

No. 857i

Supreme Court of Illinois

Joseph W. Peck

vs.

John Led^wmidge

71641  7

State of Illinois
 Marion County ^{vs} Pleas and Proceedings
 had in the Circuit Court
 in and for the County of Marion
 and State of Illinois in a certain
 Cause heretofore removed into
 said Court by Appeal from
 the Docket of B. J. Marshall Esq
 Justice of the Peace wherein
 John Sedwidge is Plaintiff ^{vs}
 Joseph W. Kirk Defendant.

Be it Remembered that on the 23^d day of January
 A. D. 1860 the said B. J. Marshall Esq Justice re
 filed in the office of the Clerk of the Circuit Court
 his transcripts and papers pertaining to the above
 entitled Cause, which are in the words & figures
 following To-wit:

Plffs acct	" John Sedwidge	vs	Do account for repairing	
	Joseph W. Kirk		The Dwyer Mill \$1.60.00	
			By rent of the	
			Dwyer mill	95.00
			Balance	65.00

Receipt " B. J. Marshall
 Dear Sir
 Please issue summons in this
 case according to Law."
 B. B. Smith

(2)
Summons

State of Illinois
Marion County ^{SS} The People of the State of
Illinois to any Constable of said
County Greeting:

You are hereby Comanded to
summon Joseph W Peck to appear before
me at my office in Salem on the 7th day of January
A D 1860 at 1 o'clock P M to answer the Complaint
of John Sedwidge for a failure to pay him a certain
sum not exceeding one Hundred Dollars and hereof
make due return as the Law directs.

Given under my hand and seal this 31st
day of December A D 1859

B B Marshall Seal
Justice of the Peace.

Endorsed "Served by reading to the within named Defendant, this 2^d
day of January 1860 J. F. W. Markin Constable."

Defts Acct "John Sedwidge Dr Joseph W Peck Dr
1859 Decr 31st Do 3²³/₁₀₀ Months rent of mills in
Salem Ills known as the Sawyer Mills @ \$41.66²/₃
per month \$156.91."

Pliffs Bill Itemized, " 1859 Do John Sedwidge Dr
Nov 23. for work done repairing Boiler &
Decr for work done by E B Hurdcaulo 40.00
" " G W Smudgrass 17.50

"	"	Jesse Weatherly	2,00
"	"	Alphonso Bryan	3,00
"	"	J. D. Morgan Jr	5,50
"	"	L B Kelly	6,00
"	"	Material by Penfrow Crozier & Co 831	}
"	"	Express Charges on same 100	
"	"	Lead for joints	3,00
		Do	.65
"	"	Coat from J K Finley	.20
"	"	Work by John Morrow	2,50
"	"	" Jas S Freeman Material 10,00	
"	"	Saml Smith	12,50
"	"	E Ballenger on Furnace 10,50	
"	"	Saml Youngs Bill for work	15,00
"	"	Packing	50
"	"	Wagon Steam one day & driver	3,00
"	"	Hauling Sand Benj Anderson	2,00
"	"	3 Hands one day filling in under Boiler &c.	}
Gulman		210 feet of Bands @ 60	600
			<u>\$157.16</u>

State of Illinois Justice Court Before B J
Marion County Marshall J.P.

John Edwidge on a/c
vs
Joseph W. Peck Demand \$65.00

Summons issued December
31st 1859 to J J Maclean Constable returnable
on the 7th day of January 1860 at 1 O'clock P.M.
Summons returned served by reading same
to Defendant Jan'y 2nd 1860 And now on
this 7th day of January 1860 Came said parties
and upon hearing the proofs herein the Court is
of opinion that said Plaintiff is indebted to
said Defendant in a sum exceeding a Justice
Jurisdiction. It is therefore ordered that this
cause be dismissed at the costs of said Plaintiff

B J Marshall J.P. Seal

Justice fees

Doc & Lams 31 ^{3/4} 3	Spes 4 ³ 8 oaths 50	\$1.25
Judgt 25	Transcript & certificate 50	Bonds 50
		1.25
Entg appld		<u>25</u>
		275
Constables fees (Mc) Lams 30	Spes 175	205
Witness fee		<u>50</u>
		\$10.30

State of Illinois J B J Marshall an acting Justice of the Peace
Marion County of said County do certify that the foregoing
transcript of papers herewith transmitted contain a full & per
fect statement of all the proceedings had before me in
the above entitled cause. Given under my hand & seal at 20th
day of January AD 1860 B J Marshall J.P. Seal




(Appeal Bond)


Know all Men By these Presents that Mr John Sedwidge
G. C. Lester and George E. Lester are held and firmly
bound unto Joseph W. Beck in the penal sum of
fifty Dollars. Lawful money of the United States,
for the payment of which well and truly to be made
we bind ourselves, our heirs and Administrators jointly
severally, and firmly by these presents.

Witness our hands and seals, this 17th day of
January A.D. 1860

The condition of the above
obligation is such that whereas, the said Joseph
W. Beck did on the 7th day of January A.D. 1860 before
B. B. Marshall a Justice of the Peace for the County
of Marion recover a judgment against the above
bondmen John Sedwidge for costs of suit from
which judgment the said John Sedwidge has
taken an appeal to the Circuit Court of the County
of Marion aforesaid and State of Illinois.

