

No. 3276

Supreme Court of Illinois


Benj. Hays.

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vs.

John Insley.

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(379)  7

State of Illinois  
Champaign County } 23

Plas, before  
the Honorable David Davis Judge of the 1<sup>st</sup>  
Judicial Circuit Court of the State of Illinois  
holding Court by exchange with the Hon. O. L.  
Davis Judge of the twenty seventh Judicial Cir-  
cuit of the State of Illinois and sole presiding  
Judge of the Champaign County Circuit Court,  
at a term thereof began and held at the Court  
House in Urbana in the County and state aforesaid  
on the first Monday of, it being the 5<sup>th</sup> day of  
April in the year of our Lord One Thousand  
Eight Hundred and Sixty one and of the  
Independence of the United States the Eight,  
fifth.

Present Hon David Davis Judge as aforesaid  
J. S. Cannon States Attorney  
W. L. Wright Shff. Champaign County  
Walter W. R. Lomen Clerk

Be it remembered, to wit, on the 6<sup>th</sup> day of March  
in the year last aforesaid, John Smiley, by William  
D. Somers & John E. Cone Partners as Somers &  
Cone his Attorneys, filed in the Office of the Clerk  
of said Circuit Court an order for Writ of Habeas Corpus  
which order is in the words and figures following,  
to wit,

John Smiley vs Benjamin Hays  
Champaign Circuit Court  
April Term 1861

Accumfist. Dam. \$ 200.

Clerk Please issue  
summons in above cause, returnable to April  
Term 1861

& Oblige

Somers & Coe "

In obedience to which order, the Clerk aforesaid  
issued summons in the following words and  
figures, to wit.

CIRCUIT COURT SUMMONS.—Sold by Chas, Sonne, 51 and 53 La Salle Street.

STATE OF ILLINOIS,

CHAMPAIGN COUNTY.

} ss.

The People of the State of Illinois, to the Sheriff of Said County--GREETING:

WE COMMAND YOU, that you SUMMON

Benjamin Hayes

if he shall be found in your County, personally to be and appear before the Circuit  
Court of said Champaign County, on the first day of the next term thereof, to be  
holden at the Court House in Urbana, in said County, on the first Monday of  
April next, to answer unto

John Smiley

in a plea of trespass on the case on promises

to the damage of the said plaintiff as he says, in the sum of 200

Two Hundred Dollars.

And have you then and there this writ, with an endorsement  
thereon, in what manner you have executed the same.

WITNESS, W. H. SOMERS, Clerk of our said Court, and the  
seal thereof, at Urbana, this eleventh day  
day of March A. D. 1861



W. H. Somers Clerk.

Per Jm. H. Somers Esq.

Upon which Summons the Sheriff appeared  
and soed his return in the following words and  
figures to wit.

"Served this writ on the within named  
Benjamin Hays by reading the same to him  
the 13<sup>th</sup> day of March 1861

R. C. Wright Sheriff"

And afterwards, to wit, on the 9<sup>th</sup> day  
of March in the year last aforesaid, John Smiley by  
Somers & Coe his Attorneys aforesaid, filed in the  
Office of the Clerk aforesaid, a declaration and note  
which are in the words and figures following, to wit.

"State of Illinois }  
Champaign County } Champaign County Circuit  
Court April Term 1861

John Smiley

vs.

Benjamin Hays

Summit

Summit. Dam. \$ 200.

John Smiley the Plaintiff in  
this suit complains of Benjamin Hays Defendant  
in this suit summoned to, in plea of trespass on  
the case upon promises.

For that whereas the said De-  
fendant, heretofore to wit: on the 25<sup>th</sup> day of July  
A. D. 1857 at the County and State aforesaid by  
the name style and description of B. Hays made  
his certain promissory note in writing, bearing

date a certain day and year therein mentioned  
to wit: the day and year aforesaid and thereby then  
and there promised to pay one day after date to  
one S. Trimble the sum of One Hundred and  
sixteen dollars for value received of him and  
then and there delivered the said promissory note  
to the said S. Trimble. And the said S. Trim-  
ble to whom the said promissory note was made  
and to whom the payment of the said sum of  
money in the said promissory note specified was  
to be made and before the payment of the said  
sum of money in the said promissory <sup>note</sup> specified  
to wit on the day and year aforesaid, at the County  
and State aforesaid, endorsed the said promissory  
note by which said endorsement, he the said  
S. Trimble then and there ordered and appointed  
the said sum of money in the said promissory  
note specified to be paid to the said Plaintiff and  
then and there delivered the said promissory note  
so endorsed and assigned as aforesaid to the said  
Plaintiff, by means whereof and by force of the  
Statute in such case made and provided the  
said defendant became liable to pay the said  
sum of money in the said promissory note  
specified according to the tenor and effect thereof.

And being so liable the said de-  
fendant in consideration thereof, afterwards, to wit:  
at the day and year aforesaid, at the county and

state aforesaid, undertook and faithfully promised to pay the said Plaintiff the said sum of money in the said promissory note specified according to the tenor and effect thereof.

