

No. 11985

Supreme Court of Illinois

Simmons,

vs.

^L
Pexton.

71641  7

Bureau County

Ozias Simmons
vs
Charles Pexton

1852

11985

Bureau County Circuit Court

Pleas before the Hon^{ble}. Theophilus S. Pichey judge
of the sixth judicial circuit of the state of Illinois at
the march term of the said circuit court, in and for the
County of Bureau begun and held at the Court house
in Princeton in said County on Tuesday the sixteenth
day of March in the year of our Lord One thousand
Eight Hundred and fifty two

Present Hon^{ble}. Theophilus S. Pichey Judge
Justin H. Olds Clerk
Edward M. Foster Sheriff
W. C. Cook State atty

To wit on the fourth day of said Term

Charles Pelton

vs

Appeal

Ozias Simmons

Now comes the plaintiff by M. J. Peters his
attorney and the defendant by S. Winney & S. J. Taylor his at-
torneys, and the court orders that a jury be empan-
nelled to try this cause; and there comes a jury of
twelve good and lawful men to wit: Elijah Mc Vitt
David Bartram, Jacob S. Sweet, James Bartlett, George
Limerick, David Mc Clrain, Joseph Dana, Edward H. Miller
John Dodge, Aaron L. Stephenson, David Archer and David
Watkins, who are duly elected tried and sworn well
and truly to try this cause and a true verdict render
according to the evidence

And the said plaintiff by his said attorney
objects to hearing the testimony of Nathan Brown one of said
defendants witnesses; which objection is sustained by the

Court; Whereupon the said defendant by his said attorney
enters his motion to permit said witness to testify, which
motion is overruled by the Court.

The said defendant files his affidavit herein
in the words and figures following to wit:

"The defendant in the above suit being duly
"Sworn states on oath that when he took the above appeal
"to this Court from William McKee a J.P. of said County,
"one Nathan Brown entered himself ^{as his} security in the
"appeal bond given in said cause, that said ~~affiant~~
" ~~relied on~~ Brown is a material witness in behalf of
"this affiant in the trial of the above cause, that
"said affiant relied on said Brown to make out his
"defence; that he was informed that said Brown
"would not be disqualified from testifying in
"said case by his entering himself as security in
"said appeal bond and said affiant believing that
"said Brown would not be disqualified by reason ~~thereof~~
"got him to enter himself as security in said appeal bond
"Subscribed & sworn to before me March 19 1832" "Cyrus Simmons"
"Ist. J. C. Olds"
"Clerk"

And thereupon enters his motion for leave to
substitute other security in said appeal bond and to release
the said Brown from the same — And the Court here
considers that said motion be overruled.

The jury having heard the testimony of the witnesses
and considered upon their verdict return into Court
and upon their oath do say "We of the jury do find
for the plaintiff and assess his damages at the sum
of seventy five cents.

It is therefore considered by the Court that
the said plaintiff have and recover of the said defend-
ant the said sum of seventy five cents his damages
assessed as aforesaid, together with all his costs and

Charges in and about his suit in this behalf expended
as well in the Court as in the Court below and that
he have execution therefor - Do sit on the fifth day of
Said Term The said defendant files his bill of exceptions
herein in the words and figures following to wit

" Be it remembered that on the trial of this cause
in the Circuit Court of said County, the defendant
called upon One Nathan Brown to be sworn as a
Witness in his behalf. The Plaintiff thereupon objected
to said Witness testifying on the ground that said Witness
was the security of the defendant in the appeal bond filed
by the defendant in taking said appeal, and thereupon ex-
hibited said appeal bond showing that fact. The defendant
then produced an instrument executed by One William
O. Chamberlain to said Witness Brown in consideration of
fifty dollars said Chamberlain agreeing to pay to said
Brown all damages & costs which may accrue to
said Brown by reason of his liability as security
of said defendant on said appeal bond. Said defendant
offered said instrument to restore the competency of
of said Brown as a witness in his behalf. But the
Court still refused to allow said Brown to testify as a
witness in said cause. The said defendant then
filed an affidavit setting forth the fact that said Brown
was a material witness on his behalf and indispen-
sible in his behalf to make out his defence on the
trial of the above cause. That said defendant
was informed at the time that said Brown signed
said appeal bond that his doing so would not
affect his (Brown's) competency as a witness in be-
half of said defendant on the trial of said appeal
and that said defendant verily believed that said
Witness would not be disqualified as a witness in

