

No. 8789

Supreme Court of Illinois

Adams

vs.

~~Mieler~~

Miller

71641  7

At a court court began & held at the court house in the Town
of Vienna in Susan County, Illinois on the 14th day of May
A.D. 1849 Before the Honorable William A. Denning President
Judge of the Third Judicial Circuit The following
proceedings were had to wit

Richard S. Adams	vs	Circuit Court of said Co.
Frederick Miller		& State, by appeal from
Fountain Miller		the Judgment of J. R. Pearce
Serenuah Miller		Mag. Justice of the Peace
		in and for said County

Summons



State of Illinois }
Susan County } vs The People of the State of Illinois
To any Constable of said County, Greeting:
You are hereby commanded to summons Frederick
Miller, Fountain Miller, & Serenuah Miller, to be and
appear before me at my office in Vienna on the 18th day
of this instant at the hour of ten o'clock A.M. to answer
the complaint of Richard S. Adams for a failure to dis-
charge their duties as public Millers in Susan County
and hereof make due return to me as the law directs
Given under my hand and seal this 7th day of September
A.D. 1848 J. R. Pearce, J. P.

Endorsed on the back of said writ as dupl claim
& dollars costs 31/4 cents; Officers return
on the back of said writ served by reading on
all of the dpts on the 9th inst. Court fees 1,15
William D. Deans Const & Co

Appeal Bond of Depts. filed in the Clerk's
Office on taking the appeal from Justice
Judgment - my

Know all men by these presents that we Jud-
nick Miller and Chesly Miller are held and firmly
bound unto R. S. Adams in the penal sum of
fifty Dollars the payment of which well & truly
to be made and bind ourselves our heirs and
assigns jointly and severally, and firmly by these
presents Witness our hands & seals this 31st day
of September 1848. The condition of the above
obligation is such that whereas R. S. Adams did
on the 18 day of September 1848, recover a judgment
Judnick Miller, Gountain Miller, & Jeremiah Miller
upon Isaac R. Pearce Esq for the sum of
five Dollars besides costs and the said Judnick
Miller has taken an appeal to the Johnson Cir-
cuit Court Now if the said Miller shall pro-
secute his appeal with effect & shall pay what
ever Judgment shall be rendered upon the
dismissal or trial of said appeal then this
obligation to be void otherwise to remain in
full force & virtue in law

Approved by me this
31 day of Sept 1848
Saml Copland CLK.

Judnick Miller 
Chesly Miller 

Summons to P. W. J. Jack Atty Pro quer
waines & accepts the said & served of
Summons on P. W. J.

R. S. Adams } Justice Court
 Judnah Miller }
 Mountain Miller }
 Lemiah Miller }
 Action of Debt Demand \$5.00 for a
 failure to discharge duties as public
 Miller in Johnson County in refusing
 to grind for \$400.

Summons issued the 7th day of September 1848
 Made returnable on the 18th of the same instant
 at 9 o'clock A.M. handed to W. H. Davis Constable returned
 executed by reading to Depts the 9th day of Sept 1848
 On the day set for trial the parties appeared & after hearing the
 several proofs & allegations it is considered by the Court
 that the Deft recover of the Depts aforesaid the sum
 of five Dollars besides costs given under my
 hand & seal this 18th of September 1848

J. M. Peace J. C. C.

Back Rent	12 1/2	Driving Team out	75
Spring Sums.	18 3/4	Miles 8	40
2 Subs	39	Driving out on 5	62 1/2
Lam 3 Saths	18 3/4	Miles 33 at 5	165
Judgt	25	Driving Sub on 1 wt	12 1/2
Entering appeal	25	Miles 4 at 5	20
Transcript	25	Driving 3 listers, ms	37 1/2
		Miles 10 1/2 at 5	52 1/2
			<hr/>

Writings			
Alvah Arly	50	David Wodge	50
Thomas Meen	50	Edward Ellis	50
John Standard	50	Unah Arly	50
John Adams	50	W. H. Davis	50
Norman Martin	50		<hr/>

Total writings fees \$ 4.50

I Certify that the above is a true copy of the
 proceedings had before me in the within named
 cause given under my hand and seal the
 2^d day of October 1848

