No. 8455

Supreme Court of Illinois

Patrick B.Ducie

---

vs.

President & Trustees of
the Town of Ashley

Know all men by these presents, that we Patrick B. Ducie and John Haney, are held and firmly bound unto the Corporation of the Town of Ashley — The President and Trustees of the Town of Ashley — Washington County, Illinois, in the penal sum of Two Hundred Dollars — lawful Money of the United States — for the payment of which sum, well and truly to be made, we bind ourselves, our heirs, Executors and administrators, jointly, severally — and firmly by these presents. Witness our hands and seals this 31st day of December, A.D. 1861.

The Condition of the above obligation is such, that, whereas the said President and Trustees of the said Town of Ashley, did at the September Term A.D. 1861, in the Circuit Court of Washington County, Illinois, recover a judgment against the said Patrick B. Ducie for the sum of twenty-five Dollars, in a certain action of Appeal from a Justice of the peace — for the reversal of which said judgment, he the said Patrick B. Ducie is about to sue out his writ of error from the Supreme Court, for the first Grand Division of Illinois — which said writ of error, by order of one of the Justices of said Supreme Court, is to be made to operate as a Supersedeas, on him the said Patrick B Ducie filing his bond

[8N55-1]

with John Harvey as security, in the penal sum of two hundred dollars - conditioned according to law - &c. Therefore, Now Know ye, that if he the said Patrick B. Ducie, shall well and truly, and without delay, prosecute his said Writ of Error with effect - and shall pay, or cause to be paid the said judgment - and all such damages, interest and costs as shall be awarded against him by the said Supreme Court on the affirmance of said judgment, or this Dismissal of said Writ of Error, then this obligation to be void - otherwise the same to be and remain in full force and effect -

Patrick B. Ducie (Seal)

J W Harvey (Seal)

In presence of
Wm L Brown

13

Dwelle
v. } Bond
Trustees

to be signed first
by Dwelle
& by Harvey

Supersedeas bond.

Filed Jany. 11. 1862.
N. Johnston Clk

State of Illinois,
CLERKS OFFICE OF THE SUPREME COURT, } SS
First Grand Division.

I hereby certify that a writ of error hath ifued from this Office for the reversal of a Judgment obtained by The President and Trustees of the town of Ashley Against Patrick B. Ducie in the Circuit Court of Washington County at the September Term, in the year of our Lord one thousand eight hundred and Sixty one in a certain action of Appeal ~~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, and the seal of the said Supreme Court, at MOUNT VERNON, this Eleventh day of January in the year of our Lord one thousand eight hundred and Sixty-two.

Noah Shuster
Clerk of the Supreme Court.

[8465-3]

15

SUPREME COURT.

First Grand Division.

Patrick B. Ducie
Plaintiff in error

vs

President & Trustees
of Town of Ashley
Defendants in error

WRIT OF SUPERSEDEAS.

FILED.

Recd. this 20
Circuit Clerk

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

The People of the State of Illinois,

To the Sheriff of Washington 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 Washington county, before the Judge thereof between The President and Trustees of the Town of Ashley plaintiffs and Patrick B. Ducie defendant it is said that manifest error hath intervened to the injury of said Patrick B. Ducie 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 President and Trustees of the Town of Ashley that they 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 they 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 President and Trustees 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 Eleventh day of January in the year of our Lord one thousand eight hundred and Sixty-two

Noah Houston
Clerk of the Supreme Court.

2 PHSS-4

13

SUPREME COURT.

First Grand Division.

Patrick B. Duir

Plaintiff in Error,

vs.

President & Trustees of Town of Ashley

Defendants in Error.

SCIRE FACIAS.

FILED.

The Writ of Error, which is issued and filed in this Cause, is merely a Supersedeas, and as such, is to be allowed by all concerned.

Scott Lawton Clk

In the Supreme Court, State of Illinois.

FIRST GRAND DIVISION,

At Mount Vernon----November Term, A. D., 1861.

PATRICK B. DUCIE vs. THE PRESIDENT & TRUSTEES OF THE TOWN OF ASHLEY.	ERROR TO WASHINGTON.

ABSTRACT OF PLAINTIFF'S CASE.