Now if the said John Sedwidge shall
prosecute his appeal with effect, and shall pay
whatever judgment may be rendered by the Court
upon dismissal or trial of said appeal, then
the above obligation to be void; otherwise to remain
in full force and effect.

John ^{his} Sedwidge 
G. C. Lester 
George E. Lester 

Approved by me at my office this 21st day
of January A.D. 1860 B. B. Marshall J.P. 

Whereupon summons issued by the Clerk of said Circuit Court in words of figures following To-wit

"State of Illinois }
County of Marion } The People of the State of
Illinois to the Sheriff of said
County Greeting,

We command you to Joseph W. Prentiss if to be found in your County, to appear before the Circuit Court of Marion County, on the first day of the next Term thereof, to be holden at the Court House, in Salem, on the third Monday in the month of March next to answer John Sedwidge in his appeal from the docket of B. P. Marshall a Justice of the Peace in & for said County and hereof make due return to our said Court as the Law directs.



Witness A. W. Cagan Clerk of our
said Court, and the official seal
thereof at Salem, this 23^d day of
January A. D. 1860

A. W. Cagan Clerk

Endorsed as follows

"Returned drafts not found
March 9th 1860

Joe Shultz Sheriff

And afterwards at the March term of the Circuit Court of said County, Judge H. H. S. O'Melroy presiding, Docket April 3^d 1860 the following order was made Docket

No 138)

“John Sedwidge
vs
Joseph W. Preko Appeal
The Court enters the appearance of Defendant Preko and this cause is continued by consent of parties to the next term of this Court.”

And afterwards Docket on the 21st day of August it being of the Aug term of said Court for the year 1860, this cause being called for trial the following Instructions were given to the Jury Docket

“The Court instructs the Jury for the Defendant Preko
1st That if there was a written lease or contract between the parties in reference to the renting of the mill and that the Defendant Preko did not in such Contract or lease agree to keep the mill in repair then he was not liable for any amount that the Plaintiff may have expended in repairing the mill, unless the Jury believe from the evidence, a subsequent agreement to pay

for the repairs, were made by Deft
Given

2^d That in Law Deft the Defendant in this action was not bound to keep the Mill in repair while it was occupied by the Plaintiff and that unless the Plaintiff can show a contract to repair on the part of Deft the Jury must find the issue in the case for the Defendant

Given

3^d That if under the proof the Jury believe the Plaintiff cannot recover for the work done in repairing the mill and if the proof shows that the Defendants claim for rent is more than one hundred Dollars then the Jury must find for the Defendant a verdict for costs simply against the Plaintiff. But if the Defendants claim should from the proofs turn out to be less than one hundred Dollars the Jury should find for the Defendant such amount not exceeding one hundred Dollars as the proof may show

Given

4 That Deft the Defendant could not make himself liable to the Plaintiff for work done by his Defts hands on the mill by simply saying to them to make a good job" and that in order to make Deft liable to the Plaintiff there must have been such an undertaking on the part of Deft as amounted to a contract to pay rather than

Plaintiff or his hands for the work done
Given

3 That Plaintiff was liable for the whole time he occupied the mill and that he is not entitled to any abatement from the rent unless he has shown by the proofs that the Defendant agreed the Plaintiff should not be liable for rent while the mill was undergoing repairs, unless the jury believe that Deft is liable for the repairs by Contract subsequent to the case

Given

6 That if the Plaintiff undertook the repairs by a Conditional authority from Bryan agent that the Defendant would pay for the same provided he was bound to do so by the terms of a written lease between the parties, then he can recover only by the terms of such written lease and is bound by the provisions of such lease

Given

11 The Plaintiff asks the Court to instruct the jury that if the Jury believe from the evidence that the Plaintiff done the Repairs to the mill at the instance and by the authority of Peck or his agent, then the Deft is entitled to recover for the same what the repairs were reasonably

worth:

Given

2/ That if the Jury shall find from all the evidence and Circumstances proved in the case that the repairs were made by the authority of the Deft Peck or his agent Bryant as a matter of Contract then he is entitled to recover

Given

3/ That if the Jury find from the evidence that Peck was about the mill while the repairs were being made, and gave directions as to how the work should be done, this is a fact which may be considered by the Jury and if they find from a view of all the evidence that the work was done by the authority of Peck or Bryant as a matter of contract the Plff should recover

Given

4th That if the Jury believe from the evidence that there was either an express or implied agreement of Peck or his agent to pay the Plaintiff for the repairs you should find for him the value of such repairs

Given

5th That if the accident to the mill was unavoidable then the Plaintiff was not to repair; and if he did repair at the instance of the Deft or his agent then the Plaintiff is entitled to recover Given

Whereupon the Court on said 21st August 1860
made the following order in said Cause Docket

