No. 11816

Supreme Court of Illinois

Wells

vs.

McCullock, et al

71641 7

Kane Co.
Charles B. Wells
vs
Angus McCullock et al.
2 ✓

11816

1851

~~Reversed for non-joinder~~
~~Not recommended~~

Reversed

State of Illinois
Kane County Circuit Court
November Term A. D. 1850

Angus McCulloch and
John Madden
vs
The People of the State
of Illinois

} Motion to quash Fee Bill

Be it remembered that on the hearing of this motion the following facts appeared in the evidence viz. At the January Special Term A. D. 1849 of the Kane County Circuit Court, McCulloch and Madden were indicted for malicious mischief. At the Jany Term A. D. 1849 they applied for a change of venue and on their application the venue was changed to the County of W. Henry where the case was tried at the April Term A. D. 1849. and they were acquitted. Afterwards on the 25th day of July A. D. 1849. the Clerk of the Kane Circuit issued a Fee Bill against said McCulloch and Madden for the costs made by them in the Kane Circuit Court which said Fee Bill is in the words and figures following viz.

State of Illinois. January Term A. D. 1849
Kane County Circuit Court

The People of Illinois
vs
Angus McCulloch. John Madden.

} Defendants Costs
Clerks Fees.

Attys app 25. fil 4 Pa 25. 2 Spa & fil $1.69½. ex 3 Recog $1.12	3.31		
aff & fil 18^3 mo chg Ven 25. ord 25. make Record 8 fol $1.00	1.69		
ord for Bail 25 Cer & Seal 50. fee Bill 37^2. Cer & Seal 50. Sat 25		87^2	6.87^2
Sheriff fees. 5 Spa $1.00 Tr $4.42 Rt 12^2. 5 Spa $4.75. Tr $20.99. Rt 12^2.			31.40^2
addl. Costs. Clks fees. alias fee Bill 37^2. Doc 12^2. Rt 12^2 Cer & Seal 50 Sat 25.			1.37^2
Shriff's fee. add Costs on fee Bill 19 Tr. 1.18^3 adv 25. Sc 50 Rts 12^2			2.06
		$	41.71^3

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I. Charles B. Wells Clerk of Kane County Circuit Court do hereby certify. that the above is a true Copy from my Fee Book.

Charles B. Wells Clerk

State of Illinois }
County of Kane } The People of the State of Illinois to the Sheriff of Kane County Greeting

We command you that if the above Fee Bill. amounting to Forty One 71 3/4 100 shall not be paid within thirty days. after being by you demanded. you cause the same to be levied of the goods and Chattels. lands and tenements of the said Angus McCulloch and John Madden defts in your County according to the Statute in such case made and provided And make due return of this writ. within Ninety days as the law directs, with an endorsement hereon. in what manner you shall have executed the same.

Seal

Witness Charles B. Wells clerk of Kane County Circuit Court and Seal thereof at Geneva in said County this 20th day of July AD 1849.

Charles B. Wells. Clerk

Which said fee bill was placed in the hands of the Sheriff of Kane County to execute and by him levied on the following lands, after 30 days demand. viz. the South east quarter of Sec 21. T 42 Range 8 E. Containing 160 acres. property of said McCulloch. which was afterwards on the 20th day of October AD. 1849 sold by said Sheriff on said fee bill to one Charles B Wells. to satisfy said fee bill. and afterwards to wit at the September Term AD 1850 the said McCulloch and Madden without having paid said fee bill or given bond for the payment of the same. and without having replevied the same in the manner prescribed by law, made their motion in open Court to quash said fee bill which said motion is in the words and figures following to wit.

Kane Circuit Court. Septem. Term 1850

Angus McCulloch
John Madden
vs
The People &c

Motion to Quash Fee Bill

And now comes the said Angus McCulloch and John Madden by Farnsworth their Attorney and moves the Court to quash the fee Bill heretofore issued by the Clerk of said Court against them, to wit issued on the 25th day of July 1849. for costs made in a certain action against them, wherein the People of the State of Illinois were plaintiffs in an indictment against them the said McCulloch & Madden for malicious mischief which said fee bill amounted to - as set forth by said Clerk - the sum of Forty one dollars and Seventy one & 3/4 cents. $41.71 3/4 for the reasons.

1st There was no judgment against them on which to issue said Fee Bill.

2d. The said Madden & McCulloch were not liable for the costs embraced in said fee bill

3d. The Clerk had no authority to issue said fee bill against them.

