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Elizabeth Ballard
vs
Patrick McCarty

11875

1850

Prepared
E

No. 11875

Supreme Court of Illinois

Ballard.

vs.

McCartey.

71641 7

State of Illinois
In Danub County } set

Appeal in the In Danub County
Court begun and held within and for the County
of In Danub as follows on Monday the 7th Day
of May a d 1849 before the Hon Hugh S Dickey
presiding Judge of the said Court

Elizabeth Ballard } Plaintiff
vs }
Patrick McCarthy } Defendant

Be it remembered that on the 13th
Day of December a d 1848 the Defendant
Patrick McCarthy filed in the office of the
Clerk of the In Danub County Court of said
In Danub County a transcript from the Office
of William C Poston Esq a Justice of
the peace in and for said County which said
transcript is in the words and figures following
to wit

Elizabeth Ballard } On Charge of bond
vs } from Justice Rippey
Patrick McCarthy } for trespass on personal
property Damages \$50

1848 Decm 7th The Papers in the case are han-
ded to me, with transcript and case is set for
hearing on 12th inst at 2 P M

Subpⁿ ipd for Dep to Shannon & Co served fees
1³⁰ Reyon Subpⁿ for dep ipd to Harrett & Co

Served fees 1³² Byrne. Verdict issued by assent
of Dept for 6 jurors. Verdict served by summoning
the following named persons to Mr George
Harrison John Williams Comfort Barnes
Owen Doyle David Argent & Jacob Ling, Byrne
Cost fees \$1.00 Dec 12 Parties appeared
& Defendant moves to Dismiss the Suit
for insufficiency of the writ issued in this
Case; which motion is overruled and the
above named jurors are duly elected tried
& sworn, and witnesses are sworn and if
arranged, and after hearing the evidence
& arguments of Counsel the jury return to
consider of their verdict, and after a short
absence return into Court and publicly
deliver the following Verdict to Mr " The
jury find the Defendant Guilty and
assess the Damages at the sum of \$15 -
Judgment is thereupon rendered against
the Defendant for the said sum of \$15
Damages as aforesaid and for \$14⁵⁷ Cents

Dec 12 On out of Dept agent	Damages	15.-
Steamy Ex ipd to Kingston	Juries Peppery	2
Witnesses Joseph Beal 2 ^{ds}	At Portland B	2.06
R W Mc Elheny 3 ^{ds} & D Kilgus 3 ^{ds}	Cost Kingston	263
J. Park 3 ^{ds}	At Byrne	(2.32 4.95
	Witnesses	(5.50
Dec 7. 1848 Defendant Demands		\$ 29.51
an appeal		
Inster City appeal tamper		50
		\$ 30.01
Defendant paid Jury fees		1.50
		\$ 31.51

State of Illinois
In DuPage County } }

I the undersigned Justice of
the Peace do certify that the foregoing transcript
and papers annexed contain a full and perfect
statement of the proceedings & judgment in
the above entitled Cause before me to wit
my hand and seal this 12th day of December
1848

W^m C. Poston Jst of Peace

Enrolled

This December 13th 1848

George M. Poston Clerk

and afterwards to wit on the 14th day of
December a d 1848 the said Patrick McCarry
Defendant filed in the Office of the Clerk of
said DuPage County Court an appeal Bond
which is in the words and figures following to wit

Shown all men by these presents that we
Patrick McCarry and Zephaniel Bell are
held and firmly bound unto Elizabeth Ballard
in the penal sum of seventy five dollars for
the payment of which well and truly to be made
we bind ourselves and each of our heirs executors
and administrators jointly and severally firmly
by these presents Sealed with our seals and dated
this 13th day of December a d 1848. The Con-
dition of the above obligation is such that
whenever the above named Elizabeth Ballard
did on the twelfth day of December a d 1848
before W^m C. Poston Jst of Peace of the peace

for Jo Damp County recover a judgment
against the above named Patrick McCarty
for the sum of fifteen Dollars from which
said judgment the said Patrick McCarty
wishes to appeal to the Jo Damp County Court
of Jo Damp County. Now if the said Patrick
McCarty shall prosecute his appeal with effect
and shall pay whatever judgment shall be
rendered upon the demand or trial of said
appeal then the above obligation to be void
otherwise to remain in full force & effect
approved
Geo M. Fisher } Patrick McCarty }
Clerk } By Dele }
Clerk }

