

11883

No.

Supreme Court of Illinois

Clay, et al.

vs.

Boyer, et al.

71341

No. 46.

David Clay et al.

vs.
Jacob Boyer

1849

11883

| | | | |
|---|---|--------------------------------|-------------------------------|
| Jacob Boyer | } | Appeal | |
| " | | | |
| David Clay and | } | April Term Circuit Court 1849- | |
| Isaac C. Stoneman | | | |
| | | Ply costs - clerk fees - | |
| July papers taken. Bond & issuing injunction | | | 50 |
| Dock. cause 2 terms 25 Issuing sum. 50. | | | 75 |
| July. 4 papers 37 ² Issuing 1 subp ^a 50. 2 aff. of mt. 25 | | | 1.12 ² |
| Entry app 12 ² Atty 12 ² Sup. 3 ent. 18. | | | 43 ² |
| Call. & sup. July. 18 ² Recy. entry. verdict 12 ² | | | 31 ² |
| Entry mo. for doct 25 - Entry doct 25 - Dock. 25 | | | 75 |
| Entry sub 25 Mak. entry Bill costs 37 ² | | | <u>112²</u> \$4.50 |

| | |
|--------------------------------------|-------------------|
| Court in Court below J. Bechtel J.P. | 2.06 ¹ |
| " " P. Fowler J.P. | 2.37 ² |
| " " J. Baker const. | 3.75 |
| " " Jury fee | 1.50 |

| | |
|--|----------------------------------|
| Witness fees 14 Supps. J.P. Kohler, J. Liebkeitz, J. Burtel, Wm Baker, D. Dalton, M. Doll, R. Hammond, W. Stoneman, J. Burtel, M. Black, | <u>5.50</u> \$15.18 ² |
|--|----------------------------------|

| | |
|--|-------------------------|
| Shuffler for Overwritten Exs. & entry sup. 18 ² | 18 ² |
| " " " " sum. | 1.25 |
| " J. A. Shrocky " " 1 subp ^a | <u>1.06¹</u> |
| | 3.00 |

| | |
|---|------------------------|
| County for Jury fee | 3.00 |
| Witness fees Henry Supps 2 days J.P. Kohler 4 days. | 3.00 |
| J. A. Shrocky bill for money & call. Aug. | <u>112²</u> |
| | \$29.31 ¹ |
| clerk fees for cert & seal to this Bill | <u>50</u> |
| | \$29.81 ¹ |

State of Illinois }
 Stephenson County } J. John A. Clark clerk of the Circuit Court
 in and for the said County of Stephenson do hereby certify that

the foregoing is a true copy from my fe Book of the Pff.
costs in the said Circuit Court in the said Cause of
Jacob Boyer against D. Clay & J. C. Stouman

In witness whereof I have hereunto set
my hand and affixed the seal of the said
Court at Newport this 7th day of April
1849 John A. Clark. Clerk

Jacob Boyer

or

Daniel Clay & Stouman

Pls of Com.

760

Jacob Boyer

v.

} April term Cir. Court AD 1849

David Clay and
Isaac C. Stummam }

} Defendants costs clerk fees

Enty. app 12² atty. 12² Issuing & Subpenas. 400 \$4.25

July 11 papers 18² aff. of 1 wit. 12² 81¹

Enty. mov. in arrest of Judg. 35 Enty. mov. for new trial 25 50

Enty. order overruling motions 25 Enty. Exceptions 25 50

Enty. wages for appeal 25 Enty. order granting appeal 35 50

July Bond in appeal 50 make senty. Proc costs 37² 87² \$7.43³

Shuff for Over Seer of Puff for exp. & duty 2 subpos 2.43³

" " " " " 1 " 1.81

" " " " " 2 " 1.81⁴

" " " " " 2 " 1.12²

" " " " " 1 " 44 7.12²

Complete Record \$4.12² cut. & seal 50 4.12²

Seal & Seal to this Bill 50

\$19.68³

State of Illinois }
Stephenson County } 3p.

