwards to wit: on the day and year
 aforesaid at the County aforesaid requested
 her to do, to collect the amount due on said
 Instrument of him the said Menorris Williams
 and pay over the same to her the said Plaintiff
 or return the said Instrument to her the said
 Plaintiff. In the said Defendant has wholly
 hither to neglected and refused, and still
 neglects and refuses to do: at the County aforesaid to

3. and whereas also heretofore to wit: on the
 day and year last aforesaid at the County
 aforesaid the said Plaintiff at the like special
 instance and request had delivered to the
 said Defendant a certain other promissory note
 made by one Menorris Williams as Principal and
 one Justice A Drake and Daniel Bain as his
 securities in favor of the School Commissioners of
 Franklin County by which said note the said
 Menorris Williams promised to pay the said
 School Commissioners the sum of \$65 with 8 percent
 per annum interest thereon payable half yearly
 in advance bearing date the 23. day of October
 1847 payable 12 months after date. Which said
 Promissory Note was at the time of the delivery
 thereof by her the said Plaintiff to her the said
 Defendant as aforesaid a large sum of money
 of great value to wit: of the value of the sum
 of \$86.50. Which said instrument was then and

these the Property of the Said Plaintiff and was
 delivered by him the Said Plaintiff to him the
 Said defendant to be taken by him to Sangamon
 County to be collected for the benefit of him the
 Said Plaintiff by him the Said defendant of the
 the Said Menorris Williams, for certain reasonable
 charges to be there for paid him by the said plaintiff
 and it then upon became the duty of him the
 Said defendant to collect the said sum of money
 in said note specified of and from the said
 Menorris Williams or return the same to him
 the Said Plaintiff in case the same should not
 be collected by him the Said defendant at a
 for said, within a reasonable time after the
 Delivery thereof to him as aforesaid when
 thereunto afterwards by him the said Plaintiff
 requested so to do, and the said Plaintiff in
 fact, saith that although the said defendant
 failed to collect the said sum of money in said
 Instrument specified with the interest due
 thereon, and altho a reasonable time since the
 Delivery thereof to him has elapsed, yet to return
 the said last mentioned to him the said Plaintiff
 although he was afterwards to wit: on the day
 and year last aforesaid at the County aforesaid
 requested so to do, the said defendant hath
 neither wholly neglected and refused and still
 doth neglect and refuse to wit: at the County aforesaid

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And Whereas also heretofore to wit: on
 the day and Year aforesaid at the County aforesaid
 said the said Plaintiff at the like Special
 instance and Request had delivered to the said
 Defendant for collection a certain other
 promisory note on our Memores Welleans and
 one Justice A Drake to be taken by him the
 said Defendant to Sangamon County and to
 be collected by him the said Defendant for
 him the said Plaintiff, for her services in
 collecting which said note he the said
 Defendant was to receive a large sum of
 Money to wit: the sum of \$15 and the said
 Plaintiff ever that said note at the time
 of the delivery thereof by him the said Plaintiff
 to him the said defendant worth a large
 sum of Money to wit: the sum of \$86.50. and it
 then upon him and was the duty of the said
 defendant to take due and proper care
 thereof, yet the said Defendant not regarding
 his duty in that behalf did not nor would
 take due and proper care of the ^{said} last mentioned
 promisory note but wholly neglected so to do
 and took such care thereof that afterwards
 to wit: on the day and Year last aforesaid
 the last mentioned note became and was
 wholly lost to the said Plaintiff to wit:
 at the County aforesaid &c

And Whereas hereuntofore to wit: on the day and Year last aforesaid at the County aforesaid the said Plaintiff was lawfully possessed of as of his own Property of a certain other Promissory Note of Great Value to wit: of the Value of \$86.50 and one other certain instrument in Writing for the Payment of Money of like Value also a certain Bond of Great Value to wit: of the Value of \$94 and being so possessed then of by the said Plaintiff afterwards to wit: on the day and Year aforesaid at the County aforesaid he casually lost the said last mentioned Note instrument in Writing and bond out of his Possession and the same afterwards to wit: on the day and Year aforesaid at the County aforesaid came to the Possession of the said Defendant by finding: yet the said Defendant well knowing that the said last mentioned Promissory Note and the said last mentioned instrument in Writing were the Property of the said Plaintiff and of right belong and appertain to him hath not as yet delivered the last mentioned Note instrument in Writing or bond or any or either of them to the said Plaintiff although often requested so to do and afterwards to wit: on the day and Year aforesaid at the County aforesaid he converted and disposed of the last mentioned