his behalf by reason of his signing said appeal
bond as security of said Defendant. Said defend-
ant then moved the Court for leave to file a new
appeal bond and give other security so as to
release the said Person in order to restore his
Competency, and the Court thereupon overruled
said motion and refused to discharge said
Person and to allow a new bond to be filed
So all which ruling of the Court the said defendant
excepts and prays the Court to sign and seal this
his bill of exceptions and make it a part of
the record which is done accordingly

J. L. Dickey *Seal*

State of Illinois }
Bureau County } 3

I Justin H. Olds Clerk of the Circuit
Court in and for said County, do hereby certify that
the foregoing is a true copy of the proceedings in
in the above cause in said Court and of the
defendants bill of exceptions, filed therein as the
same appear of record in my Office

Witness my hand and the seal of said
Court at Princeton in said County
this tenth day of June in the
year of our Lord One thousand
Eight Hundred and fifty two

Justin H. Olds
Clerk

Clerk fee 10 folios 1.00
Cost Seal .35
\$1.35

State of Missouri }
Supreme Court }

June 10 1852

And now comes the said Ogden Simmons
the p[er]t in error by E. S. Leland his atty & says that
in the record & proceedings in this case there is manifest
error in this to wit.

1st The Court erred in excluding the
evidence of Brown on the ground of interest.

2^d

The Court erred in refusing to allow
the substitution of other security on the appeal bond, in
place of Brown.

And there errors said p[er]t in error prays
a reversal of the judgment of the Court below

E. S. Leland

for p[er]t in error

and the said p[er]t in error says
there is no such error in the
records & proceedings as
above

M. J. Peters

att[or]ney for p[er]t in error

Bureau County
Charles Felton

vs

Ozias Simmons

Copy of Record

Filed June 17th 1852.
J. Seland Clk.
By P. W. Seland Depy.

The questions discussed on the argument are
not presented by the record. The decisions
complained of were not accepted to on the
trial. The judgment is therefore affirmed.

Simmons v. Peterson,

Per Curiam.

Filed July 24th 1852.

L. Leland Clk.

By P. H. Leland Depy.

Recorded

Pomfretton. June 14th 1852.

Mr. Clerk.

You will find enclosed this Record in the case of Pettaw, vs. Simonang, which you will please put on the Docket for trial at the present Term Term and sent and by mail to our Sheriff a Summons or Writ against Pettaw the Deft in Error. I want to have this case tried at the ~~present~~ ^{June} Term of Court if possible, Will you be kind enough to write me, and let me know what day of the Term the Bureau County Causes are set for - you will find enclosed \$5.00. which I understand is necessary to be advanced before the cause is docketed please acknowledge the receipt of this also.

And oblige your ob^oto
J. J. Taylor.

Burgess Co.
Ogus Simmons
vs.
Charles Felton

Precept -

Filed June 17th 1852.
S. Selman Clk.
By P. H. Selman Depy

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 *Bureau* 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 *Bureau* county, before the Judge thereof, between

Charles Pelton plaintiff and *Ozias Simmons*

defendant it is said manifest error hath intervened, to the injury of the aforesaid *Simmons* 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 distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plea 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 *2^d Monday in June A.D. 1853* 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 *June* in the year of our Lord one thousand eight hundred and fifty *two*.

S. Leland Clerk of the Supreme Court.
By P. H. Leland Esq. Clk.

Bureau County -
Cyrus Simmons,
Charles^{vs.} Pelton
Writ of error.

Filed June 17th 1852.
L. Seland Clerk
By P. K. Seland Deputy.