"This Cause being ready for trial and issue
being joined and the parties being present by
their attorneys Let a Jury come and thereupon
came the following Jury Docket, J. B. Searcy
Henry McClelland, S. P. Kave, W. H. Huggins, James
S. Jackson, James F. Jones, David Shultz, James
Bryant, W. D. Lynch, E. Shultz, W. H. Stormont
and Henry Holt, twelve good and lawful men, who
being tried elected and sworn well and truly to try
the issue joined having heard the evidence and
arguments of counsel and being charged by the
Court, retired to consider of their verdict and
afterwards brought into Court the following verdict
"That the Jury find for the Plaintiff and assess his
damages at \$65. Whereupon the Defendant moved
for a new trial which motion the Court over-
rules. It is therefore considered and adjudged
by the Court that said Plaintiff do have and
recover of and from said Defendant said
sum of \$65. together with his costs in this behalf
expended, and may have execution therefor &c.

And the Defendant prayed an appeal
which was granted the Defendant entering into
Bond in \$200 in thirty days with Sarkin Anderson
as security &c. Bill of Exceptions to be signed at Nashville
and made a part of the Record as of this Term &c."

And afterwards on the 20th day of September 1860
said Defendant filed his appeal Bond in the
words & figures following To-wit,

“

State of Illinois
Marion County ^{SS} Know all Men By these
Presents that we Joseph ^W Peck

^{and} Sarkin L. Anderson of the County of Marion
& Cook are held firmly bound unto John Led-
-widge of the ^{Marion} County in the sum of two Hundred
Dollars lawful money of the United States ^{and} for
the payment of which sum well and truly
to be made we ^{and} each of us bind ourselves
our heirs ^{and} assigns firmly by these presents

Witness our hands & seals this 17th
day of September Eighteen Hundred ^{and} sixty

The Condition of the foregoing obligation
is such that whereas the said John Ledwidge
did at the August term of the Marion Circuit
Court for the year Eighteen Hundred & sixty
obtain a Judgment for a certain Cause then
determined involving the lease of a mill in
the Town of Salem belonging to the said Peck
against the said Joseph W Peck for the sum
of sixty five ^{and} costs of suit from which judgment
the said Joseph W Peck did at the time of the
 rendition of said Judgment pray an appeal
to the Supreme Court, of the State of Illinois

which was granted upon the Condition of this Bond
in thirty days.

Now if the said Joseph W Felt
shall well truly prosecute said appeal
and upon the trial or dismissal of said appeal
in the Supreme Court or the affirmance of the said
Judgment in the said Supreme Court that he
will pay and content whatsoever Judgment
against him in or order may be rendered or
entered against him in the premises then said
obligation shall be null and void otherwise
to remain in full force and effect.

Witness our hands seals the day
and year above written

J. W. Felt Seal
L. P. Anderson Seal.

Bill of Exceptions as follows Court "Be it Remembered
That at the August term of the Marion Circuit
Court for the year Eighteen hundred and sixty
a certain Cause came on to be heard and was
heard in which John Sedwidge was Plaintiff
and Joseph W Felt was Defendant said Cause
having been tried before B. D. Marshall a Justice
of the Peace and appeal by said Sedwidge to
the Circuit Court of Marion County where the
same was tried at the said August term for

the year aforesaid by the Hon^{ble} H. S. Milroy
 Judge & a Jury It was admitted before the jury
 by the Defendants that he the Plaintiff had done
 repairs on the mill of Defendants to the amount
 of one Hundred^{and} fifty seven Dollars^{and} sixteen
 Cents^{and} it was admitted by the Plaintiff that
 he had occupied the mill of Defendants for three
 months^{and} twenty three days under the lease and
 then give up the key & possession to defendant
 that for about ten weeks of the time the mill was
 kept in operation^{and} the residue of the time was
 in progress of repairs. It was also admitted
 by Defendants that the injury to the mill was
 # Caused by an unavoidable accident and
 by the natural wear^{and} tear of the mill and
 it was admitted by the Plaintiff that he had
 occupied the mill until the accident happened
 to the amount of ninety five Dollars^{and} Pff gave
 Defendants Credit for that time and amount

The Plaintiff then called Silas J. Bryan
 as a witness who testified as follows -
 That the Plaintiff Sedwidge called on him
 sometime in the forepart of the winter of fety
 nine & sixty^{and} informed witness that some part
 of the boiler of the mill had failed and that
 the mill would have to stand still till repairs
 that in his opinion it would cost some thirty
 Dollars to repair the same. Plaintiff wished

to know if he should go on and make the repair
at the expense of Mr Peck. Witness stated to
the Plaintiff that the lease had been written
by his partner Mr Scheffer and that he did
not know whether Mr Peck was bound in the lease
to make repairs or not but that he the Plaintiff
should repair the Boiler and that Mr Peck would
be down from Chicago in a short time and
that if he was bound by lease to do the repairs
he would pay the Plaintiff or deduct the same
from his rent but that if he was not bound
by the lease to repair he would not pay for
the same. That Witness and his partner acted
as the agents of Mr Peck in leasing to Plaintiff
and in drawing up the lease, that Mr Scheffer
drew up the lease and witness could not tell
whether Mr Peck was bound or not by the terms
of the lease to repair but was of the opinion
and so stated to the Plaintiff that Mr Peck was
not bound to repair the mill. But that Peck
would be down soon and they Sedwidge and Peck
could settle it and told Sedwidge to do the
repairs. Crawford B Hardcastle was then called
by Plaintiff Testify that he was a machin-
ist; that the boiler had worn through or had
been eaten through with cement and that
the break was not the result of any bad
management on the part of the Plaintiff