Instrument impugning and bonds to his own
 use and the said Plaintiff in fact saith that
 by means of the said several Grievances in
 the said several counts of this Declaration
 above mentioned he hath been injured
 and sustained damage to the amount of
 \$150. for the recovery whereof he brings this
 suit

Daniel Baird
 by R. S. Nelson his
 attorney

Demurred

Raynes Circuit Court
 Sept Term 1855

Clinton C. C. of Pleas

Att.

Daniel Baird

and the said Defendant by
 Beecher his attorney comes and defends &c. and
 says that the matters and things in 1, 2, 3,
 & 4 Counts of Plaintiff's Declaration as therein
 set forth and Pleaded are not sufficient
 in law nor is either of them, and that he
 is ready to verify wherefore he prays
 Judgment &c.

R. Beecher for

Defendant

and for Special Cause to 1st count
 Defendant shows it is not, and that said
 instrument was unpaid

No 9

2nd, it is not averred that Minor Williams was solvent and able to pay.

Same objections apply to 2nd Count 3rd Count is defective for the reason that Plaintiff does not aver that said note was unpaid 2nd, that Mr Williams was solvent and able to pay.

4th Count does not sufficiently describe the Instruments

and said Declarations and each Count is uncertain and insufficient

Order of Court

Wayne Circuit Court
Sept Term 1855

Daniel Bain

vs

Robert Hoopkins

Case

at this day heard the parties by their attorneys and the said Defendant filed his Demurrer which is overruled by the Court, and it is ordered that the Defendant have leave to withdraw his demurrer and plead therein &c.

Pleas &

Application

Robert Hoopkins
Att

Daniel Bain

Wayne Circuit Court
Sep 1855 Sept Term

and the said Defendant by Marshall

and Paugh his attorney comes and defends
 the wrong and Injury when He and says that
 he is not guilty of the said supposed wrongs
 and Injuries or any or either of them as
 is in said Plaintiffs Declaration mention-
 -ed and of this he puts himself upon
 the Country &c.

Marshall & Paugh

for Defendant

Traverse & Issue Tendant R. S. Nelson for Plaintiff

Said Plaintiff will take notice that on the
 trial of this Cause Defendant will prove
 that the note specified in the 4 different counts
 of said Declaration was fully paid off and
 satisfied to the payee therein long before
 the delivery of said note to Defendant

And that after the delivery of said note
 to said defendant he the said Defendant
 deposited said note with Isaac Wornath
 for safety and that said Wornath received
 said note and agreed to keep the said
 safely and immediately deposited said
 note in his Desk with his own private papers
 carefully locking said Desk and that after
 wards said note was stolen from said
 Wornath

No. 11

Wayne Circuit Court

Sept. Term 1855.

Samuel Bain

vs

Case

Eleonore Hopkins

Ordered that this cause be continued

Wayne Circuit Court

April Term 1856

Samuel Bain

vs

Case

Eleonore Hopkins

Ordered that this cause be continued

Order of
Court

Wayne Circuit Court

Sept Term 1856

Samuel Bain

vs

Case

Eleonore Hopkins

at this day found the parties by
their attorneys and the said Plaintiff entered
a Motion to the first count in his Declaration
and this cause being submitted to the
court and after hearing the evidence the
court finds for Defendant to which finding
of the court. the said Plaintiff by his counsel
excepts and leave is given till the next term
of this court to file bill of exceptions. it is

therefore considered and adjudged by the Court that the said Defendant recovered of the said Plaintiff his cost about his suit in this behalf expended and then of have execution &c

