No. 11893

Supreme Court of Illinois

Murphy, et al.

vs.

Sweeney.

71641 7

No 2

John Murphy et al

vs

Jeremiah Sweeney

1871

11893

State of Illinois
County of Cook } S. Pleas before the Honorable Richard M. Young one of the Justices of the Supreme Court and presiding Judge of the Seventh Judicial Circuit of the State of Illinois, at a Term thereof begun and held in and for the County of Cook at the Court-house in the City of Chicago on the Twenty Seventh day of March (it being the fourth Monday in March) in the Year of our Lord One Thousand Eight Hundred and Forty Three and of the Independence of the United States the Sixty Seventh

Present the Hon. Richd M Young Judge
James Curtiss States Attorney
Samuel J Lowe Sheriff
Attest. Henry G Hubbard Clerk

Be it remembered that on the First day of November in the Year of our Lord One Thousand Eight Hundred and Forty Two there was filed in the Office of the Clerk of the Circuit Court the following transcript from the records of N. L. Rucker Esq a Justice of the peace in and for said County of Cook which said Transcript is in words and figures following to wit:

State of Illinois
County of Cook } S. Before N. L. Rucker J. P. Debt $50.00

Jeremiah Downey for use of Morris Corder
vs
John Murphy 2nd } Assumpsit on promissory note for $40 dated Feby 28th 1838 payable to bearer on demand

Justices fees
Docket — 12½
Sums — 18¾
2 Spas — 37½
Judt — 25
Cert — 25
Appeal — 25
Bars — 20 per
Bond — 75 — 2,18¾

Sum issd April 21 1842. rettd April 29 at 10 O'Clk A.M. Gave to Sullivan

One Spa. Deft April 25 Sums rtd

Served April 25 One Spa. Deft. April 27th

211893-D

Justice Fees $2.18¾ April 29th Plff appears by his Atty.
Cons Sullivan Defendant makes default whereupon judgment is
Service 25 rendered for plaintiff for Debt $40
Dr. Spa. 12½ & for Costs of suit Costs 2.66½
Milage 10 47½ $42.66½
$2.66½ Judgt. April 29th 1842.
May 18th Deft prays an appeal - Bond filed and Transcript made

I do hereby certify the above to be a true Transcript of the Judgment & proceedings had before me in the above entitled cause

May 18: 1842. H. L. Rucker Jus. Peace

and afterwards to wit on the same day and year aforesaid to wit on the said twenty day of November AD 1842 there was filed in the office of the Clerk of the Said Circuit Court the Defendants appeal Bond in said suit, which said appeal Bond is in words and figures following to wit

Know all men by these presents that we John Murphy 2d and John McIntyre are held and firmly bound unto Jeremiah Sweeney for use of Dennis Cordan in the penal sum of Eighty Five $ 30/100 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 18th day of May AD 1842.

The Condition of the above obligation is such, That whereas the said Jeremiah Sweeney for use &c did on the 29th day of April AD 1842, before H. L. Rucker a justice of the Peace for the County of Cook, recover a judgment against the above bounden John Murphy for the sum of Forty Two Dollars and Sixty Five ½ Cents, from which judgment the said John Murphy has taken an appeal to the Circuit Court of Cook aforesaid State of Illinois. Now if the said John Murphy shall prosecute his appeal with Effect, and shall pay whatever judgment may be rendered by the Court upon the dismissal or trial of said appeal, then the above obligation to be void, otherwise to remain

in full force and effect.

Approved by me, at my Office this 18th day of May AD 1842
H L Rucker J.P.