That he had worked on the mill in repairing the boiler the weather was cold & disagreeable part of the time that while witnessed was working on the mill Mr Peck called round once or twice or several times while he was in Salem and rem-
 asked to or told him to make a good job of the work one of the times Peck told him to put in the value which he would not have done but for Pecks order. he was at the mill and this was all the evidence offered by the Plaintiff the Defendant then offered in evidence the following lease which was read to the Jury without objection

This Agreement made and entered into this Eighth day of September A.D. 1839 by and Between Joseph W Peck of the City of Chicago and State of Illinois the Lessor and John Sedwidge of the County of Marion and State aforesaid the Lessee Witness that the said Lessor in Consideration of the Covenants hereinafter mentioned on the part of the said Lessee to be kept and performed doth hereby lease and let unto the said Lessee the Grist and Saw mill in the Town of Salem in said County of Marion and State aforesaid known as the Dwyer Mills Do Have and Do Hold the same together with all the appurtenances machinery and fixtures thereunto belonging for the space and term of twelve months from the eighth day

of September A D Eighteen Hundred and fifty
nine The said Lessee paying therefor the
rent of five Hundred Dollars to be paid in
Quarterly payments of One Hundred and twenty
five Dollars and the said Lessee agrees and
Covenants to pay said rent in quarterly pay-
ments as aforesaid as it shall become
due and payable at the end of each quarter
and to make no improper or unlawful use
of the premises aforesaid and deliver them up
at the end of said term in as good condition
and repair (reasonable wear and tear and unavoidable
accidents excepted) peaceably and quietly and
without Notice from the Lessor. and the said
Lessee further Covenants and agrees that he will
not make or suffer any waste of the said premises
nor lease or underlet the same nor suffer any
other person to occupy the same except such
as the said Lessor or his agents or agents shall
in writing have approved. Provided also
that this lease is upon this Express Condition
that in case the said rent will not be paid by
the said Lessee as herebefore mentioned to wit
Quarterly at the end of each quarter but if default
will be made in the payment thereof at any
time when the same is due and payable it
shall be lawful for the said Lessor by himself
his agent or agents whenever such default

shall be made as aforesaid without first giving Notice to remove and take immediate possession of the said premises to the exclusion of the said Lessee or any other person or persons holding or to hold under him or may otherwise evict him or them without prejudice to any remedy which might otherwise be used for breach of any of the preceding covenants And the said Lessor covenants that upon the performance and keeping of the aforesaid agreements and covenants by the said Lessee to be performed he the said Lessee shall have the quiet and peaceable possession of the premises aforesaid for the term aforesaid to be used in a manner not inconsistent with the covenants herein

Witness our hands on the day & date first herebefore written

Joseph W. Felt
Per Bryan & Schaffer agents &
Attys

John Sedwidge
mark

Witness to signing
Wilbur W. Roboy

The defendant then closed his case and the foregoing is all the evidence given in the case - Whereupon the Court instructed the jury as follows for the Plaintiff.

1st The Plaintiff asks the Court to instruct the Jury that if the Jury believe from the evidence that the Plaintiff done the repairs to the mill at the instance ^{and} by the authority of Peck as his agent the Plaintiff is entitled to recover for the same what the repairs were reasonably worth
Given

2^d That if the Jury shall find from all the evidence ^{and} circumstances proved in the case that the repairs were made by the authority of the Defendant Peck or his agent Bryan as a matter of contract then he is entitled to recover
Given

3^d That if the Jury find from the evidence that Peck was about the mill while the repairs were being made ^{and} gave directions as to how the work should be done This is a fact which may be considered by the Jury ^{and} if they find from a view of all the evidence that the work was done by the authority of Peck or Bryan as a matter of contract the Plaintiff should recover
Given

4th That if the Jury believe from the evidence that there was either an express or implied agreement of Peck or his agent to pay the Plaintiff for the repairs you should find for him the value of such repairs
Given

(5th) That if the accident to the mill was unavoidable then the Plaintiff was not to repair and if he did repair at the instance of the Defendant or his agent then the Plaintiff is entitled to recover to the giving of each of the said Instructions to the Jury the Defendant by his Counsel at the time excepted and prayed that his exceptions should be made a part of this Bill of exceptions.

