No. 8600

Supreme Court of Illinois

Wm. Winkleman et al

vs.

Mathias Kiser, for use

71641 7

STATE OF ILLINOIS, ss.

IN THE SUPREME COURT—1st Grand Division.

William Winkelman and Nicholas Kiser vs. Mathias Kiser for the use of Noah B. Harlow.	Error to Monroe.

Page 1. This was a suit in chancery, brought in the Monroe county circuit court at the May term thereof, 1861, by Mathias Kiser, who sued for the use of Noah B. Harlow, against Nicholas Kiser and William Winkelman to foreclose a mortgage, made by Nicholas Kiser to Mathias Kiser, dated September
2. 7th 1858, to secure to said Mathias Kiser the payment of a certain promisory note of that date. Said mortgage conveyed certain town lots in the town of Harrisonville in said county. Winkelman claims
3 & 4. said lands by a title subsequent to said mortgage. Said bill prays for a foreclosure and sale of the premises in the usual form. Summons was issued in the usual way and notice given by publication to said Nicholas Kiser, he being a non resident of this State. Said summons was served upon said Winkleman and the following return thereon endorsed, to wit:

5. "This writ executed by leaving copy with Winkleman and by reading the same to the above named "Winkelmann. Kiser not found."

March 15. 1861. "WM. BOURKE, D. P. Sheriff."

6. And afterwards, on the second Monday (May 13. 1861) of said term of court, the defts. having
7 & 8 failed to appear and answer, said bill was taken as confessedagainst them and decree rendered by said court for 173, 10 in favor of said pltfl's below and the land ordered to be sold.

William Winkelman brings this case to this court and assigns for error. 1st. The court below erred in rendering a degree against defts. without their appearance or being duly served with process. 2nd. The proceedings are irregular and erroneous in this; that the suit should have been brought in the name of the party for whose use it was instituted.

(BRIEF.)

1. A return to a summons, signed by a person as "deputy sheriff" without using the name of the Sheriff, is erroneous and void. Ditch vs. Edwards 1 Scam. R. 127. Breese R. 168. Harriman vs. The State 1. Mo. R. 504. Atwood vs. Reyburn 5 Mo. R. 533. Simonds vs. Catlin 2 Caines R. 61. 1 Bouvier's L. D. 455. Freemans Practice Sec. 59 Note 40 & Sec. 863.

2. The suit should have been brought in the name of the party for whose use it was instituted 5. Gil. R. 337. Frye vs. Bank of Ills.

W. H. UNDERWOOD,
Atty. for pltff. in error.

[8600-1]

29-24

William Winkelman and
Nicholas Kiser
vs
Mathias Kiser for the
use of Noah B. Harlow

Error to Monroe

Abstract & Brief

~~It must~~ The service on Winkelman is bad but he was not a necessary party - He is charged as claiming an interest & has none - Bell confessed Decree simply of foreclosure & no word said about Winkelman

Filed Nov. 15. 1866.

A. 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 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*

Mathias Kiser for the use of Noah B. Haslow *plaintiff and*

William Winkelman and Nicholas Kiser *defendants it is said manifest error hath intervened to the injury of the aforesaid* William Winkelman and Nicholas Kiser *as we are informed by* this *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 *Sunday 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* Seventeenth *day of* October *in the year of our Lord one thousand eight hundred and* Sixty-One.

Noah Johnston
Clerk of the Supreme Court.

[2400-2]

29

SUPREME COURT.

First Grand Division.

Wm Neukelman &
Nicholas Kiser

Plaintiffs in Error,

VS.

Mathias Kiser for use
of Noah B. Harlow

Defendant in Error.

Issued & WRIT OF ERROR.

Issued & FILED October
17. 1861
N. Johnston Clk

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[8600-2]

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vs
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Error to Monroe.

Abstract & Brief

STATE OF ILLINOIS, ss.

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[8600-4]

29

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Error to Monroe

Abstract & Brief

Offer

Filed Nov. 15. 1861.
Sig. Lynstow Clk

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Winkelman Etal
~~Kiser~~
Vs
Mathews Kiser
Ad Lowe
1861

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