And whereas afterwards, to wit: on the 4<sup>th</sup> day of March A. D. 1861 at the County and state aforesaid the said Defendant was indebted to the said Plaintiff in the further sum of \$200, for the price and value of goods wares and merchandise sold and delivered to the said Defendant by said Plaintiff at the special instance and request of the said Defendant and the sum of \$200 for money had and received by said Defendant for the use of the said Plaintiff, and the sum of \$200 for money by them and there lent by said Plaintiff to said Defendant at his request. And the sum of \$200 for money then and there paid by the said Plaintiff to and for the use of the said Defendant at his request. And the sum of \$200 for balance of an account found due said Plaintiff from Defendant upon an account then and there stated between them. And the sum of \$200 for so much money before that time then due and payable from the debt to said Plaintiff for interest upon and for the forbearance of divers large sums of money before that time then due and owing from the said Defendant for divers long spaces of time before then elapsed at the like special instance and request of the said defendant, and the sum of \$200,

for work and labor and materials for the same provided by Plaintiff to and for the use of the Defendant at his special instance and request And being so indebted, he the said defendant in consideration thereof afterwards to wit undertook and faithfully promised to pay the said several sums of money last mentioned. Yet the said Defendant have not as yet paid the said several sums of money or any or either of them or any part thereof to the said Plaintiff, although often requested so to do. - but to pay the same the said Defendant hath hitherto wholly neglected and refused and still doth neglect and refuse to the Plaintiffs dam \$ 200, and therefore he brings his suit &c

Somers & Coe

Pliffs Attys.

Note sued on

\$116.00

One day after date I promised to pay to L. Trimble the sum of One Hundred and sixteen dollars, for value received of him this the 25 day of Julye A. D. 1857

On the back of said note indorsed

as follows "Pay John Smalley"

W. Hays

(signed) "L. Trimble"

Benjamin Hays

To John Smalley

Dr.

To money lent and advanced

\$ 200

" " paid laid out and expended

\$ 200

Recd this 10th day  
of Sept. A. D. 1857  
on the within of \$116.00

To money had and received to and for the use of said Plaintiff	\$ 200.
To goods wares & merchandise sold and delivered	\$ 200.
To labor and services	\$ 200.
To balance due on account stated	\$ 200.
To work labor and materials	\$ 200.
To interest forborne	\$ 200.

Be it remembered, to wit, on the 13<sup>th</sup> day of June in the year 1801 aforesaid, it being the term of Court aforesaid, certain proceedings were had and entered of record in said <sup>Court</sup>, which proceedings are in the words and figures following, to wit.

2413 John Shaley  
 vs.  
 Benjamin Hays } Accusant

And now comes the Plaintiff by Somers Stone his Attorneys and on his motion the said Defendant is ruled to plead to Plaintiffs Declaration by the first of July and this cause stands continued.

And afterwards, to wit, on the 28<sup>th</sup> day of June in the year last aforesaid, Benjamin Hays by J. S. Sheldon his Attorney filed in the office of the Clerk of said Circuit Court, certain pleas and offset which Pleas and Offset are in the words and figures following, to wit.



2413

Benjamin Hays  
vs.  
John Husley

Circuit Court

August Term 1845

And the said Defendant by  
Sheldon his Attorney comes and defends the wrong  
and injury when he and says that he did not  
undertake and promise ~~in~~ in manner and form  
as said Plaintiff hath complained against him  
and of this he puts himself upon the Country

J. C. Sheldon Atty for Deft.

And for further plea in this behalf, said defendant  
says that said promissory note mentioned in said  
Plaintiff's Declaration was not indorsed by one L.  
Trimble to said Plaintiff upon the day of the  
making thereof as said Plaintiff hath asserted  
but that the same was indorsed by said L.  
Trimble long after the maturity of said note and  
of this the said Defendant puts himself upon  
the Country

J. C. Sheldon Atty for Deft.

Plaintiff will take notice that the  
above named Defendant will on trial of this cause  
give in evidence and insist that the said L.  
Trimble indorser of the note named in Plaintiff's  
declaration was before and at the time of the in-  
dorsement and sale of said note to said Plaintiff  
indebted to said Defendant by way of a certain

promissory note made by Simon said, L.  
Trimble, to said defendant of which the  
following is a copy " § 161. <sup>25</sup> On or before  
" the 4<sup>th</sup> day of April next I promise to pay to  
" Benjamin Hays the sum of One Hundred  
" and thirty one dollars and twenty five  
" cents for value recd of him this the 25<sup>th</sup>  
" of July A. D. 1857 - (signed) Simon Trimble"

Plaintiff will further take  
notice that said defendant will on trial of  
the cause offer said last named note as offset  
or so much of it as shall offset and pay off  
and discharge the note named in Plaintiffs  
declaration

J. S. Sheldon Atty. for  
Defendant

Proceedings, continued before the Hon. O.  
L. Davis Judge of the Twenty Seventh Judicial  
Circuit of the State of Illinois, and also pre-  
siding judge of the Champaign County  
Circuit Court at a term thereof began and  
held at the Court House in Urbana in the  
County and State aforesaid on the first Mon-  
day of, it being the fifth day of August in  
the year of our Lord One Thousand Eight  
Hundred and Sixty one and of the Independence  
of the United States the Eighty Ninth.