The Court at the instance of the Defendant then instructed the Jury as follows

1st That if there was a written lease or contract between the parties in reference to the renting of the mill and that the Defendant did not in such contract or lease agree to keep the mill in repair then he was not liable for any amount that the Plaintiff may have expended in repairing the mill so which the Court added these words. Unless the Jury believe from the evidence a subsequent agreement to pay for the repairs were made by Defendant to the making of which addition by the Court the Defendant by his Counsel at the time Excepted

Given

2^d That in Law Peck the Defendant in this action was not bound to keep the mill in repair while it was occupied by the Plaintiff and that unless the Plaintiff can show a contract to repair on the part of Peck the Jury must find the issue in the case for the defendant
Given

3^d That if under the proof the Jury believe the Plaintiff cannot recover for the work done in repairing the mill and if the proof shows that the Defendants claim for rent is more than one Hundred Dollars then the Jury must find for the defendant a verdict for costs simply against the Plaintiff but if the Defendants claim should from the proof turn out to be less than one Hundred Dollars the Jury should find for the Defendant such amount not exceeding one Hundred Dollars as the proof may show
Given

(4th) That Peck the Defendant could not make himself liable to the Plaintiff for work done by his Plaintiffs hands on the mill by simply saying to them to make a good job and that in order to make Peck liable to the Plaintiff there must have been such an undertaking on the part of Peck as amounted to a contract to pay either

the Plaintiff or his hands for the work done

Given

5th) That Plaintiff was liable for the whole time he occupied the mill and that he is not entitled to any abatement from the rent unless he has shown by the proof that the Defendants expressly agreed that the Plaintiff should not be liable for rent while the mill was undergoing repairs to which Instructions the Court added this qualification "Unless the Jury believe that Defendant is liable for the repairs by Contract subsequent to the lease" and gave the Instruction to the Jury as modified

Given

So which modification the Defendant by his Counsel at the time excepted

6th) That if the Plaintiff undertook the repairs by a Conditional authority from Bryan agent that the Defendant would pay for the same provided he was bound to do so by the terms of the written lease between the parties then he can recover only by the terms of such written lease & is bound by the provisions of such lease

Given

7th) That if the mill be carried out of Repair while in the hands of the Plaintiff and the terms of the lease required him to surrender

the mill in as good repair as when he received it, it was his duty to put the mill in repair before surrendering the mill - which 7th & last instruction asked by the Defendant the Court refused and wrote thereon. Abstract Law refused to which refused the Defendant by his Counsel at the time excepts and prayed that his exception might be made a part of this Record in this cause and the foregoing Bill of Exception being the whole history of the proceedings on the trial of said cause and the Jury having retired to consider of their verdict returned into the Court the following Verdict. We the Jury find for the Plaintiff sixty five dollars, the Defendant then entered a motion in arrest of Judgment and for a new trial which motions were overruled by the Court and Judgment entered on the verdict of the Jury for the Plaintiff to which rulings of the Court the Defendant at the time excepted and prayed an appeal to the Supreme Court which was granted upon Defendant giving bond in thirty days for two Hundred Dollars with Sarken & Anderson as security and prayed that this his Bill of Exceptions might be signed by the Court which is done.

H. H. S. O'Melveny, Real
Judge & Judicial Circuit

State of Illinois
 Marion County J. H. W. Eagan Clerk of the Circuit
 Court of said County do hereby
 certify the foregoing to be a true & complete transcript
 of the Records and proceedings had in our said
 Court in said above entitled Cause as the same
 remains on file in my office

Given under my hand and
 official Seal at Salem this
 20th day of October A. D. 1869

J. H. W. Eagan Clerk
 P. S. O. Lancey Deput



38

Joseph W. Peck

107

Jno. Ledwithgo

25

Joseph W. Peck

Record

Filed Nov. 14/1869

St. John's Church

Paid - \$5.75

Jan 28/70

Plaintiff in Error Joseph W. Peck comes and
 assigns for Error in the foregoing Record
 1st The Court gave improper instructions to the
 Jury for the Plaintiff below & dependent on Error
 2d The Court Erred in refusing & modifying proper
 instructions for the Plaintiff in Error
 3d The Court Erred in overruling motion for new
 trial made by the Plaintiff in Error
 And the Defendant says there is no Error in said Record -
 J. H. W. Eagan
 In Off.

Silas & Brown Attys for
 Plaintiff in Error

Salem Aug 17th 1781
Hobbs Johnson Esq

Dear Sir

Will you please send
the opinion of the Court
in the case of John Davidson
vs Joseph N Peck

The Execution has been done
on lands and of course
that is a satisfaction of
the execution

Your commands
are attended to this you
will oblige us

Yours

Hayden Smith

3055
314
3409
822
2209

Order Comptroler's office
Aug. 15. 1861 - and
Letter to them saying
ex is not Swedish
Costs must be paid

[Faint handwritten notes and a ledger table with multiple columns of illegible entries.]

[Small rectangular stamp or mark.]

JOSEPH W. PECK. }
vs. }
JOHN LEDWIDGE. }

BRIEF.

1st Point; plaintiff in error was not bound to repair, there being no covenant to that effect in the lease. Taylor, Landlord & Tenant, sec. 4th Page 155-6-7 Ohio R.

1st Sand P Page 920 - 7th East R 116

2d. Point; the plaintiff was at all events entitled to rent for the mill while she was lying still and undergoing repairs. 18, Ves. 115; 5 Bing. N. C. 501; 15th Ohio R. 412.

