No. 8432

Supreme Court of Illinois

Nathan H. Farnsworth

vs.

Milton M. Agnew

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Nathan H. Farnsworth } In Supreme Court
vs. } November Term 1860
Milton M. Agnew } At Mount Vernon.
} Error to Monroe.

I do hereby enter myself security for Costs in this Cause, and acknowledge myself bound to pay or cause to be paid, all Costs which may accrue in this action either to the opposite party or to any of the officers of this Court, in pursuance of the laws of this State. Dated this 19th day of September 1860.

George Abbott.

[8432-1]

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Nathan H. Farnsworth
vs.

Milton M. Aguin

Bond for costs

Filed Sept. 26. 1860 -
N. Johnston Clk

State of Illinois,
SUPREME COURT,
First Grand Division. } SS

The People of the State of Illinois,

To the Sheriff of Monroe County.

Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Circuit Court of Monroe county, before the Judge thereof between

Nathan H. Hamsworth plaintiff and

Milton McAgnew defendant it is said that manifest error hath intervened to the injury of said Nathan H. Hamsworth as we are informed by his complaint, the record and proceedings of which said judgment, we have caused to be brought into our Supreme Court of the State of Illinois, at Mount Vernon, before the justices thereof; to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said Milton McAgnew

that he be and appear before the justices of our said Supreme Court; at the next term of said Court, to be holden at **Mount Vernon,** in said State, on the first Tuesday after the second Monday in November next, to hear the records and proceedings aforesaid, and the errors assigned, if he shall think fit; and further to do and receive what the said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said Milton McAgnew notice together with this writ.

WITNESS, the Hon. John D. Caton Chief Justice of the Supreme Court and the seal thereof, at MOUNT VERNON, this 19th day of September in the year of our Lord one thousand eight hundred and Sixty.

Noah Johnston
Clerk of the Supreme Court.

[8432-2]

17

SUPREME COURT.

First Grand Division.

N. H. Farnsworth

Plaintiff in Error,

VS.

M. M. Agnew

Defendant in Error.

SCIRE FACIAS.

FILED.

State of Illinois
Morrow County } The defendant is served
not found in my County
Oct. 29. 1860 Charles. Fiske Sheff

In the Supreme Court---November Term, 1860, at MOUNT VERNON.

NATHAN H. FARNSWORTH,
vs.
MILTON M. AGNEW.
} ERROR TO MONROE.

Record pages, 1, 2 and 3.

This was an action of Ejectment, in the Monroe Circuit Court, to recover certain land lying in that county. The pltff., in error, filed his declaration, with the usual notice, on the 12th day of April, 1858, and also a bond for costs in the usual form. On the same day pltff., moved for a rule on deft., to plead in 20 days and deft., entered a cross motion to dismiss said suit for want of a bond for costs. On these motions an affidavit, by Morrison, defendant's Atty., was presented to the court, and then amended by striking out the words *underscored*, these being in effect that the bond for costs was endorsed on the original declaration filed and not on the copy served on deft. That affiant told plaintiff's Atty., on the first day of the Term, that he did not believe that said bond for costs, was put on the declaration when it was served, and was informed by said Atty., that it was not written on it the time of service; but was put on as soon as he ascertained pltff., was a non-resident. George Abbott presented an affidavit that the bond for costs was filed with the declaration.—This was all the evidence, and judgment was rendered against said pltff., for costs, and said suit dismissed; to which decission of the court, pltff., below at the time excepted, and appealed to this court, and now assigns for error that the court below erred in dismissing said suit.

p. 7. p. 6 & 7.

p. 7.
p. 8.
p. 4 and 8.

Brief:

Sec. 1, of Chapter R. L. entitled *Costs*, only requires bond for costs to be filed before pltff., "institutes" suit; that is, before he takes a step in court to issue process out of it, or files papers in a cause. This statute is construed liberally, 21 Ills. R. 129, 510, 22, Id. 259.

2nd. It does not appear by said bill of exceptions that there was any reason why the pltff., below should have given bond for costs, at all. An affidavit is copied into the record, but it is no part theroof.

W. H. UNDERWOOD,
Atty. for Pltff., in Error.

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Nathan H. Farnsworth
vs.
Milton Montgomery

Abstract & Brief

Offin

State of Illinois,
SUPREME COURT,
First Grand Division. } SS

The People of the State of Illinois,

To the Clerk of the Circuit Court for the County of Monroe 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* Monroe *county, before the Judge thereof between*

Nathan H. Farnsworth *plaintiff and*

Milton M. Agnew *defendant it is said manifest error hath intervened to the injury of the aforesaid* Nathan H. Farnsworth *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 our Supreme Court the record and 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* **Mount Vernon,** *in the County of Jefferson, on the* 1st Tuesday after 2d Monday of November *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.* John D. Caton *Chief Justice of the Supreme Court and the seal thereof, at* MOUNT VERNON, *this* 26th *day of* September *in the year of our Lord one thousand eight hundred and* Sixty.

Noah Davis
Clerk of the Supreme Court.

[8432-4]

17

SUPREME COURT.

First Grand Division.

Nathan H. Farnsworth

Plaintiff in Error,

VS.

Milton M Agnew

Defendant in Error.

WRIT OF ERROR.

Issued & FILED Sept. 26, 1860.

N. Johnston Cl M

In the Supreme Court---November Term, 1860, at MOUNT VERNON.

NATHAN H. FARNSWORTH,
vs.
MILTON M. AGNEW. } ERROR TO MONROE.

Record pages, 1, 2 and 3. This was an action of Ejectment, in the Monroe Circuit Court, to recover certain land lying in that county. The pltff., in error, filed his declaration, with the usual notice, on the 12th day of April, 1858, and also a bond for costs in the usual form. On the same day pltff., moved for a rule on deft., to plead in 20 days and deft., entered a cross motion to dismiss said suit for want of a bond for costs. On these motions an affidavit, by Morrison, defendant's Atty., was presented to the court, and then amended by striking out the words *underscored*, these being in effect that the bond for costs was endorsed on the original declaration filed and not on the copy served on deft. That affiant told plaintiff's Atty., on the first day of the Term, that he did not believe that said bond for costs, was put on the declaration when it was served, and was informed by said Atty., that it was not written on it the time of service; but was put on as soon as he ascertained pltff., was a non-resident. George Abbott presented an affidavit that the bond for costs was filed with the declaration.—This was all the evidence, and judgment was rendered against said pltff., for costs, and said suit dismissed; to which decission of the court, pltff., below at the time excepted, and appealed to this court, and now assigns for error that the court below erred in dismissing said suit.

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(not in pt) do. do.

2*nd*. It does not appear by said bill of exceptions that there was any reason why the pltff., below should have given bond for costs, at all. An affidavit is copied into the record, but it is no part theroof.

Nothing shown that he should not, & the Court having so decided it will be presumed right, & as no error ex

W. H. UNDERWOOD,
Atty. for Pltff., in Error.

Mo to dismiss suit for want of bond for costs.

Sec 5 p 214. Scates Statutes. Suit is commenced by service of Decl. To "institute" suit is nothing but to begin suit - to put suit in operation - the commencement of a suit, and the institution of a suit is ~~[illegible]~~ the same thing.

The Statute Scates Comp. 244. Sec 2.

Bruce Rep & notes pt 2 p 68. as to requisite to file bond for costs,

That as to fact of non-residence Depos of Abbotts of St

[24932-E]

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Nathan K. Farnsworth
vs
Milton M. Agnew

Abstract & Brief