J. M. Peace J. C. C.

Richard S. Adams } Circuit Court Johnson Co
 vs }
 Frederick Miller } May term 1849
 et al } Appeal from Justice
 } Judge

On this day (Tuesday the 15 May, 1849) came the P^l by Adidialo Sack his atty, and the Defts by John Danybury thm atty. And the said Defts atty thereupon moved the court to dismiss this suit for want of a bond for costs being filed before the commencement of this suit it being bot upon a penal statute, and the said motion after argument by the respective counsel, and advisement by the court the motion to dismiss is by the court sustained and the cause ordered dismissed accordingly whereupon the P^l by his counsel excepted to the opinion of the court dismissing the same

Copy of Bill of Exceptions by:

Rich. S. Adams }
 vs }
 Frederick Miller et al } Johnson Circuit Court
 } Appeal by

Be it remembered that at the May term of the Circuit Court of Johnson County ¹⁸⁴⁹ when this cause came on to be tried & was called the counsel for the Defts in thm defence moved the court to dismiss the said suit on the ground that no bond for costs was filed was filed

by the Plaintiff prior to the institution of this suit
before the Justice of the Peace to which the law
set for the Plaintiff objected, (alleging that the Plaintiff
was and is a resident of the County and State
which was not traversed or denied by the Defendant)
Whereupon the matter was referred to the Court
who being of the opinion that the suit ought
to be dismissed did dismiss the same, and
the Plaintiff by his Counsel excepted. And
prayed that this his exceptions might be signed
sealed and made part of the record in the
Cause according to the Statute in such
Case made and provided and according
by it is done. Note by his Honor the Judge
I would remark that this suit was brought
for a failure to comply with the provisions
of the act of the Legislature in relation to Wills
& Wills "

William A. Denney *CLK*

State of Illinois }
Johnson County }
}

I Saml Copland CLK
of the Johnson Circuit Court do Certify that
the foregoing is a correct copy of the Record &
proceedings had in the above cause

Soloshvany Whing I Saml Copland CLK
of said Court have set my hand & the
Judicial Seal at my Office in
Vienna this 9th day of July 1869
Saml Copland CLK

The court erred in dismissing the writ
the ground that no bond was filed before
the justice of the peace, the law not
requiring a bond to be filed before the
justice, & the writ should stand. Having
now appeared to court could not go to
show the law applicable to a justice
of the Peace, 3^d Ed. Rep. case of Allen
vs. Bolcher 594

J. Jack et al vs
M. H. et al

Assignment of error: viz.

The court erred in dismissing
suit for want of Bond for cost on Motion
Made for R. t. time, in the Circuit
Court, Adams vs. Miller et al
12 Ed. Rep. Page 27

Naudolph vs. Gauchet
13 Ed. R. 344

J. Jack et al
pro se
in error

Forward in error

I very truly all affe
Sept. in error

15
Rich. S. Adams

vs

F. Miller et al

Paper Book

For Supreme
Court

Filed the 20th day
of November, 1851

F. D. Preston, Clk

Prepared

Vienna 5 Nov. 1850

P. D. Fenney Esq. Clerk Sup^d Court

Dr. Sir, Enclosed is a transcript of the Justice record in the case of Adams & Co vs error, Miller et al & Co. in error, sent up by the Circuit Clerk in obedience to citation ordered by the Supreme Court Nov^r 1849 - as also errors assigned accompanied by my argument in writing. All of which you will please file, and when the cause is called please to present the same to the Court and you will very much oblige

Yours very truly

J. Jack



P. S. I am anxious that the case be decided at this Court, and if any attention is necessary beyond the papers, I will thank you to say to Mr. Windgate that I will be glad to reciprocate the favor at any time if he will be so good as to notice it and urge a decision at this time.

J. Jack

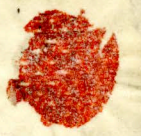
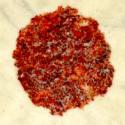
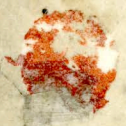
Virginia Ill.
Nov 18

Paid 10

James D. Ruston Esq.
Clk Supreme Court
Mount Vernon
Jefferson County
Illinois

8789

Admission
M... ..