1] A complaint was brought before a Justice of the Peace, P. McNeal, Esq., against the Plaintiff in Error, who was defendant in the Court below, for a violation of section 1 of ordinance No. 33 of the town of Ashley.—(Here insert ordinance on page of record.) The same was changed on the 5th day of June 1861, to another Justice. The cause was continued until the 17th June, 1861, when, after a motion to dismiss was made, and hearing testimony, the suit was dismissed.

2] The complaint, which was on oath, charges the plaintiff in substance with violating said section of said ordinance by keeping a ten-pin alley, and keeping a place for the sale of beer, without license, the same being a nui-
3] sance. Complaint sworn to the 5th June, 1861. On the 27th July, 1861, the defendants in error appealed to the Circuit Court of Washington
7] county; and at the September term of said Court the following motions appear to have been made from the order of said Court: "The defendant moves the Court to dismiss appeal for want of appeal bond. Cross motion to amend by filing new bond allowed. Motion for continuance on affidavit. Motion refused. Sept. 6, motion to dismiss generally for want of bond—this being the third time a motion was made to that effect, and leave given to amend according to the suggestions of defendant, and further leave refused and motion overruled, to which ruling defendant at the time excepted. And now, on this, the 6th September, cause called for trial. Plaintiff moved to strike out name of William D. Mitchell from appeal bond. Motion allowed, and by agreement of parties submitted to the Court for trial. Judgment for plaintiffs for $25 and costs of suit. A new trial moved for and overruled, to which ruling of the Court defendant at the time excepted. A Bill
8] of Exceptions tendered and allowed, which is substantially as follows: motion to dismiss for want of appeal bond, the appeal bond on file being executed by plaintiffs only, no security being given. Motion sustained, and leave given to amend bond. On third day of term another appeal bond filed
9] filed before trial to dismiss for want of appeal bond. The Court sustained the motion, and gave leave to amend by altering the date of appeal bond to agree with date of filing, and the plaintiffs then and there altered the appeal

bond with the consent of all the obligors to it, so as to agree with date of same—the bond being thought sufficient by defendant's attorney, he moved to dismiss the suit because of defects in the original appeal bond; another counsel being employed, said new counsel again moved to dismiss appeal for want of an appeal bond, the appeal bond on file being signed by the President and Trustees of said incorporation, and not by the President and Secretary of said incorporation, and also not being signed by any principal. Motion overruled, defendant at the time excepting. [N. B. The said appeal bond appears to be signed James Smith, Pierce McNail on the right hand of the page, and by the President and Trustees of Ashley on the left hand of the page. See appeal bond, page 3 of record.] Motion overruled, and defendant excepted at the time. Motion to continue on affidavit filed. [Here affidavit ought to be inserted, but it is not on the record for some cause.] Motion to continue overruled, defendant excepting.

Plaintiff then called James Ramsey, a witness on their behalf, who stated that it was generally understood by the people of Ashley that there was a corporation; did not know it of his own knowledge. Saw Messrs. Mitchell, Board and Smith laying down plank for side walk; don't know of his own knowledge whether it was for incorporation; don't know as they were Commissioners of highway; could not say the plank was laid down before persons houses that were taxed for doing the same or not. Thinks defendant kept a ten-pin alley and a place for the sale of beer in Ashley in May last; think I have seen defendant selling beer; I have seen them rolling on ball alley, knocking down ten pins; my knowledge is not positive and ~~not~~ very limited. William Mitchell was then called as a witness for plaintiff; defendant objected because he was a party to the record; objection overruled, and witness allowed to testify, defendant excepting; the plaintiff moved to strike out name of Mitchell from appeal bond; defendant objected because it rendered security less, and because the plaintiff had no right to strike a a party's name from the record to make a witness of him for them; motion was sustained, defendant excepting; name stricken from an appeal bond, clerk approved appeal bond with remaining securities, who consented thereto, defendant at the time excepted and Mitchell stated: I put up notices of ordinances as of ordinace No. 33, immediately on the passage of the same: put up said notices ten days before cause was commenced in the Court below. The plaintiffs then offered a book called the Book of Incorporation, and offered to prove by said Mitchell record; defendant objected to said book, it not being competent evidence to prove existence of incorporation; objection overruled and book allowed in evidence, defendant excepting; said witness then stated: Defendant keeps a ten-pin alley and place for the sale of beer in Ashley and thinks defendant kept alley and sold beer last May. Defendant has no license.