John Murphy 2d (Seal)
John McIntyre (Seal)

And afterwards to wit on the same day and year to wit on the First day of November in the Year of Our Lord One Thousand Eight Hundred and Forty Two, there issued out of the Office of the Clerk of the said Circuit Court the peoples Writ of Summons which is in words and figures following to wit –

State of Illinois
County of Cook } ss. The People of the State of Illinois
To the Sheriff of Cook County Greeting

We Command you that you Summon Jeremiah Searey who sues for the use of Dennis Lorden, if he shall be found in your County, personally to be and appear before the Circuit Court of said County on the first day of the next Term thereof, to be holden at the Court House in the City of Chicago in said County, on the first Monday of November next to answer unto John Murphy 2d to an appeal from before H L Rucker a Justice of the peace of said County

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

(Seal)

Witness Henry G Hubbard Clerk of said Court and the seal thereof at the City of Chicago, in said County, this First day of November in the year of Our Lord One Thousand Eight Hundred and Forty Two.
H. Geo. Hubbard Clerk

On the back of which said Summons there appears the following return of said Sheriff to wit

Returned Jeremiah Searey not found
Nov. 7, 1842. Fees 12½
J Lowe Shff
by W A Dawes Dpty Shff

511893-B

and afterwards to wit on the Eighth day of April in the Year of Our Lord One Thousand Eight Hundred and Forty Three there was filed in the Office of the said Clerk of the said Circuit Court the Defendants affidavit which said affidavit was in words and figures following to wit —

Cook Circuit Court

Thomas Sweeny for use &c } On appeal
vs
John Murphy } County of Cook State of Illinois ss.

John Murphy the above defendant being duly sworn saith that he has a good and substantial cause of appeal in this suit, as he is advised by counsel & verily believes — and this deponent further saith that the note, memorandum or bill on which this suit is brought against him was not signed by him nor by any one by him thereunto lawfully authorized —

Sworn & Subscribed this 8. day of April 1843. W. G. Hulbard C.M. } John Murphy

and afterwards to wit on the Thirteenth day of April in the Year of our Lord One Thousand Eight Hundred and Forty Three there was filed in the Office of the Clerk of said Circuit Court, the plaintiffs motion to dismiss the above entitled cause which said motion is in words and figures following to wit —

John Sweeny use of Lorden }
vs
John Murphy — } The Plaintiff comes and moves the Court to dismiss the appeal taken in this cause for the following reason The papers in the cause were not filed until November 1st 1842 the judgment having been rendered April 29th 1842

Leary for Pltff

And afterwards to wit on the Thirty First day of August in the Year of Our Lord One Thousand Eight Hundred and Forty Three, being one of the days of the August Term of the said Circuit Court for said

County the following among other proceedings were had to wit —

Jeremiah Sweeney for use of
Dennis Lordan
vs
John Murphy 2d } Appeal

This day came the plaintiff by Leary and entered his motion herein to dismiss this appeal and afterwards to wit on the 1st day of September as yet being one of the days of the said August Term of the said Circuit Court for the year One Thousand Eight Hundred and Forty Three the following among other proceedings were had to wit

Jeremiah Sweeney for use of
Dennis Lordon
vs
John Murphy 2d } Appeal

This day come the parties by their attorneys — thereupon the said plaintiff moves to dismiss this appeal for the reason that the appeal bond was not filed in time — It is therefore ordered that this appeal be dismissed and that a procedendo issue and that the plaintiff recover his costs expended in this court, and have execution — The Defendant by his counsel excepts to the opinion of the Court —

State of Illinois
County of Cook } ss. I Samuel Hoard Clerk of the Circuit Court in and for said County do hereby certify that the foregoing is a true perfect and correct transcript from the records and proceedings in the foregoing entitled cause as appears of record — In testimony whereof I have hereunto set my hand and affixed the seal of said Circuit Court at Chicago in said County this Twenty Seventh day of March in the Year of our Lord One Thousand Eight Hundred & Forty Seven

Sam Hoard Clerk

[11893-3]

Let the writ of error to be issued in this cause be made a supersedeas on the defendants entering into bond with Charles P. Cringle as security, in the penal sum of two hundred dollars conditioned according to law — July 6. 1848

W B Thomas
Associate Jus
Sup. Ct
State of Ills

John Murphy Plff in error vs. Jeremiah Sweney for the use &c Defd in error } Error to Cock Co Cir Court

Assignment of Error

The said Murphy Plaintiff in error assigns for error in the within Record

1st The Court erred in dismissing the Appeal

2d The Court dismissed the appeal because (altho the appeal was regularly perfected before the Justice of the Peace) the Justice of the Peace did not file his Transcript and the appeal Bond in Sup. Court within twenty days from the perfecting said appeal

T W Ballingall for Plff in error

Filed August 24. 1848.
Allan Clerk.

