

8600

No. _____

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 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 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 Winkelman and the following return thereon endorsed, to wit:

2.

3 & 4.

"This writ executed by leaving copy with Winkleman and by reading the same to the above named Winkelmann. Kiser not found."
March 15. 1861.

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

7 & 8

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 plff. in error.

William Kirkedman and
Nicholas Kiser

vs
Matthias Kiser for the
use of Noah B. Carlow

Error to Monroe

It seems the service on Munk
Cham is bad but he was
not a necessary party. He
is charged as claiming an interest
has none. Bill confessed.
Died simply of for closure &
no word said about Munk
Jailed Nov. 15, 1866.

As Justice of the Peace
J. W. WOODWARD

was included & Cit.

1. The State of Illinois, in and for the County of Madison, ss. I, J. W. Woodward, Clerk of the said County, do hereby certify that the within and foregoing is a true and correct copy of the original as the same appears in the files of the said Court.

2. The within and foregoing is a true and correct copy of the original as the same appears in the files of the said Court.

3. The within and foregoing is a true and correct copy of the original as the same appears in the files of the said Court.

4. The within and foregoing is a true and correct copy of the original as the same appears in the files of the said Court.

5. The within and foregoing is a true and correct copy of the original as the same appears in the files of the said Court.

6. The within and foregoing is a true and correct copy of the original as the same appears in the files of the said Court.

7. The within and foregoing is a true and correct copy of the original as the same appears in the files of the said Court.

8. The within and foregoing is a true and correct copy of the original as the same appears in the files of the said Court.

9. The within and foregoing is a true and correct copy of the original as the same appears in the files of the said Court.

10. The within and foregoing is a true and correct copy of the original as the same appears in the files of the said Court.

STATE OF ILLINOIS, ss.

IN THE SUPREME COURT - 1st Grand Division.

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 their 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 2^d 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. Catron 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.

SUPREME COURT.
First Grand Division.

*Mrs. Muckelbauer &
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*

State of Illinois
SUPREME COURT
FIRST GRAND DIVISION

To the Clerk of the District Court for the County of _____
The People of the State of Illinois

Remand. On the record and proceedings, as also on the record
of the judgment of a plea entered in the Circuit Court of

Handwritten notes and signatures, including a circular stamp and a signature at the bottom right.

STATE OF ILLINOIS, ss.

IN THE SUPREME COURT—1st Grand Division.

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

- 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 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 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 Winkelman and the following return thereon endorsed, to wit:
5. "This writ executed by leaving copy with Winkelman and by reading the same to the above named Winkelman. 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 confessed against them and decree rendered by said court for 173, 10 in favor of said plff'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. *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 plff. in error.

William Heikelman &
 Nicholas Kiser
 vs
 Matthias Kiser for the
 use of Noah B. Harlow
 Error to Monroe.
 Abstract & Brief

M. H. UEDERWOOD
 July 1st 1851

1. Docketed in No. 1000. Plaintiff's Petition Dec. 22 1850 40 & Dec. 2003.
 The same in No. 1000. Answered at Rehearing Dec. 23 1850. Plaintiff's Petition Dec. 23 1850.
 2. Petition for a writ of Habeas Corpus (p. 1) a return on "deportment" without setting the name of the
 name of the party for whose use it was required.

3. The proceedings are irregular and erroneous in this: that the said petition was not brought to the
 court for its trial in the usual way and notice given by the court to the
 defendant's counsel and answer, and bill was taken on the return of the court below
 without any notice to the second party (No. 1000) of the same of which the date is
 March 14 1851.

4. Assignment filed on 10th day of March 1851.
 The writ granted by Justice Cook with Heikelman and by reading the same to the above named
 Heikelman and the following return thereto returned to wit:

1. That the said return was not returned at the time. Said return was served upon the
 Heikelman and the said return was returned in the usual way and notice given by the court to the
 defendant's counsel and answer, and bill was taken on the return of the court below
 without any notice to the second party (No. 1000) of the same of which the date is
 March 14 1851.

2. That the said return was not returned at the time. Said return was served upon the
 Heikelman and the said return was returned in the usual way and notice given by the court to the
 defendant's counsel and answer, and bill was taken on the return of the court below
 without any notice to the second party (No. 1000) of the same of which the date is
 March 14 1851.

3. That the said return was not returned at the time. Said return was served upon the
 Heikelman and the said return was returned in the usual way and notice given by the court to the
 defendant's counsel and answer, and bill was taken on the return of the court below
 without any notice to the second party (No. 1000) of the same of which the date is
 March 14 1851.

STATE OF ILLINOIS

IN THE SUPREME COURT OF THE STATE OF ILLINOIS

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 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 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 "Winkelman. Kiser not found."

March 15, 1861.

"WM. BOURKE, D. P. Sheriff."

6.
7 & 8

And afterwards, on the second Monday (May 13, 1861) of said term of court, the defts. having failed to appear and answer, said bill was taken as confessed against them and decree rendered by said court for 173, 10 in favor of said plff'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 plff. in error.

William Nickelman &
Nicholas Kiser
vs.
Matthias Kiser for the
use of Noah B. Harlow

Error to Monroe

Abstract & Brief

Coffin

Filed Nov. 15, 1861.

Wm. Underwood

UNDERWOOD,

Printer in error.

STATE OF ILLINOIS, ss.

IN THE SUPREME COURT--1st Grand Division.

Nicholas Kiser

Plaintiff

William Nickelman

Defendant

[Faint, mostly illegible text, likely bleed-through from the reverse side of the page]

29 - 24

~~Wm~~

Winkelman Etal

~~Wison~~

vs

Mr

Mathews Kiser

Harlow

1861

8600

Controll on 497-

6