I John A. Clark Clerk of the Circuit Court in and for the said County do hereby certify that the above is a true copy from my fee Book of the costs and charges taxed against the defendant in the above entitled cause in the said Court

In witness whereof I have hereunto set my hand and the seal of the said Court at Freeport this 7th day of April AD 1849

Attest John A. Clark Clerk

Jacob B. B. B.

260

Clay & Stone

Bill of Costs

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Supreme Court, 3^d Grand Division - June Term 1849.

David Clay & Isaac C. Stoneman } appellants.

vs

Appeal from Stephenson.

Jacob Boyer

appellee.

judt. aff. June 22. 1849.

Applic^{ts} costs - Apper. 25; Adv. affg. judt. 25; fil. opinion 6⁴; ent. judt. & opinion 2.25; = 2.81⁴

Copy of judt 50, cert. & seal 50, fil. joins in error 6⁴,

1.06⁴

ent. judt. for costs 25; Adv. for extra. 25; execution 50, fil. & Dk. 18⁴,

1.18⁴

Shiffs. retur. 12¹/₂, bill of costs 37¹/₂, copy 25, ent. for. 25, postage. 20,

1.20

Amount \$ 6.26⁴

A true copy from my fee book as taxed & recorded therein.

L. Leland Clk.

Sup. Court.

Supreme Court
Clay & Stouman

^{vs}
Jacob Boyer

Bill of Costs \$6.26⁴/₁₀₀

State of Illinois, ss.

Supreme Court, Third Grand Division, at Ottawa:

The People of the State of Illinois, to the Sheriff of *Stephenson* County---Greeting:
WE COMMAND YOU, That of the goods and chattels, lands and tenements, and real estate of

David Clay & Isaac C. Steneman _____

you cause to be made the sum of *six* _____ dollars and
twenty six & a fourth ^{cents} *costs* in the said Supreme Court, which _____

Jacob Boyer _____

lately recovered against *them* before the Justices of our said Supreme Court, as appears to
us of record, and make return hereof in ninety days.

WITNESS, the Hon. SAMUEL H. TREAT, Chief Justice
of our said Court, and the Seal thereof, at Ottawa,
this *eleventh* - day of *July* _____
in the year of our Lord one thousand eight hundred
and *forty nine*.

C. Island Clerk of the Supreme Court.

Supreme Court

David Clay vs Isaac C. Stoneman

vs
Jacob Boyer

Execution vs App.

Bill of Costs of 6.26 $\frac{1}{4}$

Fee Bill of 9.54 $\frac{1}{4}$

Chm. r. of 15.77 $\frac{1}{2}$

all the within Execution

ratified in full

J. A. Stronky Shff

Stephen Coms

Filed Feby. 23^d 1850.

D. Ireland Clk.

Rec^d this Execution for collection
July 18. 1849 at the hour of 4.
o'clock P.M. of J. A. Stronky Shff

Rec^d of Isaac Stoneman on the within Execution
Seven Dollars thirty nine cents August 24, 1849
J. A. Stronky Shff

Supreme Court, 3^d Grand Division - June Term 1849.

David Clay & appellants.

Isaac C. Stoneman

vs

Appeal from Stephenson.

Jacob Boyer - Appellee = Judt. appn. June 22^d 1849.

| | | | | |
|---------------------------------------|--------------------------------------|----------------------------|---------------------------|-------------------------|
| appellts costs = Fil. transcript. 20, | Dk. cause 12 ^c , | appn. of appellants 25, | .57 ^c | |
| Fil. appt. of mas 6 ^c , | fil. s. abstracts. 37 ^c , | ent. mas joined 25, | Ent. argt. 25, | .87 ^c |
| Ent. subn. 25, | Ord. taking time 25, | Fee bill 37 ^c , | copy 25, | 1.62 ^c |
| ent. 4 ^c seal 50, | | | | |
| Fil. & Dk. 18 ^c , | Shffs. retn. 12 ^c , | ent. catopn. 25, | Dk. fee 12 ^c , | 1.81 ^c |
| Chks fee for complete record | | | | 4.62 ^c |
| | | | | <u>9.51^c</u> |

Amount \$ 9.51^c

State of Illinois, ss.

