No. 791-A.

Supreme Court of Illinois

Nicalls Patterson

vs.

Edwin
~~Edward~~ Reeves, Wm. Stuart

(379) 7

State of Illinois
Cook County } Set.

Pleas before the Honorable John Pearson judge of the Seventh Judicial circuit in the State of Illinois and presiding Judge of the circuit Court of Cook county in said State of Illinois.

Patterson Nicholls
vs
Edwin Reeves
& William Stuart } Debt.

Be it remembered that on the 18th day of April A.D. 1838. the said Plaintiff Patterson Nicholls by Moore & Ryan his attornies filed their precipe in this cause, in the Clerks office of the circuit Court of Cook County aforesaid for a Summons against the said Defendants Edwin Reeves and William Stuart;

And thereupon the Peoples writ of Summons issued out of the clerks office aforesaid directed to the Sheriff of Cook County aforesaid against the said Defendants, and which said ~~Sheriff~~ Summons was afterwards returned by said Sheriff "Executed" on William Stuart one of the said Defendants.

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And afterwards to wit on the 24th day of October A.D. one thousand Eight hundred and thirty nine the said Plaintiff by Ryan his attorney, filed his Certain Declaration in the aforesaid Cause, which is in the words and figures following to wit;

State of Illinois
In the Circuit Court of Cook County.

Pattison Nickalls
vs.
Edwin Reeves and
William Stuart

Of the Term of November to wit. of the first Monday of November in the Year One thousand Eight hundred and thirty nine.

County of Cook }ss.

Edwin Reeves and William Stuart Defendants in this Suit were summoned to answer Pattison Nickalls Plaintiff in this Suit, and thereupon the said Plaintiff by Edward G. Ryan his attorney Complains against the said defendant of a plea that he render to the said plaintiff the sum of two hundred dollars Current money of the United States which they owe to and unjustly detain from him.

For that whereas the said Defendants heretofore to wit, on the Twenty fourth day of March in the year one thousand Eight hundred and thirty ~~nine~~ Seven at Chicago to wit at Chicago in the County of Cook aforesaid by their

certain writing obligatory sealed with their seals, and which said writing obligatory having been lost, the said Plaintiff cannot produce to the said court here; the date whereof is a certain day and year therein named to wit the day and year aforesaid, acknowledged themselves to be held and firmly bound unto the said Plaintiff in the penal sum of two hundred Dollars (above demanded) current money of the United States for the payment of which well and truly to be made they bound themselves their heirs executors and administrators firmly thereby: which said writing obligatory was and is subject to a certain condition thereon written whereby after writing to the following effect to wit, that the said Plaintiff did on the fourteenth day of March A.D. 1857. before Edw. E. Hunter a justice of the peace in and for the county aforesaid recover a judgment against the (therein) above bounden Edwin Reeves for the sum of seven dollars and ninety eight and one quarter cents; from which said judgment of the said justice the said Edwin Reeves has taken an appeal to the circuit court of the said county and state, it was conditioned that if the said Edwin Reeves should prosecute his said appeal with effect and should pay the said debt and costs in case the said judgment

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Should be affirmed on the trial of the said appeal in the said Circuit Court, then that obligation should be void, otherwise to remain in full force and virtue:

Yet the said Edwin Reeves did not prosecute his said appeal with effect in the said Circuit Court as in the said condition mentioned; but the said Edwin Reeves hath hitherto wholly neglected and refused and still neglects and refuses so to do. to wit at the place aforesaid;

And for assigning further Breach of the said condition of the said writing obligatory the said Plaintiffs say (according to the form of the statute in such case made and provided) that although the said Judgment in the said condition mentioned was affirmed on the trial of the said appeal in the said Circuit Court for the sum of Eighty two dollars fifty cents, besides fifteen dollars and thirty cents costs; Yet the said Edwin Reeves hath not paid the same or any part thereof but to pay the same or any part thereof hath hitherto wholly refused and neglected and still refuses and neglects; to wit at the place aforesaid; By reason of which said Breaches the said writing obligatory hath become forfeited and according to the statute in such case made

and provided an action hath accrued to the said plaintiff to have and demand of and from the said defendants the said sum of money above demanded yet the said Defendants although often requested so to do have not as yet paid the said sum of money above demanded or any part thereof to the said plaintiff according to the said writing obligatory, and condition, but to pay the same have hitherto wholly refused and still do refuse. To the Damage of the said plaintiff of two hundred Dollars and therefore he brings his suit &c.