Jeremiah Sweney for use &c. vs. Dennis Vorder

John Murphy 2d

Transcript

Fee $2.75

[11893-1]

Know all men by these presents That We John Murphy second and Charles P. Kingle of the County of Cook and State of Illinois are held and firmly bound unto Jeremiah Sweeney for the use of Dennis Lordan in the penal sum of Two Hundred Dollars lawful money of the United States, for the payment of which said sum well and truly to be made we bind ourselves, our heirs Executors & administrators ~~and assigns~~ jointly and severally, firmly by these presents

Witness our hands and seals, at Chicago this 6th day of July AD 1848.

The Condition of the above obligation is such that whereas heretofore to wit on the first day of September AD 1843. in Circuit Court of Cook County, before the Hon. Richard M Young Judge thereof the said Jeremiah Sweeney who sued for ~~and appeared~~ the use of Dennis Lordan recovered a judgment, against the said John Murphy 2d for the sum of three dollars & twelve ½ cents Costs, upon the dismissal of a certain appeal then and there pending in said Court, and whereas the said John Murphy has taken an appeal from the Judgment of the said Circuit Court by writ of Error to the Supreme Court of the State of Illinois. Now if the said John Murphy 2d shall prosecute his said appeal with effect and in case said Judgment shall be affirmed shall pay all Judgments costs interests and damages which may be awarded in said Supreme Court against him then this obligation to be void otherwise to be and remain in full force and effect.

Taken and entered into before me this 6th day of July 1848.

Saml Hoard Clerk
Cook Cir. Court.

John Murphy (Seal)

C P Kingle (Seal)

[1893-5]

John Murphy
Pltff in error
vs
Jeremiah Sweeney
for use &c
Deft in error
Bond

Filed July 6. 1848.
S Woodall

Filed Aug. 24. 1848.
U. Leland Clerk.

State of Illinois ss.
Supreme Court 3d Grand Division

The People of the State of Illinois,
to the Sheriff of Cook County.

Because in the Record & proceedings, & also in the rendition of the Judgment, of a plea which was in the Circuit Court of Cook County, before the Judge thereof, between Jeremiah Sweeny for use of Dennis Lorden, plaintiff, & John Murphy 2nd, defendant, it is said that manifest error hath intervened to the injury of the said John Murphy 2d as we are informed by his complaint, the record & proceedings of which said Judgment, we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form & manner, according to law; therefore we command you, that by good & lawful men of your County, you give notice to the said Jeremiah Sweeny for use of Dennis Lorden that he be & appear before the Justices of our said Supreme Court, at the next Term of said Court, to be holden at Ottawa, in said State, on the first Monday of February next, to hear the records & proceedings aforesaid, & the errors assigned, if he shall think fit; and further to do & receive what the said Court shall order in this behalf; And have you then & there the names of those by whom you shall give the said Jeremiah Sweeny for use of Dennis Lorden notice, together with this Writ.

Witness, the Hon. William Wilson, Chief Justice of our said Court, & the seal thereof, at Ottawa, this 24th day of August A.D. 1848.

C. Leland Ex Officio Clerk of the Supreme Court 3d Grand Division.

[11893-7]

No. 2.

John Murphy Pltf
vs
Jeremiah Sweeney for use
of Dennis Leddon

Scire Facias

The Defendant in the
Case James Sweeney
is not found within
my bailiwick
May 1st 1849
Peter Gr. Ill
S. Cook Sheriff
By John Black
Deputy

Filed May 21st 1849.
J. Leland Clk.

Supreme Court, 3d Grand Division – June Term 1849.