Taylor's Land & Tenant Page 157

3d. Point; the court gave improper instructions to the jury.

SILAS L. BRYAN, Att'y.

ABSTRACT.

JOSEPH W. PECK,) APPELLANT.
vs.)
JOHN LEDWIDGE.) APPELLEE.
ERROR TO MARION COUNTY.

1 LEDWIDGE the Plaintiff below filed his account with Marshall a Justice of the Peace. Account for repairing Mill, One hundred and sixty dollars (\$160). Credit by Rent of Mill, Ninety-five dollars (\$95;) Balance claimed Sixty-five dollars (\$65.)

2 Summons issued in usual form Peck defendant below files his Account for Rent of Mill three months and twenty-three days at Forty-one dollars and sixty-six cents (\$41 66) per month. \$156 91.

4 Trial and Judgement for the Defendant below against Plaintiff for costs upon the ground that the Court could not render Judgement fee \$156 91 amount of Defendants claim. Caused Appeal by Ledwidge plaintiff below. Defendant below on the trial admitted that the Plaintiff had expended in repairing Mill, \$157 16.

13 It was admitted by Plaintiff that he had occupied the Mill of Defendant for three months and twenty-three days under the Lease and then surrendered the key and permission to Defendant—that ten weeks of the time the Mill was running and the remainder was being repaired.

not full
The plaintiff below then called Silas L. Bryan as a witness who testified; that Ledwidge called on him in the fore part of the winter of '59 and '60 and informed witness that some part of the Boiler in the Mill had given away and that the Mill would have to stand still till repaired—that it would cost some thirty dollars to repair it. He wished to know of witness if he should make the repair at the expense of Mr. Peck. Witness stated to him that the Lease had been written by his partner Mr. Schaeffer and that he did not know whether Mr. Peck was bound to repair or not, but that Plaintiff should repair the boiler and that Mr. Peck would be down from Chicago soon and that if he was bound in the Lease to repair the mill he would pay him for the repair or deduct it from his rent, but that if he was not bound by the lease to repair, he would not pay for the repairs. Witness and his partner acted as the agents of Mr. Peck in leasing the Mill and drawing the lease. That Mr. Schaeffer drew up the lease and witness could not tell whether Mr. Peck was bound to repair or not but gave it as his opinion to Ledwidge that Peck was not bound to repair, but that Peck would be down soon and they could settle it, and told Ledwidge he could do the repairs.

14 Crawford Hardecastle testified: He was a mechanic, the breakage on the boiler was not the fault of Ledwidge. Witness worked in repairing Mill for Plaintiff, weather was cold and disagreeable. Witness was working on Mill and Peck the Defendant come round once or twice or several times while he was in Salem, and remarked to or told him to make a good Job of work; one of the times Peck told him to put in the valve which he would not have done but for Peck's order, he was at the Mill,

The Plaintiff rested his case.

Defendant then read the Lease between the parties without objection.

Lease in the usual form for twelve months. Plaintiff agreed to pay five hundred dollars for the use of the Mill the twelve months. Rent to be paid quarterly at the end of each quarter and upon a failure to pay rent Agent had right to take possession of the Mill.

15 Plaintiff covenanted to deliver up the Mill at the end of the term in as good condition and repair (reasonable wear and unavoidable accident excepted,) peacebles &c. Covenant not to commit, waste &c.

17 Defendant then closed his case.

The Court then instructed the Jury for the Plaintiff as follows:

18 1st, That if the Jury believe from the evidence that the Plaintiff done the repairs to the Mill at the instance and by the authority of Peck or his Agent, the plaintiff is entitled to recover for the same what the repairs were reasonably worth.

2nd, That if the Jury shall find from all the evidence and circumstances proved in the case, that the repairs were made by authority of the Defendant Peck or his Agent Bryan as a matter of contract then he is entitled to recover.

3rd, That if the Jury find from the evidence, that Peck was about the Mill while the repairs were being made and gave directions as to how the work should be done, this is a fact which may be considered by the Jury and if they find from a view of all the evidence that the work was done by authority of Peck or Bryan as a matter of contract the Plaintiff should recover.

4th, That if the Jury believe from the evidence that there was either an express or implied agreement of Peck or his Agent to pay the Plaintiff for their repairs, you should find for him the value of said repairs.

19 5th, That if the accident to the mill was unavoidable then the plaintiff was not to repair, and if he did repair at the instance of the defendant or his agents, then the plaintiff is entitled to recover the giving of each of the said instructions to the Jury, the defendant by his counsel at the time excepted and prayed that this his bill of exceptions should be made a part of the record.

The court, at the instance of the defendant's counsel, instructed the jury.

1st, That if there was a written lease or contract between the parties in reference to the renting of the mill and that defendant Peck did not in such lease or contract agree to keep the mill in repair, then he was not reliable for any amount that the plaintiff may have expended in repairing the mill—to which the court added these words, "unless the jury believed from the evidence a subsequent agreement to pay for the repairs was made by defendant" to the making of which addition by the court defendant at the time excepted-

20 2d. That in law Peck the defendant in this action was not bound to keep the mill in repair while it was occupied by the plaintiff, and unless the plaintiff can show a contract to repair on the part of Peck the jury must find the issue in the case for the defendant.