Present: Hon. O. L. Davis Judge as aforesaid  
" J. S. Cannon Atty. 27<sup>th</sup> Judicial  
" H. C. Wright Sheriff said County.  
Attest W. H. Homer Clerk said Court.

Be it remembered, to wit: on the 16<sup>th</sup> day of August in the year last aforesaid at being the Term of Court last aforesaid, certain proceedings were had and entered of record in said Court which proceedings are in the words and figures following, to wit:

John Wesley  
2413 }  
Benjamin Hays } Appellant

And now come the parties by their respective Attorneys, and issue being joined for trial put themselves upon the Country. Whereupon came a jury to wit W. D. Clapp, James Meyers, C. D. Wright, M. E. Bruce, William Craig, S. P. Percival, B. C. Morris, J. C. Sperry, F. A. Edwards, M. F. Wright, J. W. Mansfield & S. S. Key who being duly tried, elected and sworn to well and truly try the issue herein joined upon their oaths do say. That the jury find the issue for the Plaintiff and assess his damages upon the note in Plaintiff's declaration mentioned at the sum of \$159.<sup>36/100</sup>. It is therefore considered by the Court that the Plaintiff recover of the Defendant the aforesaid sum of \$159.<sup>36/100</sup> damages and also his costs therein expended and that he have execution therefor

\$144.22

And afterwards, to wit: on the 9<sup>th</sup> day of October in the year last aforesaid, comes the said Defendant by Sheldon & Jaeger his Attorneys and files his order for a writ of error to the Supreme Court of this State which order is in the words and figures as follows to wit:

State of Illinois }  
Champaign County }

John S. ... } Champaign County  
... } Circuit Court  
Benjamin ... } Common Law Sheriff

J. W. ... & ... Clerk of said Court

And now at this day comes the said  
Defendant by his attorneys Sheldon & ...  
and asks for a writ of Error in said cause  
to the Supreme Court of said State.

Sheldon & ...  
Attys for Defendant.

State is returning }  
Champaign County }

J. W. H. ... Clerk of the Circuit Court in and for said  
County, do hereby certify, that the foregoing trans-  
cript of papers filed and proceedings had, in  
the above entitled cause, is truly copied from  
the files and records of my office.

Witness my hand and official  
seal this 11<sup>th</sup> day of October  
A. D. 1861

W. H. ... Clerk

Cost of Transcript \$ 2.50 paid by ...  
W. H. ...

Benjamin Hays. Plaintiff in error

John Insley. Defendant in error.

And the said plaintiff Hays  
and says that in the record and  
proceedings herein there is manifest  
error in this to wit. Rendering judgment  
for said Insley, in not giving judgment  
ent for said Hays. Proceeding to  
trial without issue joined, in giving  
judgment for more than amount  
due on note principal and interest.

E. B. Henderson

for B. Hays in error

Benjamin Hays

John Insley

Manuscript

Filed Nov. 27/61

W. B. Henderson  
clerk

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State of Illinois, } ss.  
SUPREME COURT.

THE PEOPLE OF THE STATE OF ILLINOIS,

To the Sheriff of *Champaign* 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 *Champaign* County, before the Judge thereof, between

*John Insley, Plaintiff*  
and  
*Benjamin Hays*

Defendant, it is said that manifest error hath intervened to the injury of the said *Defendant*

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 Springfield, 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 *Plaintiff*

*John Insley,*

that *he* be and appear before the Justices of our said Supreme Court, at the next term of said Court to be holden at Springfield, in said State on the first Tuesday after the first Monday in January 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 and there the names of those by whom you shall give the said *Plaintiff, Insley,* notice, together with this writ.

Witness, the HON. JOHN D. CATON, Chief Justice of our said Court, and the seal thereof at Springfield, this *27<sup>th</sup>* day of *November* in the year of our Lord, one thousand eight hundred and sixty-*one*.

*Wm. Furness* Clerk of the Supreme Court.

I have this 14th day of December A.D. 1861 Executed  
the within writ in person by reading the same to  
the within named John Insley as I am herein Committed

Sherriff's fee for mileage 20  
" " " Service 50  
" " " Returns 10  
" " " " \$150

D. C. Wright  
Sherriff

Supreme Court,  
SECOND GRAND DIVISION

*Benjamin Wright*

Plaintiff in Error.

vs.

*John Insley*

Defendant in Error.

SCIRE FACIAS.

Filed Dec 17 1861

*Wm. Kenney*  
Clerk S. C.

*Chas. S. L. Seal*



*Kays & Insley*

SUPREME COURT  
OF  
ILLINOIS,  
SECOND GRAND DIVISION.

*3<sup>rd</sup> 76*

**50**

*1862*

~~*R. R.  
for  
non-paid*~~

*H. V. I.*

*1862*