Nov 18 1820

Rich. T. Adams
vs
Frederick Miller et al
Defts in Error

In Supreme Court
of the State of Illinois
pending at Nov. term 1850,

Errors assigned by Plffs atty

Arg;

1st

The Court erred in dismissing this suit on motion of Defts. attys. on the ground that no bond was filed by Plff. for costs anterior to the institution of the suit before the justice of the Peace, and in the absence of either allegation or proof that Plff. was a non resident, but on the contrary when the Plff. was a resident of the County & State, & fully responsible for costs,

2d

The Court erred in refusing leave to the Plff. at the time of said motion to file a bond hinc pro tunc, even if such bond for costs was required by the laws -

3d

The Court erred in not overruling the Defts. motion to dismiss for want of a cost bond,

Richd T Adams }
J. Miller et al }
Dyflon error }
Supreme Court of the State
of Illinois Nov^r Term 1850.
Argument of J. Jack Plff. atty.

Courts are ever open to every & all manner of men without condition or restriction, unless imposed by positive enactment. It was under the 1st Sec. of the Statute under head of "Costs" R.S. 126 that the Circuit Court made the order opening for error. It will be observed that the operation of this Statute, by its own terms is limited to cases originating in the Circuit or Supreme Courts, & the bond there required to be filed is, to be filed with the Clerks of these Courts respectively.

The Circuit Court when, (as in this case) its appellate jurisdiction was addressed, should have kept within the limits of that jurisdiction. *Allen vs Belcher* 3^d Gil. Rep. 594.

It is submitted that no provision of any Statute would have authorized the Justice of the Peace to have dismissed this suit, unless ^{first} it had been shown that Plff was a non resident, or 2nd if it had been shown that Plff. was not responsible for costs, attended by Plff's neglect or refusal after such showing to file Bond for costs. Neither of which was the case here. Then according to *Allen vs Belcher* et supra if the Justice of the Peace could not legally have dismissed for want of said Bond, the Circuit Court could not. The order of dismissal made by the Court below at once blends & confounds the original & appellate jurisdiction of the Court, and leaves no line or trace of distinction whatever. It is further submitted that the Statute giving this action is remedial as well as penal, & intended by the legislature

to afford a remedy to the private citizen against the caprice & partiality of those in public business, & to enforce equal accommodation and justice on part of the Miller amongst the Members of the Community by whose patronage under the protection of the same law he lives - It is contended that if the Statute is remedial as well as penal that it is then not entitled to a strict construction due a penal Statute under any circumstances, even if the Cause had originated in the Circuit Court. In support of this view of the case the case of Hyde vs Logan Doug. Rep. 673 is cited and also Wynne vs Middleton 1st Willson Reports. It is further submitted that if it could be regarded as necessary to file bond for costs anterior to the issue of summons that Deft. ought to have appeared before the Justice and made application for dismissal at the earliest possible stage of the proceeding, & by his neglect so to do his right if he had any is toll'd - And altho the application to file Bond non pro tunc made by the Plaintiff ^{to} institute the Cause, was addressed to the discretion of the Court, yet that discretion is to be a sound legal discretion for the purposes of justice; and to sustain the rights of the parties respectively, as contradistinguished from an arbitrary will, and it is argued that in the exercise of such discretion, the Court erred in not granting leave to file said Bond non pro tunc if such bond was at all necessary, which we think it was not. —

Richard S. Adams

Error to Johnson County

Frederick Miller, Fountain
Miller & Jeremiah Miller

CLERK'S FEES.

Filing Record,			25
Docketing cause,			10
Issuing and filing Subpoena,			35
Issuing and filing Writ of Error,			35
Filing Papers,			20
Furnishing Briefs,			20
Entering	2	orders,	2 00
Entering	2	motions,	40
Entering app. of Palintiff and Attorney,			40
Entering app. of Defendant and Attorney,			20
Making cost bill and copy.			20
Out judgment			35
Out of record judgment of ct.			20
Copy of same to Cir. ct	1		00
Certificate & Seal			1 00
Postage			50
Papa 25 Doc 25 Shffs at 10			20
Doc fee			45
			1 25

SHERIFF'S FEES.

Serving and returning			9. 40
Mileage			

A true copy from the Fee Book in my office.

Amney D. Preston
Clerk of the Supreme Court.