John Murphy &c – Plff. in Error –
vs
Error to Cook.
Jeremiah Sweeny for use
of Dennis Lordin – Deft. in Error –

Plffs. costs –

Fil. transcpt. 20, Dk. cause 12½, Mit of error made Supd. & fil. 1.06¼,	1.38¾
Sei. fa. & seal & fil. 1.06¼, Supd. & seal & fil. 1.06¼, fil. mcas 6¼,	2.18¾
Fil. bond 6¼, fil. 4 abstracts 25, Appr. of plff. 25, Ord. to join in mor 25,	.81¼
Ent. dfplt. of dept. 25, Ord. of reversal 25, Ord. remanding cause 25,	.75
Ord. for dept. to pay costs 25, copy of order of reversal 50, cutt. & seal 50,	1.25
Docket fee	1.25
Fee bill 37½, copy 25, cutt. & seal 50, satisfn. 25, Postage 20,	1.57½
Fil. & Dk. 18¾, Shffs. return 12½,	.31¼
Clerks fees for transcript	2.75
Shffs. fees – Retg. Sei. fa. 12½, Serv. & ret. Supd. 62½, mil. 1 mile 6¼, (Beach)	.81¼
	13.08¾

State of Illinois, ss.

Supreme Court—Third Grand Division, at Ottawa:

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

WE COMMAND YOU, that of the goods and chattels, lands and tenements of Jeremiah Sweeny for use of Dennis Lordin ——— you cause to be made the sum of thirteen ——— dollars and eight & three fourths — 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 27th ——— day of July ———
A. D. 1849.

S. Leland *Clerk of the Supreme Court.*

[11893-8]

6343

Supreme Court.

Allen Phy vs Swerny

Fee Bill vs Swerny $13.08¾

Fee Book page 27

Returned not found
and the man is dead

August 1st Return 40 · 12½

Isaac Cook Sheriff By
Owen McCarthy deputy.

Filed Oct. 1st 1849.
S. Leland Clk.

98 141
98 2
98 691

Illinois, ss.

Clerk's Office of the Supreme Court,
3rd Grand Division.

I hereby certify, that a Writ of Error hath issued from this Office, for the reversal of a judgment obtained by Jeremiah Sweeney for the use &c. against John Murphy 2nd in the Circuit Court of Cook County, at the August Term in the year of our Lord one thousand eight hundred & forty three in a certain appealed suit for which Writ of Error is to operate as a Supersedeas, and as such is to be obeyed by all concerned.

Given under my hand, & the seal of the said Supreme Court, at Ottawa, this 24th day of August A.D. 1848.

S. Leland ex officio Clerk of the Supreme Court 3rd Grand Division.

[11893-9]

No. 2 (Pl.)

John Murphy &c
vs
Jeremiah Sowny for &c.

Writ of Supersedeas

Executed by reading the within writ in the presence of ~~the within~~

the attorney within ~~the~~ within named
July 1st 1849

1 Sum	—	$ 50
1 Writ	—	" 06¼
Return	—	" 12½
		$ 68¾

J. Cook Sheriff
By John Brock
Dept.

Filed May 21st 1849.
L. Leland Clk.

State of Illinois, Set.

The People of the State of Illinois,
to the Clerk of the Circuit Court of Cook County — Greeting:

Because in the record & proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of Cook County, before the judge thereof, between Jeremiah Sweeny for use of Dennis Carden plaintiff and John Murphy 2d defendant it is said that manifest error hath intervened to the injury of the aforesaid John Murphy 2d as we are informed by his complaint, & we being willing that error, if any there be, shall be corrected in due form & manner, & that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly & openly without delay, send to our Justices of our Supreme Court the record & proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa in the County of La Salle on the first Monday of February next, that the record & proceedings, being inspected, we may cause to be done thereon, to correct the error, what of right ought to be done according to law.

Witness, the Hon. William Wilson, Chief Justice of our said Court, & the seal thereof at Ottawa, this 24th day of August A.D. 1848.

S. Leland Ex Officio Clerk
of the Supreme Court 3d Grand Division.

S11893-10

Supreme Court

Plaintiff in Error
John Murphy 2d
vs
Defendant in Error
Jeremiah Sweeny Jr.

Writ of Error

This writ of error is made a Supersedeas & is to be obeyed accordingly
Leland Clk.

Filed Aug. 24. 1848.
Leland Clk.