Bill of Daniel Baird
 Exceptions 101
 Return to G. Hopkins } Case

In the Circuit Court of Morgan County State of Illinois Sept Term AD 1856

Be it remembered, that upon the trial of the above Cause the Plaintiff introduced as evidence a paper writing or receipt which is in the words and figures following to wit:

Left with me by Daniel Baird a note on Menorris Williams & Justice A Drake for collection, which I am to take to Sangamon County & for collection & the said Daniel Baird is to pay me fifteen dollars for my services. December 4, 1854 if collected

G. G. Hopkins

Carroll Austen was then called and sworn as a witness to testify on behalf of Plaintiff who stated, on looking at the above receipt that the said receipt was in the hand writing of the Defendant and that he was present

When said paper writing or Receipt was
 given by said Defendant to Plaintiff, that
 said paper or Receipt was given by said
 Defendant to said Plaintiff for the collection
 of a Note made by Merorris Williams as
 Principal with Justin Doak and Plaintiff
 as Securities to School Commrs of Frank
 Lin County Ills for use of Town 5 R 4 East
 in said County or was given to the Treasurer of
 that Township. Said Note was for the sum of
 \$65 bearing 8 per cent Interest and dated
 3rd October 1847, and was Payable 12 months
 from date. Interest Payable half yearly
 in advance. That Defendant was an
 acting Justice of the Peace in Wayne
 County Illinois and Witness as a Constable
 of said County. That said said sued out
 an attachment against said Williams
 on said Note before said Defendant as a
 Justice of the Peace and \$8.50 was made
 on the Note. That the said attachment
 was sued out in 1854 the exact day it
 was sued out, Witness does not recollect.
 That said Hopkins Defendant, was going
 up North to where said Williams lived
 in Sangamon County and said Plaintiff
 delivered said Note to said Defendant to
 collect of said Williams

That Witness was afterwards present
 with Plaintiff when he demanded said note
 or the money of defendant after defendant's return
 from Springfield some time in the following
 Spring. Defendant said he had lost the note
 and wanted Plaintiff to show him the receipt
 so as he could file his affidavit, that the amount
 and date of said note was entered on defendant's
 Pocket as Justice, that said Plain Plaintiff showed
 Defendant the Receipt which is the same Receipt
 produced, that at the time of giving said receipt
 there was a Certificate endorsed on said note that
 it had been paid off by said Plain Plaintiff
 in this suit, Witness also stated that the name
 of said State on of the makers of said note
 was Justice and not Justice, which was all
 that was proved by said Witness, the Plaintiff
 then rested his case, the Defendant then
 introduced as a Witness Isaac S. Wormath
 who stated that he was at Springfield Ill
 with the Defendant in 1854, when at Springfield
 said Defendant gave Witness said note spoken
 of by Witness, Carlew Austin to get the money
 on it that Witness had the note in his Pocket
 Book, and it was either stolen or lost, his
 Pocket Book with all the papers in it and
 the note amongst the rest was lost, he thinks
 it was stolen from his Desk

No 15

That Witness was shown to see said Williams where he lived, but did not get to see him for the purpose of collecting said note but he failed to do so, and that it was commonly reported that said Williams was insolvent in the neighbourhood and that it was since he lost the note say twelve months, that he went to see said Williams at his residence in Sangamon County, which was all the Plaintiff and the Defendants evidence adduced on the trial of the case

The Plaintiff objected to the introduction of the evidence of the said Wornath at the time he was examined on that point as to the reports of the neighbourhood being considered as evidence by the Court, on the ground that such evidence was hearsay and not competent evidence of the said Williams insolvency and also for the reason that if it proved any thing it only proved said Williams insolvency after the note was lost but the Court stated that the evidence might be heard subject to objections afterwards, and on the final hearing the statements of said Wornath as to the solvency of the said Williams 12 months after the note was lost were rejected, and the Court overruled the further objections, and the Plaintiff then

and there excepted to the opinion of the Court.