This is the substance of plaintiff's evidence. On cross-examination said witness stated the last election was held 18th last January; ten days notice given of election; I was then a trustee and am still a trustee; no elections held since; never seen defendant rolling ball on ten-pin alley, nor 12] selling. I don't roll balls, nor drink beer, nor go into such places.—Saw defendant rolling a keg towards his place, which I supposed to be beer, but I don't know positively that it was beer.

Defendant then offered to read a certificate from County Clerk of Washington county, (here insert certificate, which will be found on page 4 of record,) plaintiff obected, Court overruled objection and plaintiff excepted at the time; the certificate was read in evidence, showing no statement of

number of polls, formation or organization of town of Ashley incorporation had ever been filed in his office, or requested to be filed. Defendant then offered to read the following certificate from Secretary of State of Illinois, (here insert certificate which is found on pages 4 and 5 of record,) but plaintiff objected; objection overruled, certificate read and defendant excepted.

The said certificate contains section 3 of Act to Incorporate town of Du Quoin, passed February 1st, 1861, which contained regulations of election of Trustees of town of Du Quoin and requiring two weeks notice of election, &c. This was all the evidence offered on the part of plaintiff and defendant. [See certificate on page of record.]

14] The Court gave judgment for plaintiff for $25. Defendant moved for a new trial; motion overruled and defendant excepted at the time and brings the cause into this Court by Writ of Error, seeking to reverse the judgment of the Court below for the errors assigned upon the record.

R. S. NELSON,

For Plaintiff in Error.

BRIEF

Of Points and References Relied on by the Plaintiff in Error.

1st " Town of Ashley incorporated under Carbondale act see private laws Ills 1857 page 1013 as to mode of appeal under Carbondale act 21st see laws of Ills 1853 and amendatory act laws 1855 Sec 3 under Carbondale act this appeal cannot be sustained

2nd " Town of Ashley again incorporated under Duquoin charter - appeal not in conformity with this See laws of Ills 1861 page 590

3rd " After the passage of the charter of the town of Ashley in 1861 under the Duquoin charter, two weeks notice of election required and there is no proof showing Ashley was incorporated or incorporated in part

4th " A party to the record cannot be a witness unless made a witness by some of the modes pointed out by law see this was error to allow a party's name to be stricken out to make a witness of him and for this reason alone the judgment of the court below ought to be reversed 1 Gil 360 Greenleaf on evidence § 39

5th " There was no appeal taken as required by law in other cases and no order of the board of trustees of Ashley allowing it and the court below really had no jurisdiction

6th " The judgment of the court was contrary to law and evidence see testimony in the case

R S Nelson for pltffs in error

Guardian Office print, Mt. Vernon.

13

P. B. Ducie

vs

President & Trustees

of Ashley.

Abstract

Filed Oct. 20. 1862.

N. Johnston Clk

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 Washington 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* Washington *county, before the Judge thereof between* The President and Trustees of the Town of Ashley Washington County Illinois *plaintiffs and* Patrick B Ducie *defendant it is said manifest error hath intervened to the injury of the aforesaid* Patrick B Ducie *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 the 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* Eleventh *day of* January *in the year of our Lord one thousand eight hundred and* Sixty two.

Noah Johnston
Clerk of the Supreme Court.

[2455-B]

13

SUPREME COURT.

First Grand Division.

Patrick B. Ducie

Plaintiff in Error,

VS.

President & Trustees of Town of Ashley

Defendants in Error.

WRIT OF ERROR.

Issued - Made a Supersedeas and

FILED - January 11th A.D. 1862 -

N. Johnston Clk

This Writ of Error is made a Supersedeas, Bond to be adjusted accordingly.

N. Johnston Clk

Springfield
8 Jany 1862

Major

No 8th here to day - as usual whole Morning taken up in Business as to whether the 8th should fought over again with the British. Convention adjd & nothing done, not having a suitable place to fight at this time. I spoke to the enclosed bond with me you will please open on it to Shff of Washington as soon as possible

Yours &c R S Nelson

[8455-9]

Ottawa Dec 14 1861

Honorable Sidney Breese

Dear Sir

Enclosed is a record in the Case of Ducie vs the incorporation of the town of Ashley. The affidavit for a Certiorari could not be found & altho' we relied on that yet we are forced to abandon that ground of error.