Supreme Court—Third Grand Division, at Ottawa:

The People of the state of Illinois to the sheriff of Stephenson county---Greeting:

WE COMMAND YOU, that of the goods and chattels, lands and tenements of _____

David Clay & Isaac C. Stoneman _____ you cause to be made the sum of nine _____ dollars and fifty one & a

fourth _____ cents, the amount of the foregoing bill, which is due and unpaid, and is a true copy from the Fee Book in my office; and hereof make due return in ninety days.

WITNESS, the Hon. SAMUEL H. TREAT, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this

eleventh - day of July _____ A. D. 1849.

Beland Clerk of the Supreme Court.

Supreme Court

Clay & Stoneham

Jacob Boyer

Fee Bill $\$9.51\frac{1}{4}$

The within Execution
Satisfied in full
F. A. Strouty Shff,
Stephens County

Filed Feby. 23rd 1850.
J. Seland Clk.

Rec^d at this Execution for collection July 18. 1849
at the Court H. O. Clerk S. M. J. A. Strouty Shff. S. C.

Stoneman & Wiley } Appeal from Stephenson &
vs. } Sup. Ct. June Term 1849
Jacob Buyer }

And now come the said appel-
lants and say, that in the records & proceedings aforesaid, & in the rendition of the judgment aforesaid, there is manifest error in this, to wit, that the circuit court rendered a judgment in favour of the pff. below against the appellants - whereas by the law of the land, the said court should have rendered a judgment in favour of the appellants & against the pff. below - & for further error, the said appellants assign the following - to wit,
1. The said circuit court erred in refusing to give the instruction asked for by the appellants -
2. The circuit court erred in overruling the motion for a new trial, made by the appellants -
wherefore, for the errors aforesaid, & for other errors in the record & proceedings aforesaid, & in the rendition of the judgment aforesaid, said appellants pray that said judgment may be reversed, annulled & for nothing esteemed, & they be restored to what they have lost by reason thereof -

By their atty. Ouslow Peters

State of Illinois }
 Sixth Judicial Circuit } sp.-
 In Daviess County }

Appeal in the Circuit Court begun
 and held within and for said County of Stephenson
 on the second day of April A.D. 1849 before the Hon.
 Benjamin R. Sheldon presiding Judge in the said
 Sixth Judicial Circuit of the said State of Illinois

Jacob Boyer }
 " }
 David Clay and }
 Isaac L. Stouman }

Be it remembered that heretofore
 to wit: on the 31st day of May A.D. 1848 the said
 defendants, ^{Plaintiff} filed in the office of the Clerk of the said
 Court a transcript from the Justice of the Peace, whose
 manuscript is in the words and figures following to wit:

Transcript

Jacob Boyer }
 " } Demand for \$ 90.00
 I. L. Stouman } on trespass on a change of venue
 David Clay } from J. Bechtol as I. P. -

May the 20th 1848 parties came before me, jury
 called and sworn - cause submitted, jury returned
 a verdict of not guilty
 judgment against plaintiff for cost - J. Bechtol
 fees \$ 2.06 - my fees \$ 1.87 - Const. fees \$ 3.75 witness
 fees \$ 6.00 - H.ripps, J. P. Haler, J. Linsbush, John Bartel,
 Wm Barw, Daniel Dalton, M. Doll, R. Hammond,
 Wm Stouman, J. Barton, M. Clark, claimed atten-
 dance - Jury fees paid by deft. \$ 1.50 - transcript paid
 for by plaintiff 25 cts. returning appeal on Docket

25 not paid -

State of Illinois }
Stephenson County }
I. P. Fowler one of the acting
Justices of the Peace do certify that the above is
a true copy with the papers in the above entitled
suit — Given under my hand and
seal this 30th day of May 1848 —

P. Fowler J. P. —

which said transcript is endorsed as follows.

'Filed May 31. 1848. John A. Clark Clerk.