The cause was submitted to his Honor Judge Peck who decided in favor of the Defendant, and gave Judgment of Not guilty in his favor and that defendant Recover his cost

To which Judgment of the Court the Plaintiff then and there by his Council excepted and prays that this his bill of exceptions be signed sealed and made part of the record which is done

Edwin Peck

Judge Circuit Court

Court Fees viz.

Clerk's fees	4 85
Sheriff "	4 30
Witnesses "	22 00
	<u>\$ 31.15</u>

State of Illinois
Waukegan County

J. R. B. McCumb, Clerk of the
Circuit Court in and for said County
do hereby certify that the foregoing
Sixteen Pages, contains a true and correct
copy of the Papers and Records in the above
entitled Cause as appears of Record in
my office

In Testimony Whereof I have hereunto
set my hand and affixed the Seal of said Court at Hawthfield
this 18th day of April A.D. 1857

J. R. B. McCumb, Clerk

for copying Record & Papers on file 3.80

Certificate & Seal 35

\$4.15

Postage 12

\$4.27

Daniel Bain Puff in error

17

3 error to hope

Clinton C. Hopkins debt in error

and the 3^d Puff by Reshadow
Came, and say, there is Manifest
error in Judgment record and
process aforesaid, in this that
the Judgment aforesaid in the record
aforesaid is in favor of debt whereas
by the law of the Land the Judgment
ought to have been in favor of
Puff and that in the rendition
of the Judgment aforesaid the Circuit
Court of Wayne County Manifestly
erred and that the Judgment
aforesaid ought to be reversed
and for assigning special Errors
in the record & process aforesaid
the Puff says

first the Judgment of the 3^d Court is
Contrary to Law

second it is Contrary to Law and
evidence

3^d The 3^d Court erred in receiving
hearsay evidence of the workmen
of Drabes

4th The Court erred in allowing to
receive hearsay evidence of Drabes

involving and excluding it.
and ~~in the~~ 5th The Judgment
of the Court ought to have been
put in ~~the~~ ~~place~~, and not for the
defendant

and for these and divers
other errors apparent in the
record & process aforesaid, the plaintiff
by his attorney aforesaid says that
the Judgment aforesaid is erroneous
and says that the same may
be reversed & held for nothing

Restituted for
plaintiff in error

No 27

Record

Daniel Bain
by
C. C. Hopkins

Filed Sept. 13th 1857
Book Johnston Clk
" "

Repaid \$5.00 by
R. S. Nelson Esq

Daniel B. Main
vs
Clinton C. Hopkins
defendant in error

for plaintiff in error

Nov. Term Supreme Court
State of Illinois
1st Seaced decision
November Term A.D. 1857

Daniel Main, plaintiff in error
vs
Clinton C. Hopkins, defendant in error

Page

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Abstract of pliff case
Plaintiff used one Justin Drake
were securities on a promissory note
for Mercomis Williams principal
which note was for the sum of \$65
& was payable to the School Comaunty
one of Franklin County, and in the
Month of December 1844, the prin-
cipal and interest due on said
note amounted off \$86.50. Pliff took up
said note and the certificate of the note its
being paid by pliff was endorsed
on said note.

Defendant was a Justice
of the peace, and pliff ^{had} sued out an attach-
ment on said note before defendant &
made \$8.50 of the account, which deduc-
ted from the principal left \$86.50 due
thereon in December 1844 aforesaid.

Plaintiff ^{affirmed} delivered the note to
defendant ^{to take to Springfield Sangamon}

County

~~William~~ to collect the balance
due thereon and took the following
receipt from him "Left with me
" by Daniel Bain a note on William's
" Williams and Justin Drake for
" Collection and the said Daniel Bain
" is to pay me \$15 for my services if
" collected. December 4th 1844"