Endorsed filed
14th Decr 1838
Geo M. Fisher
Clerk

And afterwards to wit on the day and year
last aforesaid to wit on the 14th Decr a d 1838
there was issued out of the said Clerk above
a summons against the said Plaintiff
Elizabeth Ballard in the words & figures
following to wit

State of Illinois Jo Damp County Set
The People of the State of Illinois to the Sheriff
of the County of Jo Damp Greeting
We Command you to summon Elizabeth
Ballard to appear before the Jo Damp County
Court at the Court house in Gallena at the next
term to be holden at Gallena on the 1st Monday

of July next to answer Patrick McCarthy in
 an appeal And hence you then then then
 went to the Hon Hugh J Deakley Judge
 of said Court at Galena
 the 14th Day of December
 1848
 Attest Geo M. Andrew Clerk

which said writ was returned by the Sheriff
 into the said Clerk's office with the following
 endorsement thereon to wit: Executed the
 within by reading to the within named Elizabeth
 Bullard the 19th day of December a d 1848
 Sheriff Geo M. Andrew

Serving 50
 Mileage 12 1/2
 Returning 12 1/2
 75

And afterwards to wit on the 11th day of January
 a d 1850 at the January Special term a d 1850
 of said Court, in the Records of said Court in
 said cause is the following entry to wit

Elizabeth Bullard }
 vs } Appeal
 Patrick McCarthy }
 The defendant by his atty
 comes and files his Motion to Dismiss

which Motion is in the words and figures
 following to wit

Patrick McCarty
vs
Elizabeth Ballard

In vs Damp
County Court
Appeal

And now at this day Comes
the said Defendant by his attorny and
moves the Court to dismiss the above Cause
and reverse the judgment rendered by the
Justice for want of Jurisdiction in the Justice
and for other reasons

Drummond & Campbell
Attys for defd

Entered filed 11th of Janry 1830

Geo M. Ingleson Clerk

And afterwards to wit on the same day to wit
on the 11th Day of January a. d. 1830 as yet of
the January Special term a. d. 1830 of said
Court, in the Records of said Court in said
Cause is the following entry to wit

Elizabeth Ballard

vs
Patrick McCarty

Appeal

Now come on to be heard
the motion of the Defendant heretofore filed
to dismiss this Suit, which motion after argu-
ment is sustained by the Court - It is thereupon
Considered by the Court on Motion of the Defendant
by his attorny that the judgments below be reversed
and the Suit dismissed at the Costs of the plaintiff

and that the Defendant have and receive of
the plaintiff his Costs by him about his de-
fence in this behalf expended and also his
Costs in the Court below and that Execution issue
therefor. And the Plaintiffs atty & expts to
the ruling and decision of the Court,

The Exceptions of the Plaintiff are in the words
and figures following to Wit^s

Elizabeth Ballard	}	On appeal from a Justice
Patrick McCarthy		In the p Damp County Court to the January special term thereof A.D. 1851

Be it remembered that on this eleventh day of
June 1850 this Cause came on to be heard upon
the Motion of the Defendant to dismiss this Suit
for the causes stated in said Motion & Wit^s

Patrick McCarthy	}	In p Damp County Court appeal
Elizabeth Ballard		

And now at this day
comes the said Defendant by his attys and moves
the Court to dismiss the above Cause and reverse
the judgment rendered by the Justice for want
of jurisdiction in the Justice and for other
reasons