And on the same day the said defendant ~~for~~ plaintiff
filed his appeal Bond in the said cause in the office
of the said Clerk — which bond is in the words and
figures following to wit:

Bond

"Know all men by these presents that we Jacob
Boyer & Rudolph P. Kohler are truly and firmly
bound unto David Clay and Isaac S. Stoneman
in the penal sum of one hundred and fifty
dollars to the payment of which will and
truly to be made, we bind ourselves and each
of our heirs, executors, and administrators, jointly severally,
firmly by these presents; sealed with our seals, and
dated this 30th day of May A.D. 1848

The condition of this obligation is such, that whereas
as the above named David Clay and I. S. Stone-
man did on the twentieth day of May before
Philip Fowler Justice of the Peace for Stephenson
County, recover a judgment against the above
named Jacob Boyer for costs, from which said
judgment the said Jacob Boyer wishes to appeal
to the Circuit Court of Stephenson County. Now if
the said Jacob Boyer shall pay the said judgment
for costs and all costs, in case the judgment shall
be affirmed on the trial of the appeal and whatever

judgment shall be rendered by the Circuit Court upon the trial or dismissal of the appeal then this obligation to be void; otherwise to remain in full force and virtue

Approved. } Jacob Seitzger (seal)
 John A. Clark } F. P. Köhler (seal)
 CLK

which bond is endorsed as follows, to wit:

"Filed May 31. 1848 John A. Clark CLK"

and afterwards to wit: on the first of June AD 1848 the said plaintiff filed in the office of the said Clerk the following transcript to wit:

transcript

| | | |
|-------------------|-----------------|--|
| Jacob Boyer | 3 | Action on Debt Demand |
| " | 4 | 9000 - summons issued |
| Isaac L. Stoneman | 5 | May 12 th 1848 made return = |
| and David Clay | 3 | able May 20 th 1848 at 1 O'clock P.M. |
| Entry | 15 ^c | Given to J. Baker Clerk, returned |
| Summons | 18 ^d | in due time executed by reading |
| Swearing | 2 | to defendants - by order of Plaintiff |
| Defendants | 12 ^c | Subpenas issued for John Bartel, Henry |
| | 25 | Hippes J. P. Kohler, Jns. Liebke - by |
| Verdict | 25 | order defendant Job Barton, William |
| costs | 301 | Stoneman Robert Hammon, John |
| | | Layman, Madison Clark, Martin |
| | | Dole D. A. Knowlton and John Howe |

Parties met and after pleading called for change of venue, which was granted

I hereby certify that this is a true copy of the proceedings before me

Isaac Bechtel J. P. (seal)

which transcript is endorsed as follows

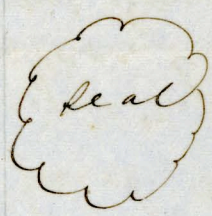
"Filed June 1. 1848 John A. Clark CLK"

Then was issued out of the Clerk's office of the said Court on the 31st day of May A.D. 1848 a summons in the said cause, which summons is in the words & figures following to wit:

Summons

State of Illinois } the People of the State of Illinois
Stephenson County } To the Sheriff of said County, Greeting:

We command you that you summon David Clay and J. C. Stoneman if they 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 the town of Newport in the said County, on the second Monday of August next, to answer unto Jacob Boyer in an appeal - and have you then and there this writ, with an endorsement thereon in what manner you shall have executed the same



Witness John A. Clark Clerk of our said Court, and the seal thereof, at Newport in said County, this 31 day of May A.D. 1848

John A. Clark Clerk

which summons was returned by the Sheriff endorsed as follows

Return

"Executed the within by reading the same to the within named Clay & Stoneman June 2^d 1848

Service 1.00 mileage 12⁵ Return 12⁵ - \$ 1.25

O. W. Brewster Sheriff

And on the same day, to wit: on the said 31st day of May A.D. 1848 then issued out of the said Clerk's office a subpoena of which the following is a copy to wit:

Subpoena

State of Illinois } the People of the State of Illinois
Stephenson County } To the Sheriff of said County, Greeting:

To Philip Fowler Justice of the Peace of said County
 You are hereby notified that Jacob Boyer has
 filed an appeal Bond in this office in the case of
 Jacob Boyer against D. Clay and J. C. Stoneman
 on which judgment was rendered by said Justice
 on the 20th day of May 1848 according to Law,
 and that therefore, you are hereby enjoined from
 proceeding any further in said suit, and from
 having any further proceedings in relation thereto
 Witness - John A. Clark clerk of
 our said Court at Jessport, this 21
 day of May 1848
 John A. Clark clerk

which subpoena was returned by the Sheriff enclosed
 as follows to wit:

Return Executed the within by reading the same to the
 within named Philip Fowler Jun 1st 1848 -
 Service so mileage 6^{cts} Return 12^{cts} - " 18^{cts}
 O W Brewster Sheriff

and afterwards to wit: on the 1st day of June 1848
 there was filed in the office of the said clerk by the Justice
 before whom the suit was tried below the following
 declaration to wit:

Declaration before J. P. Jacob Boyer
 " Isaac Stoneman
 Davis Clay } State of Illinois Stephenson Co. ss

Plff complains that the said
 defendants on or about the first day of May A.D.
 1848 entered upon the land of the said Plff in
 said County and then and there bored, bored
 and cut and destroyed several trees growing

upon said land - which said land is described
as follows viz: the South East quarter of the South
East quarter of section five in town twenty six of
Range eight East of the 4th P.M., situate in said
County of Stephenson - and the said Papp avers
that the said def^s did on the day and year
above mentioned cut down, or cut and destroy
the following trees and saplings to wit: 10 red
oak saplings, 10 white oak saplings, 10 plum
trees or saplings - 6 poplar trees or saplings, 4 Burr
Oak trees or saplings on the land aforesaid belong-
ing to said Papp - to his damage of \$100 - and there-
fore he brings suit according to the Statute in
such case made & provided

J. J. Goshorn Papp. atty. -

which said declaration is endorsed "Filed from 1. 1848
John A. Clark clerk"

And afterwards to wit: at the April Term of the said
Circuit Court, on the 4th day of April A.D. 1849. upon
the records of said Court for the said Term there appears
the following entry to wit:

Jacob Byrre }
 3 }
 Dains Delay and } Appeal
 Isaac C. Stouman }

Now at this day came the parties
and their Attornies and upon issue joined, there-
upon came a jury of twelve good and lawful
men to wit: W. P. Davis, Alonzo Lusk, G. B. Barber,
J. Daggett, W. G. Humphrey, John Bolman, Levi Wiggins,
Ferdinand Rabe, Lewis G. Reed, Isaac Stratz, J. Gibler,
and Robert Budgett who were severally duly sworn

trial and term, and after hearing the evidence and arguments of counsel, retired to consider of their verdict, and after a short time returned into court with the following to wit: we find for the plaintiff thirty dollars debt - and thereupon the said defendants by their attorney move the court in arrest of judgment and for a new trial of this cause

and afterwards court on the 7th day of April at the said April term of the said court AD 1849, upon the records of said court for the said term, there appears the following entry to wit:

23

Jacob Boyer }
" }
David Clay and } Appeal
Isaac C. Sturman }

Now at this time again came the parties and their Attornies, and the several motions for new trial and in arrest of judgment came on to be heard and after hearing the arguments of counsel, It is advised by the Court that the said several motions be overruled, and thereupon the said defendants by their Attorney except to the opinion of the Court, and tender their Bill of exceptions to the Court, which the Court allows and orders the same to be entered

which Bill of exceptions is in the words and figures following to wit:

David Clay &
Isaac C. Sturman }

and } In the Circuit Court of Stephenson
Jacob Boyer } County, State of Illinois
} Of the April Term A.D. 1849 -

Be it remembered, that on the trial of the above
cause on the fourth day of April A.D. 1849, the Plaintiff
to sustain the issue on his part called and exam-
ined as witnesses John Bartel and Andrew
Keller, said witnesses in substance testified that
the defendants, cut saplings and small trees
on the North East quarter of the North East
quarter of Section five in Township N. twenty six
North of Range eight East of the fourth principal
meridian and that said land belonged to the
Plaintiff that sapling and small trees were
black oak, Burr Oak, Mulberry, a quaking
and wild cherry, that said land was situated
in the County of Stephenson, the foregoing being
substantially all the evidence in the cause, and
after all the evidence had been given in the
cause had been submitted to the jury, then the
counsel for the defendant [then] asked the Court
to instruct the jury that if the Plaintiff had
failed to prove by the production of paper title
that he was the owner of the land on which the
saplings and trees were cut - oral proof of such
fact is not sufficient and they will find for the
defendants, which instruction the Court refused
to give, because parol proof of such fact had been
given & not objected to, and thereupon the defendant
excepts to the opinion of the Court and prays
that this his bill of exception be signed and sealed
and made a part of the record in this cause,
and thereupon the jury after a short absence re-
turned into Court with a verdict for the Plaintiff
whereupon the defendant by his counsel moved