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Defendant, when he went to
Springfield gave the note one Isaac H.
Waymouth to get the money on it, who
lost it and when defendant got back
" plaintiff demanded it of him. Where
" plaintiff said he had lost it, and
" wanted to look at receipt to file
" an affidavit, when ~~Plff~~ asked
" him what he wanted to see receipt
" for when he had the account doct,
" so on his docket, but he showed
" deft the receipt and defendant
" did not give up the note called
" for by the receipt. ~~Plff~~ then sued
" defendant. ~~Plff~~ ~~11~~ 12
" months after the loss of the note he
" sent S. Waymouth to see S. Williams
" in Saragossa County where he then
" lived & that the rumor among the
" neighbors was that he was in the

on the trial in the Court below
this evidence was objected to by ~~the~~ ^{the} ~~party~~
~~at the time~~ for the reason that it
was just hearsay & secondly it
related to testimony of witnesses
12 months after the Cause of action
arose. The Court ^{found} overruled the
objection and sustained it and
considered the evidence - which
decision of the Court in overruling
& receiving the evidence of D Williams
unlawfully was excepted by ~~the~~ ^{the} ~~party~~
at the time.

Next also proved on trial
that D Drake's Name was Justice &
not Justice but no objection
was made to the introduction
of the receipt on the ground
of a variance nor did it appear
from the receipt and declaration
what the Christian Name of
D Drake was any more than
that it might be called Justice
or Justice, as there was there
no dot over the, i, in D Drake's
Christian Name.

This above is a succinct
statement of all the facts in the case
so far as they have any bearing on

the question before the Court.

1. 2. 3. 4

The Declaration was in Case said contained 3 Counts. on the 1st Count a Verdict was entered. The second was a Count in law on special ~~pleas~~ bailment to defendant to collect. The third was a Count in Trover in the usual form Counting on the loss a promissory note of the value \$86.50 and the loss of an instrument in writing of like value - plea Not Guilty with Notice of Special Matter 1st That \$^d note was paid off. 2 That def gave it to ~~plff~~ ~~who~~ ~~kept~~ ~~it~~ ~~way~~ ~~for~~ ~~the~~ ~~to~~ ~~collect~~ ~~who~~ ~~lost~~ ~~it~~

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Case was submitted to Court who decided in favor of defendant where upon plff moved for new trial but the Court overruled the motion. to which Judgment of the Court Plff excepted at the time excepted and now brings the cause in this Court alleging amongst other errors - 1st That the Court erred in finding for defendant - 2nd The Court erred in receiving hearsay evidence of testimony of Williams & 3rd Because the Court did not render Judgment in favor of plff for nominal damages at least.

Heater. N. 16. 1887.
A. S. Williams
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Daniel Bain (Plaintiff in the Court below)

vs
Clinton C. Hopkins Defendant
Essex County Court

In the Supreme Court of the State of
Illinois 1st Term & Division Nov. Term
AD 1857

The Clerk will please
issue a Summons to the Sheriff of Essex
returnable 10

Wm. H. Johnson
for plaintiff in
error

No 27
Daniel Bain

Christen C. Hopkins

East Wagon

nacipe

Filed Sept. 1st 1857

Noah Johnston C.M.
||

STATE OF ILLINOIS, }
SUPREME COURT. } ss.

1st Grand Division.

THE PEOPLE OF THE STATE OF ILLINOIS,

To the Sheriff of *Wayne* 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 *Wayne* County, before the judge thereof, between *Daniel Baird, Plaintiff*

and Clinton C Hopkins

defendant, it is said that manifest error hath intervened to the injury of said *Daniel Baird* 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 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 *Clinton C Hopkins*

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 Tuesday 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 *Clinton C Hopkins* notice; together with this writ.

Walter B. Scott

Witness, the Hon. ~~SAMUEL H. TRAT~~, Chief Justice of our said Court, and the seal thereof, at Mount Vernon, this *first* day of *September* in the year of our Lord, one thousand eight hundred and fifty-*seven*.

Noah Johnston
Clerk of Supreme Court.

I have served the within summons on the within
named Clinton G Hopkins on the 18 day of
September 1857 to the County Clerk of Wayne
County

By W. Crayford S

27

David Beebe
Deft in error
vs } Sec. fee

Clinton G Hopkins
Deft in error

Spiff fees
Serving summons 50
Milage 18 120
Returning 60
180



8645

SUPREME COURT OF ILLINOIS.
FIRST GRAND DIVISION.
NOVEMBER TERM, A. D. 1857.