The points are set forth as relied on & I could not produce the Charter of Dupoin passed in 1861, nor that of Ashley, which was incorporated under the Dupoin Charter in the same year & at the Session of 1861 - but I will when at Springfield this winter get a copy of it - we took an appeal but the Judge forgot to enter the names of the Security

& they are pressing us with an execution. all we want is a fair hearing in the Supreme Court & if you can see that there is reasonable grounds of error I shall feel obliged for a supersedeas

I append my affidavit as to Hamp Tolbert who was approved of in the Circuit Court

Very respectfully
Yours
R S Nelson

Patrick Dacie plff in error

" error to Washington

The Incorporation of the town of ashley } defendants in error

This day appeared before me Richard Shelson who being first duly sworn according to Law states that he is personally acquainted with John Harvey a resident of Washington County State of Illinois and that he believes that said Harvey is worth after payment of his debts & reserving homestead & exemptions of personal property as by Law exempted from sale on execution at least $200, tho' this affiants best impression is that that he is worth $1000 Clear of all deductions. This affiant believes said Harvey is Clear of debt & has a very considerable account due him besides his property real & personal & this affiant knows he is a respectable & worthy man & a man that pays his debts punctually which is all affiant can say excepting that he believes he is perfectly good for fine & Costs in the above Cause if adjudged against him

Rich^d. S. Nelson

Sworn to & subscribed before me at affiant at Mt Vernon this 14th Dec 1865

Noah Johnston, Cl Sup^r Court 1 Division Ills

[1845511]

State of Illinois
Lawrence County } ss

This ~~affidavit they~~ is to certify that Richard Nelson in person appeared before me and acknowledged that he subscribed the foregoing affidavit & upon oath declared that the contents thereof is true to the best of his knowledge & belief.

Testimony whereof I have hereunto set my hand affixed by said office at Mt Vernon this 14 Decr 1861

13

R. B. Brown
vs
Town of Bowling

Affdvt. of Witness
of Claimant

Filed Dec 30-1861
W. Schnitzius Clk

In the Supreme Court, State of Illinois.

FIRST GRAND DIVISION,

At Mount Vernon----November Term, A. D., 1861.

PATRICK B. DUCIE vs. THE PRESIDENT & TRUSTEES OF THE TOWN OF ASHLEY.	ERROR TO WASHINGTON.

ABSTRACT OF PLAINTIFF'S CASE.

1] A complaint was brought before a Justice of the Peace, P. McNeal, Esq., against the Plaintiff in Error, who was defendant in the Court below, for a violation of section 1 of ordinance No. 33 of the town of Ashley.—(Here insert ordinance on page of record.) The same was changed on the 5th day of June 1861, to another Justice. The cause was continued until the 17th June, 1861, when, after a motion to dismiss was made, and hearing testimony, the suit was dismissed.

2] The complaint, which was on oath, charges the plaintiff in substance with violating said section of said ordinance by keeping a ten-pin alley, and keeping a place for the sale of beer, without license, the same being a nui-
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7] county; and at the September term of said Court the following motions appear to have been made from the order of said Court: "The defendant moves the Court to dismiss appeal for want of appeal bond. Cross motion to amend by filing new bond allowed. Motion for continuance on affidavit. Motion refused. Sept. 6, motion to dismiss generally for want of bond—this being the third time a motion was made to that effect, and leave given to amend according to the suggestions of defendant, and further leave refused and motion overruled, to which ruling defendant at the time excepted. And now, on this, the 6th September, cause called for trial. Plaintiff moved to strike out name of William D. Mitchell from appeal bond. Motion allowed, and by agreement of parties submitted to the Court for trial. Judgment for plaintiffs for $25 and costs of suit. A new trial moved for and overruled, to which ruling of the Court defendant at the time excepted. A Bill
8] of Exceptions tendered and allowed, which is substantially as follows: motion to dismiss for want of appeal bond, the appeal bond on file being executed by plaintiffs only, no security being given. Motion sustained, and leave given to amend bond. On third day of term another appeal bond filed
9] ~~filed before bond~~ Later motion made again to dismiss for want of appeal bond. The Court sustained the motion, and gave leave to amend by altering the date of appeal bond to agree with date of filing, and the plaintiffs then and there altered the appeal