J. F. Farnsworth. Atty for Plffs

Which said motion was heard at the November Term AD. 1850. and the Court rendered judgment quashing said fee Bill. to which decision of the Court the Defts by Stale & Wilson their Attorneys except. The above were all the facts appearing in evidence on the hearing of the motion. They pray that their bill of exceptions may be signed which is done.

T. L. Dickey (Seal)
Judge

United States of America
State of Illinois

Pleas before the Hon Theophilus L Dickey Judge of the Ninth Judicial Circuit of the

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State of Illinois. At a Term of Kane County Circuit Court begun and held at the Court house in Geneva in said County on the Eighteenth day of November in the year of our Lord One thousand eight hundred and fifty

Present the Hon Theophilus L Dickey Judge
Burlow C. Cook. States atty
B C Yates Shriff

Attest Chas B. Wells. Clerk P.

Be it remembered that afterwards to wit on the Sixth day of December A D 1850. being one of the days of the aforesaid November Term A D 1850 of the Kane County Circuit Court. the following among other proceedings were had.

Angus McCulloch
John Madden
vs
The People of the
State of Illinois

Motion to Quash Fee Bill

This day comes the plaintiff by Farnsworth their attorney. and enter their motion to quash the fee bill filed herein, which motion is resisted by Plato & Wilson attorneys for defendant. the Court being fully advised sustains said motion. and orders said Fee Bill quashed. to which decision of the Court the defendant by their Counsel excepts. thereupon Comes C B. Wells purchaser under said fee bill and claims and prays an appeal to the Supreme Court which is allowed upon condition that they enter into Bond in the penal sum of One hundred dollars with George E Cowin Security to be filed in Sixty days.

And afterwards to wit on the 16th day of December A D. 1850 there was filed in the Office of the Clerk of the said Kane County Circuit Court. an appeal Bond in the

words and figures following, to wit.

Know all men by these presents that we Chas B Wells and George E Corwin of Kane County State of Illinois are held and firmly bound unto Angus McCulloch and John Madden of said County of Kane and State aforesaid in the penal sum of One hundred dollars to be paid unto the said Angus McCulloch and John Madden to which payment well and truly to be made we bind ourselves our heirs executors administrators or assigns jointly severally and firmly by these presents. Witness our hands and seals this 16th day of December A.D. 1850

The condition of the above obligation is such that whereas the said Angus McCulloch and John Madden filed their motion at the September Term of Kane County Circuit Court A.D. 1850 to quash a Fee Bill issued in the name of The People of the State of Illinois against them by Charles B Wells Clerk of said Court and which was decided at the November Term A.D. 1850 by the Honble Theophilus L Dickey Judge of said Court in favour of said motion and Judgment rendered quashing said Fee Bill from which Judgment of said Court Charles B Wells immediately prayed an appeal to the Supreme Court of the State of Illinois which the Judge of the Circuit Court allowed on condition the said Charles B. Wells enter into Bond with Geo E Corwin as his surety in the penal sum of One hundred dollars. Now if the said Chas B. Wells shall pay whatever Judgment may be rendered by the Supreme Court costs interest and damages in case the Judgment shall be affirmed and shall duly prosecute his said appeal then this obligation to be void otherwise to remain in full force and value

C. B. Wells (Seal)
Geo E Corwin (Seal)

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State of Illinois }
Kane County } ss I Charles B. Wells Clerk of Kane County Circuit Court certify the foregoing to be true and correct transcript of the Papers filed, and proceedings had in the case of Angus McCulloch and John Gladden vs. The People of the State of Illinois" on Motion to Quash Fee Bill in said Kane Circuit Court viz Bill of exceptions. Fee Bill. Motion to Quash. Proceedings had in Court. Appeal bond filed. from the original papers [illegible] of said Court in my office.

In Witness whereof I hereunto set my hand and affix the Seal of said Court at Geneva this 16th day of May A D 1851.

Charles B Wells
Clerk.

and now comes the said appellants and says ~~there is manifest~~ that in the record and proceedings aforesaid there is manifest error in this to wit

1st the court erred in quashing said Fee Bill

Platt & Wilson
attys for appellant

And now comes the said appellee McCulloch ~~by it~~ and says there is no such error in the record & proceedings as the said Appellant hath above

set forth and this he
prays may be inquired
of by the court—

Farnsworth & Wallace
attys for appellee

Kane Co

Chas. B. Wells
vs
Angus McCulloch et al.

Recd —

Filed June 11. 1857.
L. Leland Clk

Kane County Circuit Court

Angus McCulloch
and
John Madden
vs
The People of State of Ills

Transcript

State of Illinois } Supreme Court
3rd Grand Division } June Term 1857.