E. G. Ryan
Atty.

Copy bond within declared on

Know all men by these presents That we Edwin Reeves and William Stuart of the county of Cook and State of Illinois are held and firmly unto Patterson McKalls also of the same County and State in the penal sum of Two hundred Dollars current money of the United States for the payment of which 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 Twenty-fourth day of March A.D. 1837.

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The Condition of the above obligation is such that whereas the Said Pattison Nickalls did on the fourteenth day of March A.D. 1837. before Edw. E. Hunter a Justice of the Peace in and for the county aforesaid recover a Judgment against the above bounden Edwin Reeves for the Sum of Ninety Seventy Dollars and ninety Eight 98 cents costs; from which Said Judgment of the Said Justice, the Said Edwin Reeves has taken an appeal to the circuit court of the Said county and State.

Now if the Said Edwin Reeves shall prosecute his Said appeal with effect and shall pay the Said debt and costs in case the Said Judgment shall be affirmed on the trial of the Said appeal in the Said circuit court, then the above obligation to be void otherwise to remain in full force and virtue.

Taken and entered into before me ~~this~~ at my office this 24th day of March A.D. 1837.

Richd J. Hamilton
Clerk

Edwin Reeves (L.S.)

William Stuart (L.S.)

And afterwards to wit on the 16th day of December A.D. 1839. An alias writ of Summons issued out of the Clerk's office aforesaid against the said Edwin Reeves impleaded with the said William Stuart, directed to the Sheriff of Cook County aforesaid, and which said Writ was afterwards returned by said Sheriff, with the following endorsement to wit;

"Returned Edwin Reeves not
"found; April 11th A.D. ~~1839~~ 1840"
"S. R. Gavin Shff
by Geo. Brady Depty
Shff"

And afterwards at the April Term A.D. 1840. To wit, on the 17th day of April A.D. 1840. The said Defendant by Arnold and Ogden filed his certain plea which is in the words and figures following to wit;

Cook Cir. Court.

William Stewart
ad.
S. Nichols } And the said Defendant by Arnold & Ogden his attornies comes & says that the said supposed writing obligatory is

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not his Deed & he puts himself ~~upon~~ on the country &c.

Arnold & Ogden

And the said Plaintiff doth the like

Dickey atty.

And also at the same time to wit, on the 17th Day of April A.D. 1840. the said Circuit Court then being in Session, the following amongst other proceedings was had to wit;

Patterson Nickalls
vs.
Edwin Reeves and William Stuart } Debt.

This day comes the Defendant by Arnold his Attorney and the Plaintiff by Dickey his Attorney also comes and issue being joined for trial the parties waving the intervention of a Jury submit this cause to the Court and after hearing the evidence and arguments of Counsel the Court upon consideration finds the issue for the plaintiff. Wherefore it is considered

that the plaintiff have Judgment of his Debt of ninety seven dollars & 80 cents and his damages of fifteen Dollars & 16 cents, amounting in all to the sum of one hundred and twelve dollars and ninety four cents, and it is thereupon.

Ordered by the court that the said Plaintiff recover of the Defendant his said Debt of one hundred and twelve Dollars and ninety four cents together with his costs and charges herein expended and that he have execution therefor.

And thereupon the Defendant by Arnold his attorney prays an appeal from said Judgment, which is allowed upon condition that within fifteen days he enter into bond in the penal sum of one hundred and fifty dollars conditions as the law directs, with S. Lysle Smith as Surety.