ABSTRACT.

Record Page

Daniel Bain, Plaintiff in Error,
 vs.
 Clinton C. Hopkins def't in error. } Error to Wayne.

ABSTRACT OF PLAINTIFF'S CASE.

12. Plaintiff and one Justice Drake, were securities on a promissary note for Menonis Williams principal, which note was for the sum of \$65 and was payable to the school commissioner of Franklin County, and in the month December 1844 the principal and interest due on said note amounted to \$86.50. A certificate of it being paid by plaintiff was endorsed on said note.
- Defendant was a Justice of the Peace, and plaintiff sued out an attachment on said note before defendant and made \$8.50 of the amount which deducted from the principal left \$86.50 due thereon in December 1844 aforesaid.
7. Plaintiff afterwards delivered the note to defendant to take to take to Springfield, Sangamon county, to collect the balance due thereon and took the following receipt from him. "Left with me by Daniel Bain, a note on Menonis Williams and Justice Drake for collection and the said Daniel Bain is to pay me \$15.00 for my services if collected, December 4th 1844."
14. Defendant, when he went to Springfield, gave the note one Isaac H. Warmoth to get the money on it, who lost it and when defendant got back plaintiff demanded it of him; when defendant said he had lost it, and wanted to look at receipt to file an affidavit, when plaintiff asked him what he wanted to receipt for when he had the file dates on his docket, but he showed defendant the receipt and defendant did not give up the note, called for by said receipt. Plaintiff then sued defendant. Twelve months after the loss of the note he sent said Warmoth to see said Williams in Sangamon county, where he then lived, and that the rumor among the neighbors was that he was insolvent. On the trial in the Court below this evidence was objected to by plaintiff for the reason that it was first hearsay, and secondly it related to solvency of Williams, twelve months after the cause of action occurred. The court both overruled the objection and sustained it, and considered the evidence; which decision of the court in overruling and receiving the evidence of Mr. Williams' insolvency was excepted by plaintiff at the time.
- Defendant who proved on trial that Mr. Drake's name was Justin and not Justice, but no objection was made to the introduction of the receipt on the ground of a variance nor did it appear from the receipt and declaration what the christian name of said Drake was any more than that it might be called Justin or Justice, as there was then no dot over the I in said Drake's name.
- The above is a succinct statement of all the facts in the case so far as they have any bearing on the question before the court.
11. The declaration was in case and contained 3 counts, on the first count a nolle was entered. The second was a count in case on special bailment to defendant to collect, the third was a count in trover in the usual form counting on the loss a promissary note of the value \$86.50 and the loss of an instrument in writing of like value—plea not guilty with motion of special matter, first that first note was paid off. Second that defendant gave it to Warmoth to collect, who lost it.
9. Case was submitted to court who decided in favor of defendant, whereupon plaintiff moved for a new trial, but the court overruled the motion; to which judgment of the court plaintiff excepted at the time excepted and now bring the cause in this court, alledging amongst other errors, first that the court erred in finding for defendant, second the court erred in receiving hearsay evidence of insolvency of Williams, and third because the court did not render judgment in favor of plaintiff for nominal damages at least.

NELSON & JOHNSON Attys.,
 For Plaintiff in Error.

Handwritten text in blue ink, possibly a signature or a set of numbers, located in the upper central portion of the page. The text is partially obscured by horizontal red lines. The characters appear to be stylized, possibly representing a name or a date.

Extra

STATE OF ILLINOIS
SUPREME COURT,

SS.

WRIT OF ERROR.