Prerogative & Compliance
attys for Deft

Entered filed 11th Jan 1850

Geo M Bridgman CLK

And it appearing to the Court from the transcript
of Justice Portmanth, that a change of venue
had been taken by the Deft from the Justice

before whom said Debt had been Commenced
and it further appearing from said transcripts
that the Defendant by his Counsel before any
issue had been joined in said Cause entered
his Motion to disemp said Debt on account
of the insufficiency of the writ issued against
said Debt, and it further appearing that said
Justice overruled said Motion and after inspection
of the Capias issued by the Justice before whom
the Debt was commenced of which the following
is a Copy to wit

State of Illinois }
In Deerp County } 3

The People of the State of Illinois
to any Constables of said County, Greeting
You are hereby Commaanded to take the Body
of Patrick McCarty and bring him forthwith
before me unless special bail be entered
and if such bail be entered you will
Command him to appear before me at my
Residence in East Galena Precinct on 28 day
of November (inst) at 5 o'clock P.M. to answer
the Complaint of Elizabeth Bullard for trespass
and Damages by entering and driving out
the Stock of the Plaintiff out of a certain field
inform which the said Plaintiff is entitled of
the said Defendant - And hereof make
due returns as the law directs - given under
my hand and seal this 28th day of Nov-1858
H. G. Peppin J. C. (Seal)

which said writ was returned as follows
to wit " Return the within by bringing
dependant before the justice Nov 28. 1848
H Rigdon Cin

(also)

I William J Crane acknowledge my self
Special Bail for the within named Patrick
McCarty as witness my hand this 28th day of
November 1848
W^m J Crane

Grant

Damages	\$50.00
Justice Costs	75
Const Cost	62

and also after inspection of the affidavit
of the Dependant before said justice for a change
of venue of which the following is a copy to wit

Elizabeth Ballena

Against
Patrick McCartney

} Action of trespass on
personal property before
H G Peppy JD

Patrick McCartney the dependant

in the above case being duly sworn on his oath
says it is his belief he cannot have an impartial
trial before said justice H G Peppy and prays
a change of venue

Sworn to and Subscribed
before me this 7th day
of December 1848

H G Peppy JD

} Patrick McCartney

and also after inspection of the transcript

of Justice Portman who tried the cause below
of which the following is a copy to Mr^s

Elizabeth Ballard }
" }
Patrick McCarly } On Charge of
} Verdict from Justice
} Reppin for trespass
} on personal property

Damages \$50 -

1848 Decem 7th The Papers in the case are
handed to me with transcript and case is
set for hearing for 12th inst at 2 P M

Subpoena for Deft to Sherman et al served per 1st Regm

Subpoena for Deft to Fancett et al served per 1st Regm

Verdict issued by order of Deft for 6 jurors

Verdict served by summoning the following named
jurors to wit; Geng Karrison John Williams Compt Barnes
Owen Doyle, Saw Argent & Jacob Ling. Regm cost
per \$1.00

Dec 12 Parties appeared & defendant went on
to dismiss the suit for insufficiency of the writ
issued in this case, which motion is overruled
and the above named jurors are duly selected
& sworn, and oaths are sworn and examined
and after hearing the evidence & arguments of
Counsel the jury retire to consider of their verdict
and after a short absence return into Court and
publicly deliver the following verdict to wit
That the jury find the defendant guilty and
assess the damages at the sum of \$50 -
Judgment is therefore rendered against the
defendant for the said sum of \$50 damages
as assessed and for \$15⁰⁰ Costs

Due 12 th in units of pl th agent	}	Damages	15
Stunning Ex ^o sp ^o . to Ringoon		Justin Peppy	2
Writings		At Portsmouth	2-06
Small Rec ^{ts} 2 ^o R ^o M ^o Dr ^o Col ^o King		Cost Ringoon	2-63
3 ^o D ^o Ringoon 3 ^o P ^o Surt 3 ^o		At Rymer	2-32
		Writings	5-50
			<u>\$29-51</u>