Charles B. Wells
vs.
Angus McCulloch & Madden } Appeal from Rowan

W. A. Wallace being duly sworn on oath deposes and says that J. T. Farnsworth who was attorney for the appellee below, wrote a letter to J. C. Champlin, the partner of this affiant, ~~which letter~~ requesting him to appear in said cause for him, and from the tenor of said letter this affiant believes that some arrangement had been previously made between said Farnsworth and Champlin in reference to said cause - but on Saturday last said Champlin left hurriedly, on account of some pressing engagements, and for that reason did not speak to this affiant in relation to said cause - and affiant was wholly unaware that he or his said partner were engaged in said cause, until he received the letter aforesaid from said Farnsworth - that said letter is dated the 8th of July inst & mailed on the 9th & should in the ordinary course

[illegible]

of the mails have reached ~~[illegible]~~ Ottawa the same day it was mailed - & if it had done so it would have enabled this affiant to join in error in this cause before the expiration of the rule for that purpose but said letter did not ~~[illegible]~~ come to the hands of this affiant until the morning of the 11th of July inst. although affiant called every day at the post office - and enquired for letters for ~~himself & said~~ his said partner - affiant believes from the tenor of said letter that said Farnsworth was the counsel for appellees in this court and that the errors in said cause would have been joined but for the delay of said letter. Affiant further believes from an examination of the record in this cause that there is an important question of practice involved in the case, and in the opinion of this affiant, the judgment of the court below in the cause was correct.

Subscd. & sworn to before me July 12, 1854.
L. Leland Clk

W. H. L. Wallace

C. B. Wells

vs

McCullochet al

Affdt. of Defts

Filed July 12, 1857.

L. Leland Clk.

Charles B. Wells
vs.
Angus McCulloch et al.

Appeal from Kane.

This was a motion to quash a fee bill.

The appellees were indicted in the Kane County Circuit Court for malicious mischief. The venue was changed to McHenry County where the defts. were tried and acquitted in April 1847.

On the 25th day of July 1849, the Clerk of the Kane County Circuit Court, issued a fee bill in the words and figures following, to wit;

State of Illinois
Kane County Circuit Court

The People of the State of Illinois
vs.
Angus McCulloch &
John Madden

January Term A.D. 1847.

Defendants Clerks fees

Attys app 25 fil 4 Spa 25 3 Spa & fil $1,69 ent 3 Recog. $1,12	3,31
aff. & fil 18 3 mo ch ven 25 ord 25 making record 8 folio $1,00	1,69
ord for bail 25 cer & seal 50 fee bill 37½ cer & seal 50 Sat 25	8,7½
Sheriff fee 80 Spa $1,00, Mn 442 Rt 12½ Sa Spa $4,15 Mn $20,99 Rt 12	31,40
Additional costs Clks fee alias fe bill 32½ Sve 12½ Rt 12½ cer & seal 50 Sat 25	1,37
Sheriffs fee additional costs on fee bill 19 Mn 1,18 3 adv. 25, W 50 Rt 12½	7,06
	$41,71

I Charles B Wells Clerk of Kane Co.

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Cir. Court, do hereby certify that the above is a true copy from my fee book

Charles B Wells Clerk.

State of Illinois }
County of Kane }

The People of the State of Illinois to the Shriff of Kane County, Greeting —

We command you, that if the above fee bill amounting to forty one 71/100 shall not be paid within thirty days after being by you demanded, you cause the same to be levied of the goods & chattels, lands & tenements of the said Angus McCullock and John Madden defts. in your County according to the Statute in such case made and provided — and make due return of this writ within ninety days as the law directs with an endorsement hereon in what manner you shall have executed the same.

Witness Charles B Wells Clerk of Kane County Circuit Court & Seal &c.

Said fee bill was levied by the Shriff of Kane County after 30 days demand on the SE qr of Sec. 21, T 42, R 8, and the same after being duly advertised was

sold to Charles B. Wells.

On the 20th day of October A.D. 1849, the sale of said lands was made to said Wells.

At the September term A.D. 1850 the said McCullock & Madden not having paid said fee bill or replevied the same according to the statute, made their motion in the said Keane Co. Circuit Court to quash said fee bill for the following reasons, to wit;

1st There was no judgment against them on which to issue said fee bill.

2d That said Madden & McCullock were not liable for the costs embraced in said fee bill,

3d The Clerk had no authority to issue the fee bill against them.

The Circuit Court sustained the motion, and quashed the fee bill, which is assigned for error.

The case is brought to this Court by Wells the purchaser by appeal.

[11816-8]

Charles B Wells
vs.
Angus McCullock
et al

Abstract.

Filed July 10th 1852.