THE PEOPLE OF THE STATE OF ILLINOIS;

To the Clerk of the Circuit Court for the county of *Wayne*

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 *Wayne* county, before the Judge thereof, between

Daniel Bain

plaintiff, and

Clinton C. Hopkins

defendant it is said manifest error hath intervened, to the injury of the aforesaid

Plaintiff

as we are informed by *his*

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 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

Mount Vernon, in the county of Jefferson, on the *1st Tuesday after the 2^d Monday of*
November 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. WALTER B. SCATES Chief Justice
of our said court, and the seal thereof, at Mount Vernon this

first day of *September*

in the year of Our Lord One Thousand Eight Hundred
and Fifty-*Seven*

Walter B. Scates
Clerk Supreme Court.

No 27

Daniel Bain

as $\frac{1}{3}$ part of Em.

Clinton C. Hopkins

Issued & filed 1st Sept. 1857

Wm. Johnston C.M.

SUPREME COURT OF ILLINOIS.
FIRST GRAND DIVISION.
NOVEMBER TERM, A. D. 1857.

ABSTRACT.

Record Page.

Daniel Bain Plaintiff in Error, }
 vs. } Error to Wayne.
 Clinton C. Hopkins def't in error. }

ABSTRACT OF PLAINTIFF'S CASE.

12. Plaintiff and one Justice Drake, were securities on a promissary note for Menonis Williams principal, which note was for the sum of \$65 and was payable to the school commissioner of Franklin County, and in the month December 1844 the principal and interest due on said note amounted to \$86,50. A certificate of it being paid by plaintiff was endorsed on said note.
5. Defendant was a Justice of the Peace, and plaintiff sued out an attachment on said note before defendant and made \$8,50 of the amount which deducted from the principal left \$86,50 due thereon in December 1844 aforesaid.
7. Plaintiff afterwards delivered the note to defendant to take to take to Springfield, Sangamon county, to collect the balance due thereon and took the following receipt from him: "Left with me by Daniel Bain, a note on Menonis Williams and Justice Drake for collection and the said Daniel Bain is to pay me \$15,00 for my services if collected, December 4th 1844."
14. Defendant, when he went to Springfield, gave the note one Isaac H. Warmoth to get the money on it, who lost it and when defendant got back plaintiff demanded it of him: when defendant said he had lost it, and wanted to look at receipt to file an affidavit, when plaintiff asked him what he wanted to receipt for when he had the file dates on his docket, but he showed defendant the receipt and defendant did not give up the note.
15. called for by said receipt. Plaintiff then sued defendant. Twelve months after the loss of the note he sent said Warmoth to see said Williams in Sangamon county, where he then lived, and that the rumor among the neighbors was that he was insolvent. On the trial in the Court below this evidence was objected to by plaintiff for the reason that it was first hearsay, and secondly it related to solvency of Williams, twelve months after the cause of action occurred. The court both overruled the objection and sustained it, and considered the evidence, which decision of the court in overruling and receiving the evidence of Mr. Williams' insolvency was excepted by plaintiff at the time.
- Defendant who proved on trial that Mr. Drake's name was Justin and not Justice, but no objection was made to the introduction of the receipt on the ground of a variance nor did it appear from the receipt and declaration what the christian name of said Drake was any more than that it might be called Justin or Justice, as there was then no dot over the I in said Drake's name.
- The above is a succinct statement of all the facts in the case so far as they have any bearing on the question before the court.
11. The declaration was in case and contained 3 counts, on the first count a nolle was entered. The second was a count in case on special bailment to defendant to collect, the third was a count in trover in the usual form counting on the loss a promissary note of the value \$86,50 and the loss of an instrument in writing of like value—plea not guilty with motion of special matter, first that first note was paid off. Second that defendant gave it to Warmoth to collect, who lost it.
9. Case was submitted to court who decided in favor of defendant, whereupon plaintiff moved for a new trial, but the court overruled the motion; to which judgment of the court plaintiff excepted at the time excepted and now bring the cause in this court, alledging amongst other errors, first that the court erred in finding for defendant, second the court erred in receiving hearsay evidence of insolvency of Williams, and third because the court did not render judgment in favor of plaintiff for nominal damages at least.

NELSON & JOHNSON Attys.,
 For Plaintiff in Error.

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David C. Bain

C. C. Hopkins

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How many...

Cost bill... Page 241