Dec 7 1848
 Deft demands an appeal

Justin Eng appeal
 & transcript 30

Defendant paid jury fee \$30-01
 \$1-50
 \$31-51

State of Illinois
 vs Dumpfont 3

I the undersigned Justice
 of the Peace do certify that the foregoing transcript
 and papers annexed contain a full & perfect
 statement of the proceedings & judgments in the
 above entitled Cause before me & that
 my hand and seal this 12th day of December
 1848 W^m C^o Portsmouth J^o P^o (Seal)

Enrolled

Filed December 13th 1848

George M. [unclear] Clerk

And after argument of counsel concerning the same
 for want of jurisdiction in the justice - whereupon
 the Plaintiff excepts to the ruling and decision
 of the Court and prays this his Plea of Exceptions
 to be signed sealed and made part of the record
 in this Cause which is done

Hugh T. Dickey
 Judge

Records filed 12th Jan'y 1850

G. M. Mitchell Clerk

State of Illinois }
In Danvers County }
I, George M. Mitchell
Clerk of the 70th Danvers County Court in
and for said County do hereby certify that
the foregoing transcript contains a true
and correct copy from the records of all the
proceedings which were had in the said Court
in the aforesaid case of Elizabeth Ballard
against Patrick McCarty

Witness my hand and seal
of said Court at my office
in Gallena this 4th day
of March a. d. 1850

Attest

G. M. Mitchell Clerk

Fees for Transcript \$3.00
Certification & Seal .35
\$3.35

Ballard
v
McCarty
Transcript

Eliogabett Ballard
vs
Patrick M. Cartz
(Damages \$50.)

Trespass to personal property
commented before a Justice
of the peace, and taken by appeal
to the Judicary County Court.

Assignment of Errors in the above Case.

- I. This being an action of trespass to personal property, and the damages less than \$100 - the justice of the peace below had jurisdiction of the subject matter, and the Court erred in dismissing said appeal and reversing the judgment of the justice for want of jurisdiction in the justice of the peace.
- II - This being an action where jurisdiction is given to the justice of the peace, by express terms of the Statute - The Judicary County Court erred in dismissing said appeal for want of jurisdiction in the justice of the peace before whom the suit was instituted.
- III - If there were informalties in the original writ issued by the justice of the peace, they were waived by the appearance of the defendant before the justice; and said Court erred in dismissing said cause on account of said informalties.
- IIII - If the original writ issued by the justice of the peace, was informal and insufficient, it is too late to take advantage of the same in the Court above after an appearance of the defendant before the justice of the peace - and the Court erred for dismissing said cause for that reason.
- V - And, for other good Reasons appearing upon the face of the proceedings -

G. P. Stevens Atty. for Plaintiff.
By my Johnson

And now at this day comes the said
Dept. in error and says that in the preceding
and more, and in the relation of the
Judgment there is no error, He therefore
says that the said Judgment may be
affirmed.

Campbell
Atty Gen Dept of War

32

Elizabeth Ballard

vs

Patrick McCarty

Record

Filed May 18. 1852.
McLana Ck.

State of Illinois, }
Supreme Court, } SS.

The People of the State of Illinois

TO THE SHERIFF OF Jo Daviess County— *Greeting:*

Because in the record and proceedings, and also in the rendition of the judgment, of a plea which was in the circuit court of Jo Daviess County Court county, before the Judge thereof, between Elizabeth Ballard plaintiff, and Patrick McCarty defendant

it is said that manifest error hath intervened to the injury of the said *plaintiff*

as we are informed by *her* 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 Ottawa, 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 Patrick McCarty

that *he* be and 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 second Monday in June 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 Patrick McCarty notice, together with this writ.

WITNESS, the Hon. Daniel H. Treat
Chief Justice of our said Court, and the seal thereof,
at Ottawa, this 18th day of May
in the year of our Lord, one thousand eight hundred
and forty.

J. Ireland

Clerk of the Supreme Court.