20 3d. That if under the proof the jury believe the plaintiff cannot recover for the work in repairing the mill and the proof shows that the defendant's claim for rent is more than one hundred dollars then the jury must find for the defendant a verdict for costs simply against the plaintiff, but if the defendant's claim should from the proof turn out to be less than one hundred dollars, the jury should find for the defendant such amount not exceeding one hundred dollars as the proof may show.

4th. That Peck the defendant could not make himself liable to the plaintiff for work done by his plaintiff's hands on the mill by simply saying to them to make a good job, and that in order to make Peck liable to the plaintiff there must have been such an understanding on the part of Peck as amounted to a contract to pay, either pay plaintiff or the hands for the work done.

21 5th. That plaintiff was liable for the whole time he occupied the mill, and that he is not entitled to any abatement from the rent, unless he has shown by the proof that the defendant expressly agreed that the plaintiff should not be liable for the rent while the mill was undergoing repairs, to which instruction the court added this qualification: "Unless the jury believe that defendant is liable for the repairs by contract subsequent to the lease," to which modification the defendant at the time excepted.

6th. That if the plaintiff undertook the repairs by a conditional authority from Bryan agent that the defendant would pay for the same provided he was bound to do so by the terms of the written lease between the parties, then he can recover only by the terms of such written lease and is bound by the terms of such written lease.

7th. That if the mill became out of repairs while in the hands of the plaintiff, and the terms of the lease required him to surrender the mill in as good repair as when he received it. It was his duty to put the mill in repair before surrendering it.

Which seventh and last instruction asked by the defendant, the court refused and wrote thereon abstract law and refused, to which refusal the defendant at the time excepted.

22 The jury retired and then brought in a verdict for sixty-five dollars for the plaintiff.

Defendant entered motion for new trial, motion overruled and Judge entered on verdict and defendant at the time excepted and prayed an appeal &c.

ERRORS ASSIGNED.

- 1st. That court below give the jury improper instructions for the plaintiff, &c.
- 2d. The court erred in refusing and modifying proper instructions for the defendant.
- 3d. That the court erred in overruling defendant's motion for new trial.

SILAS L. BRYAN, Atty.

*The qualification to 5 must mean
Proof not sufficient to show an
agt to pay for repairs.*

20 The jury found in favor of the defendant in this action was not bound to keep the mill in repair while it was occupied by the plaintiff, and unless the plaintiff can show a contract to repair on the part of Peck the jury must find the same in the case for the defendant.

21 That in favor of Peck the defendant in this action was not bound to keep the mill in repair while it was

Peck
vs
Schwartz

Julia Nov. 14. 1864
St. Johnston CM

22 The jury found in favor of the defendant in this action was not bound to keep the mill in repair while it was occupied by the plaintiff, and unless the plaintiff can show a contract to repair on the part of Peck the jury must find the same in the case for the defendant.

23 JULY 1. 1864

[Faint handwritten text, possibly a signature or notes, mostly illegible due to fading.]

ABSTRACT.

JOSEPH W. PECK,) APPELLANT.
vs.)
JOHN LEDWIDGE.) APPELLEE.
ERROR TO MARION COUNTY.