[P4S5-12]

bond with the consent of all the obligors to it, so as to agree with date of same—the bond being thought sufficient by defendant's attorney, he moved to dismiss the suit because of defects in the original appeal bond; another counsel being employed, said new counsel again moved to dismiss appeal for want of an appeal bond, the appeal bond on file being signed by the President and Trustees of said incorporation, and not by the President and Secretary of said incorporation, and also not being signed by any principal. Motion overruled, defendant at the time excepting. [N. B. The said appeal bond appears to be signed James Smith, Pierce McNail on the right hand of the page, and by the President and Trustees of Ashley on the left hand of the page. See appeal bond, page 3 of record.] Motion overruled, and defendant excepted at the time. Motion to continue on affidavit filed. [Here affidavit ought to be inserted, but it is not on the record for some cause.] Motion to continue overruled, defendant excepting.

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This is the substance of plaintiff's evidence. On cross-examination said witness stated the last election was held 18th last January; ten days notice given of election; I was then a trustee and am still a trustee; no elections held since; never seen defendant rolling ball on ten-pin alley, nor 12] selling. I don't roll balls, nor drink beer, nor go into such places.—Saw defendant rolling a keg towards his place, which I supposed to be beer, but I don't know positively that it was beer.

Defendant then offered to read a certificate from County Clerk of Washington county, (here insert certificate, which will be found on page 4 of record,) plaintiff obected, Court overruled objection and plaintiff excepted at the time; the certificate was read in evidence, showing no statement of

number of polls, formation or organization of town of Ashley incorporation had ever been filed in his office, or requested to be filed. Defendant then offered to read the following certificate from Secretary of State of Illinois, (here insert certificate which is found on pages 4 and 5 of record,) but plaintiff objected; objection overruled, certificate read and defendant excepted.

The said certificate contains section 3 of Act to Incorporate town of Du Quoin, passed February 1st, 1861, which contained regulations of election of Trustees of town of Du Quoin and requiring two weeks notice of election, &c. This was all the evidence offered on the part of plaintiff and defendant. [See certificate on page of record.]

14] The Court gave judgment for plaintiff for $25. Defendant moved for a new trial; motion overruled and defendant excepted at the time and brings the cause into this Court by Writ of Error, seeking to reverse the judgment of the Court below for the errors assigned upon the record.

R. S. NELSON,

For Plaintiff in Error.

BRIEF

Of Points and References Relied on by the Plaintiff in Error.

1st Town of ashley incorporated under Carlinville act see private Laws Ills 1857 page 1013 - as to Mode of appeal under Carlinville act 21st sec, Laws 1853 and amendatory act Laws 1855 sec 3 under the Carlinville act this appeal Cannot be sustained

2d Town of ashley again incorporated under Duquoin charter - appeal not in Compliance with this - see Laws of 1861 page 590

3 after the passage of the Charter of the town of ashley in 1861 under the Duquoin charter - 2 weeks Notice of Election required - ~~in this case only 10 days Notice~~ and there is no proof shewing ashley was incorporated, or was an incorporation in fact

4 a party to the record Cannot a Witness unless made a Witness by adopting some of the Modes pointed out by Law

Guardian Office print, Mt. Vernon.

See ~~the~~ it was error to allow a party's Name to be Stricken out to

[8455-14]

make a witness of him. & for this reason alone the Judgment of the Court below ought to be reversed 1 Gil 360 Cts Greenleaf on Evidence 339

5 There was no appeal taken as required by Law in other Cases & no order of the board of Trustees of Ashley allowing it - & the Court below really had no Jurisdiction.

6 The Judgment of the Court below was Contrary to Law & evidence. See testimony in the Case

R S Nelson for plff in error

13

P. B. Dixie
vs
Town of Ashley

Abstract

Filed Oct. 20. 1862
N. Bruntzen Clk

No 13

P. B. Dueir
vs
Town of Ashley.

Error to Washington

8455

Dismissed & Leave
to withdraw Record -
in 1862.

Certified on Page 525 -