Supreme Court

Elizabeth Ballard

vs

Patrick McCarty

Veri Facias

To June Term 1850.

I Marshall B. Pierce Sheriff of Jackson County
& State of Illinois do hereby return to the within
writ that I have this 24th day of May A.D. 1850
according to the exigency thereof by John Doe and
Richard Roe good & Lawful men of my County
Caused the same to be read to the within named
Patrick McCarty in his hearing and also at the
said time delivered him the said Patrick McCarty
a true & correct copy of this writ

Shffs Fee
Subj & mileage 70
Copy & Ret 60

By John W. Keener Deputy
M. B. Pierce Sheriff

Filed June 4. 1850 Jackson Co.

State of Illinois, Oct.

The people of the State of Illinois,

To the Clerk of the ~~County~~ ^{County} court for the county of *Jodaviss* — Greeting :

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which was in the ~~Circuit~~ ^{County} Court of *Jodaviss* — county, before the Judge thereof, between *Elizabeth Ballard* _____

plaintiff and *Patrick McCarty*

defendant it is said manifest error hath intervened to the injury of the aforesaid _____

plaintiff
as we are informed by *her* 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 the Supreme Court the record and proceedings of the plaintiff 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 *second Monday of June* _____ 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. *Samuel H. Treat*
_____ Chief Justice of our said Court, and the seal thereof at Ottawa, this *18th* _____ day of *May* _____ in the year of our Lord one thousand eight hundred and *forty*,

J. Ireland

Clerk of the Supreme Court.

Elizabeth Ballard

vs
Patrick McCarthy

Mist of Error

Clerk of the Supreme Court

one thousand eight hundred and thirty

in the Year of our Lord

Chief Justice of our said Court, and the

WITNESSES, the Hon.

Samuel Wood

ing to law.

we may cause to be done therein, to correct the error, what of right ought to be done accord-

before our Justices aforesaid at Ottawa, in the county of La Salle, on the

agreement, with all things touching the same, under your seal, so that we may have the same

and to our Justices of the Supreme Court the record and proceedings of the hearing

and command you that if judgment thereof be given you distinctly and openly without de-

and be corrected in due form and manner, and the Justice be done to the parties afores-

and are required by the complaint, and that we will think that error if any there be

is said manifest error hath intervened to the injury of the aforesaid

Filed May 18, 1850.
L. Leland Clerk

Patrick McCarthy

the Judge thereof between

judgment of a plea which was in the District Court of the county of

NEGATIVE in the record and proceedings, as also in the recitation of the

No. the Clerk of the Supreme Court for the county of

The Judge of the State of Illinois

State of Illinois, etc.

Elizabeth Bullart Plff in error }
vs. }
Patrick McCarty Deft in error }

Supreme Court - State of Illinois
Ottawa LaSalle County
Abstract

This was an action of trespass to personal property and damage laid at \$50. brought by the plff. below (who is also plff in this court.) before a justice of the peace of Jo Daviess County on the 28th of Nov. 1848. The deft. was served with process, and on the 6th of Dec. 48 filed his affidavit for a change of venue. which was granted and a change of venue taken to W.C. Bastwick justice and the cause continued to the 12 of Dec. when parties appeared and deft. moved to dismiss said suit for informality of the writ issued by the justice. which was overruled and trial had and verdict ^{and judgment} for the plff. for \$10. & costs deft. appealed to County Court, and the cause was continued from term to term until the January Special term of said County Court. when deft. filed his motion to dismiss for want of jurisdiction in the justice of

the case - which motion said
court allowed and dismissed
said appeal and reversed said
judgment of the justice rendered
for the plff. and rendered a
judgment against said plff.
for all costs.

Which said ruling of said
court was excepted to by plff.
and is now assigned as error
in this court by the plff. See 2d
Ill. 337 & 340-41

J. P. Stearns,
Att. for
Plff. in error.

Ballard P.M. -
P. ^{Ms} McCarty, Dept -

Enos to Jo
Davies