- 1 LEDWIDGE the Plaintiff below filed his account with Marshall a Justice of the Peace. Account for repairing Mill, One hundred and sixty dollars (\$160). Credit by Rent of Mill, Ninety-five dollars (\$95;) Balance claimed Sixty-five dollars (\$65.)
- 2 Summons issued in usual form Peck defendant below files his Account for Rent of Mill three months and twenty-three days at Forty-one dollars and sixty-six cents (\$41 66) per month. \$156 91.
- 4 Trial and Judgement for the Defendant below against Plaintiff for costs upon the ground that the Court could not render Judgement fee \$156 91 amount of Defendants claim. Caused Appeal by Ledwidge plaintiff below. Defendant below on the trial admitted that the Plaintiff had expended in repairing Mill, \$157 16.
- 13 It was admitted by Plaintiff that he had occupied the Mill of Defendant for three months and twenty-three days under the Lease and then surrendered the key and permission to Defendant—that ten weeks of the time the Mill was running and the remainder was being repaired.
- The plaintiff below then called Silas L. Bryan as a witness who testified, that Ledwidge called on him in the fore part of the winter of '59 and '60 and informed witness that some part of the Boiler in the Mill had given away and that the Mill would have to stand still till repaired—that it would cost some thirty dollars to repair it. He wished to know of witness if he should make the repair at the expense of Mr. Peck. Witness stated to him that the Lease had been written by his partner Mr. Schaeffer and that he did not know whether Mr. Peck was bound to repair or not, but that Plaintiff should repair the boiler and that Mr. Peck would be down from Chicago soon and that if he was bound in the Lease to repair the mill he would pay him for the repair or deduct it from his rent, but that if he was not bound by the lease to repair, he would not pay for the repairs. Witness and his partner acted as the agents of Mr. Peck in leasing the Mill and drawing the lease. That Mr. Schaeffer drew up the lease and witness could not tell whether Mr. Peck was bound to repair or not but gave it as his opinion to Ledwidge that Peck was not bound to repair, but that Peck would be down soon and they could settle it, and told Ledwidge he could do the repairs.
- 14 Crawford Hardcastle testified: He was a mechanic, the breakage on the boiler was not the fault of Ledwidge. Witness worked in repairing Mill for Plaintiff, weather was cold and disagreeable. Witness was working on Mill and Peck the Defendant come round once or twice or several times while he was in Salem and remarked to or told him to make a good Job of work; one of the times Peck told him to put in the valve which he would not have done but for Peck's order, he was at the Mill.
- The Plaintiff rested his case.
- Defendant then read the Lease between the parties without objection.
- Lease in the usual form for twelve months. Plaintiff agreed to pay five hundred dollars for the use of the Mill the twelve months. Rent to be paid quarterly at the end of each quarter and upon a failure to pay rent Agent had right to take possession of the Mill.
- 16 Plaintiff covenanted to deliver up the Mill at the end of the term in as good condition and repair (reasonable wear and unavoidable accident excepted,) peacebles &c. Covenant not to commit, waste &c.
- 17 Defendant then closed his case.
- The Court then instructed the Jury for the Plaintiff as follows:
- 18 1st, That if the Jury believe from the evidence that the Plaintiff done the repairs to the Mill at the instance and by the authority of Peck or his Agent, the plaintiff is entitled to recover for the same what the repairs were reasonably worth.
- 2nd, That if the Jury shall find from all the evidence and circumstances proved in the case, that the repairs were made by authority of the Defendant Peck or his Agent Bryan as a matter of contract then he is entitled to recover.
- 3rd, That if the Jury find from the evidence, that Peck was about the Mill while the repairs were being made and gave directions as to how the work should be done, this is a fact which may be considered by the Jury and if they find from a view of all the evidence that the work was done by authority of Peck or Bryan as a matter of contract the Plaintiff should recover.
- 4th, That if the Jury believe from the evidence that there was either an express or implied agreement of Peck or his Agent to pay the Plaintiff for their repairs, you should find for him the value of said repairs.
- 19 5th, That if the accident to the mill was unavoidable then the plaintiff was not to repair, and if he did repair at the instance of the defendant or his agents, then the plaintiff is entitled to recover the giving of each of the said instructions to the Jury, the defendant by his counsel at the time excepted and prayed that this his bill of exceptions should be made a part of the record.
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- 1st, That if there was a written lease or contract between the parties in reference to the renting of the mill and that defendant Peck did not in such lease or contract agree to keep the mill in repair, then he was not reliable for any amount that the plaintiff may have expended in repairing the mill—to which the court added these words, "unless the jury believed from the evidence a subsequent agreement to pay for the repairs was made by defendant" to the making of which addition by the court defendant at the time excepted.

20 2d. That in law Peck the defendant in this action was not bound to keep the mill in repair while it was occupied by the plaintiff, and unless the plaintiff can show a contract to repair on the part of Peck the jury must find the issue in the case for the defendant.

20 3d. That if under the proof the jury believe the plaintiff cannot recover for the work in repairing the mill and the proof shows that the defendant's claim for rent is more than one hundred dollars then the jury must find for the defendant a verdict for costs simply against the plaintiff, but if the defendant's claim should from the proof turn out to be less than one hundred dollars, the jury should find for the defendant such amount not exceeding one hundred dollars as the proof may show.

4th. That Peck the defendant could not make himself liable to the plaintiff for work done by his plaintiff's hands on the mill by simply saying to them to make a good job, and that in order to make Peck liable to the plaintiff there must have been such an understanding on the part of Peck as amounted to a contract to pay, either pay plaintiff or the hands for the work done.

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6th. That if the plaintiff undertook the repairs by a conditional authority from Bryan agent that the defendant would pay for the same provided he was bound to do so by the terms of the written lease between the parties, then he can recover only by the terms of such written lease and is bound by the terms of such written lease.

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ERRORS ASSIGNED.

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SILAS L. BRYAN, Atty.

Deck
in
Sawidge

8571

Taken Nov. 14. 1860.
A. Johnston Clerk
Coffin

WILLIAM T. BRYAN JUN.

1860

No 38

Nov. Term 1860

Peck

vs

Sedwidge

Appl. from Martin

Rev. & Rend.

8571

Salem Ill Feb 4th 1861

My dear friend

Your letter containing final
order in the case of the Office of the
W. Brown came duly to hand for which
You have my thanks, I called on Bassett
and had him file the final order in the
other case of which I spoke in my last
letter, I have not seen Blankenship since
court He is well and I hope will draw up the
Military cards in that case I will call his atten-
tion to the subject as soon as I can con-
vince You had better make executions for
costs in the case of Lo Beck vs Sedgewick
and John W. Hall vs Al

Respectfully Your friend

Samuel W. Ryan

P.S. Your opponent will not
be heard of here - that is to say
our people will give you an
unlimited supply S.W.R.