the Court for a new trial and in arrest of judgment, for the cause that the verdict of the jury is against the law and the evidence, which said motion is overruled by the Court, and the defendant by his counsel excepts to the opinion of the Court and prays that his Bill of exceptions be signed sealed and allowed

Benj. R. Sheldon Seal

which said Bill is endorsed "Filed April 7. 1849
John A. Clark Clerk"

and afterwards to wit: on the said 7th day of April A.D. 1849 at the said Term of the said Court upon the records of the said Court there appears upon the following entry to wit:

23

Jacob Boyer }
" }
Davis Clay and } Appeal
Isaac C. Stoddard }

And now at this time comes the plaintiff by his Attorney and prays judgment upon the verdict of the jury — It is thereupon ordered and adjudged by the Court that the said plaintiff have and recover of and from the said defendants the sum of thirty dollars his debt or as by the jury aforesaid found to be due and owing the said plaintiff together with his costs by him about his suit in this behalf expended as well in this Court as in the Court below and that he have execution for the same and thereupon the said defendants pray an appeal to the Supreme Court — which is granted

by the Court upon condition that the said defendants enter into bond to the said plaintiff, within thirty days from the rising of this Court in the sum of two hundred dollars with Isaac Bechtel and Frederick Baker as security

And afterwards to wit: on the sixteenth day of April A.D. 1849 the said defendants filed their appeal bond in the said cause in the office of the said Clerk to wit: which Bond is in the words & figures following to wit:

Bond

Know all men by these presents, that we David Clay, Isaac C. Honnman, Isaac Bechtel, and Frederick Baker of the County of Stephenson and State of Illinois, are held and firmly bound unto Jacob Boyer in the penal sum of two hundred dollars, for the payment of which well and truly to be made, we and each of us, bind ourselves, our heirs, executors and administrators jointly, ^{and} severally, and firmly by these presents, sealed with our seals, and dated at Freeport this sixteenth day of April Anno Domini, one thousand eight hundred and forty nine

The condition of the above obligation is such; that whereas Jacob Boyer did on the seventh day of April 1849 in the Circuit Court within and for the County of Stephenson and State of Illinois, obtain a judgment against the above bounden David Clay and Isaac C. Honnman for the sum of thirty dollars and costs of suit, from which judgment the said David Clay and Isaac C. Honnman have prayed

for and obtained an appeal to the Supreme Court
of said State.

Now if the said David Clay and Isaac
L. Sturman shall duly prosecute said Appeal;
and shall moreover pay the amount of the
judgment, costs, interests and damages, ren-
ders and to be rendered against them the
said David Clay and Isaac L. Sturman
in case the said judgment shall be affirmed
in the said Supreme Court, then the above obliga-
tion to be null and void, otherwise to remain
in full force and virtue

| | | |
|---------------|--------------------|------|
| Witness | } David Clay | Seal |
| Mr. Carter | } Isaac L. Sturman | Seal |
| John A. Clark | } Isaac Bechtel | Seal |
| | } J. Baker | Seal |

which said Bond is endorsed, as follows to wit:
"Filed April 16. 1849 John A. Clark Clerk"

State of Illinois }
Deftman County } of John A. Clark Clerk of the Circuit
Court in and for the said County do hereby certify
that the foregoing is a true, perfect and complete record
of the proceedings in the above entitled cause as appears
from the records and files in my office

In witness whereof I have hereunto
set my hand and affixed the seal of
the said Court at Joliet in said County
this 7th day of May A.D. 1849
Attest John A. Clark

Clark

Jacob Boyer ⁴⁶

3

David Clay and
Isaac C. Stoneman

Complis Rend

Filed June 13. 1844
Beland Clk.

~~Rend. June 14. 1844.~~

Jes #4.152