And afterwards to wit on the 25th day of April A.D. 1840. The said William Stuart filed his appeal bond in the aforegoing Cause, which is in the words and figures following to wit; "Know all men by these presents that

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we William Stuart and S. Leisle Smith of the County of Cook and State of Illinois are held and firmly bound unto Patterson Nicholls his heirs executors and Administrators in the penal sum of one hundred and fifty Dollars lawful money of the United, for the payment of which well and truly to be made and done we bind our selves our heirs executors and Administrators jointly and severally firmly by these presents. Made sealed with our seals and dated at Chicago this 30th day of April A.D. 1840.

The Condition of this Obligation is such that whereas the above bound William Stuart has obtained an order of the Circuit Court of the County & State aforesaid granting him an appeal to the Supreme Court of the State of Illinois from the Judgment of the said Court rendered at the April Term thereof in the year 1840. for the sum of one hundred and twelve & $\frac{94}{100}$ Dollars and costs in favor of the Plaintiff in a case in which the said Patterson Nicholls was Plaintiff and the said William Stuart is Defendant.
Now if the said William Stuart shall and do duly prosecute his said appeal, and in case the said Judgment shall be affirmed

shall and do fully pay and satisfy the said judgment, costs interest and damages then this obligation to be void and of no effect otherwise to remain in full force and virtue.

Wm. Stuart (Seal)

J. Lisle Smith (Seal)

State of Illinois }
County of Cook } Set.

I Richard J. Hamilton Clerk of the Circuit Court in and for said County in the State aforesaid do hereby certify that the foregoing is a true and correct transcript from the files and proceedings of record remaining in my office, in the aforegoing entitled cause.

In testimony whereof I have hereto set my hand and the seal of said Court this 26th day of May A.D. 1840.

Rich'd J. Hamilton
Clerk

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Filed June 15. 1844
Pre Duncan

And the said defendant, Nicholas comes and says that there is no error in the record and proceedings aforesaid wherefore he prays that the judgment below be affirmed with damages & costs &c.

by Morris his atty.

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$3.64.70

Bathsheba Nicholas
ads.
Calvin Reeves &
Mary Stuart

Transcript

No 2

Office fees 3.00 1844

Wm L Duncan

Filed Nicholas v Reeves
for error to Pike Circuit
Court
W L Duncan
1844

Supreme Court. June 3.
1840.
Appeal.

Patterson Nicholes
ads.
Wm Stewart impleaded with
Edwin Reeves

The dfd. Nicholes comes & moves the Court to dismiss this appeal taken in this cause for the reason that the appellant has not filed with the Clerk of this court a Copy of the Record of this cause within the time allowed by law - and that the Judgment below be affirmed with 10 per cent damages & costs &c for the reason that the appeal was evidently taken for delay.

Morris for Dfd.

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200

P. Nicholas

ads. } motion

Wm Stewart

implead. with Reeves

Filed June 9

1840. J M Dunn

Supreme Court

William Stewart,
implead with Edwin Reves Plff in Error
vs
Patterson, Nichols Deft in Error

And the said William Stewart Comes & says that in the record & in the judgment & proceedings herein there is manifest Error in this To wit

1. The judgment in the court below is for the ~~defendant~~ Plaintiff when it should have been for the Defendant.

2. It does not appear that process was ever Served on this defendant according to Law.

3. The declaration is entirely insufficient & does not warrant the judgment.

4. The judgment is irregularly Entered — & the said Defendant William Stewart for the errors aforesaid, & for other Errors manifest & apparent on the face of said record — prays that the said judgment may be vacated, set aside & held for naught

Arnold & Graves attys
for Stewart —

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And the deft. comes & says that there is no error in the said Record & proceedings in this cause wherefore prays that the Judgment below be affirmed with damages & costs &c. by Morris his atty.

Supreme Court
William Sturgeis
Wm Blackford &c
vs
Lattimer Nichols
Assignment of Errors
Filed Jan 3. 1840
J M Duncan