John Murphy, Plff in Error
v.
Jeremiah Sweeney for the use of Dennis Lordin, Deft in Error } Error to Cook Co

The Defend. in Error brought his action against the Plaintiff in Error before H. L. Rucker a Justice of the Peace of Cook County; — Sweeney obtained judgment for $40, on 29th April 1842; On the 18 May 1842 the Plaintiff in Error prayed and perfected his appeal before the said Justice; but the Justice of the Peace did not file the Bond and other Papers with the Clerk of the Circuit Court, until long after the expiration of twenty days from the taking of the appeal;

On the 1st September 1843, the Circuit Court dismissed the appeal, "for the reason that the appeal Bond was not filed in time", to which decision the Deft. below excepted, and now assigns for Error,

1st, The Court erred in dismissing the appeal,

2nd, The Court erred in dismissing the appeal on the ground, that the Justice of the Peace did not file the Appeal Bond in time with the Clerk;

Authorities, Little v. Smith, IV Scamm. 400
Young et al. v. Bailey ib. 420

T. Ballingall
for Plff in error

[11893-B]

John Murphy
Plff in error
vs
Jeremiah Sweeney
for the use of Denis
Lordin Defdt in
error

~~Abstract &~~
Brief

John Murphy, Plff in Error
v.
Jeremiah Sweeney for the use
of Dennis Lordin, Deft in Error } Error to Cook Co.

The Deft in Error brought his action in Error against the Plff in Error, before H. L. Rucker, a Justice of the Peace of Cook County; Sweeney obtained ~~payment~~ judgment for $40, on 29th April 1842; — On the 18th May 1842 the Plaintiff in Error prayed, and perfected his appeal before the said Justice; but the Justice of the Peace did not file the Bond and other papers, with the Clerk of the Circuit Court, until long after the expiration of twenty days from the taking of the appeal; On the 1st September 1843, the Circuit Court dismissed the appeal "for the reason that the appeal Bond was not filed in time" to which decision the Defendt. below Excepted, and now assigns in Error,

1st, The Court Erred in dismissing the appeal;

2nd The Court Erred in dismissing the appeal on the ground, that the Justice of the Peace did not file the appeal Bond in time with the Clerk;

Authorities, Little v. Smith IV Scam. 400
Ewing et al. v. Bailey, id 420

W. Ballingall
for Plff in error

[11893-12]

John Murphy
Pltff in error
vs
Jeremiah Sweeney
for the use of Dennis
Lordin Deft in
error

Abstract and
Brief

John Murphy Plff in Error
vs
Jeremiah Sweeney for the use
of Dennis Lordin Defd in Error

} Error to Cook Co

The Defd in error brought his action against the Plff in error before H L Rucker a justice of the Peace of Cook County - Sweeney obtained judgment for $40. on 29th April 1842. - On 18th May 1842, the Plff in error prayed and perfected his appeal before the said Justice. but the Justice of the Peace did not file the Bond and other Papers with the Clerk of the circuit Court, until long after the expiration of twenty days from the taking of the appeal. - On 1st September 1843, the Circuit Court dismissed the appeal, "for the reason that the "appeal Bond was not filed in time"; to which decision the Defd below excepted: - and now assigns for error

1st The Court erred in dismissing the appeal

2d The Court erred in dismissing the appeal on the ground that the Justice of the Peace did not file the Appeal Bond in time with the Clerk

Authorities Little vs Smith IV Scam: 400
Ewing et al vs Bailey id: 420.

J Ballingall
for Plff in Error

[11893-19]

John Murphy Plff
error
vs
Jeremiah Sweeney
for use of Dennis
Lordan Defdt in
error

~~Abstract &~~
Brief

Chicago 16 Aug: 1848.

Dear Sir

I enclose Bond & Record with assignment of Errors; with Abstracts & Brief, for the Judges who take their seats next December, and one for the Counsel for Deft in error. I also enclose $5 for fees to Clerk:

Please file all the Papers and see that the usual Writ issues forthwith, as the time limited for suing out a Writ of Error expires about the last of this month -

Yours respectfully
P. Ballingall.

[11883-14]