

8778

No. _____

Supreme Court of Illinois

Wilson

vs.

^{LE}
Nettelton

71641  7

News held before the Honorable Justice Harlan
Judge of the fourth Judicial Circuit
of the State of Illinois, at a Circuit Court
begun and held at the Courthouse in
Carroll in and for the County of White
(being one of the Counties Composing said
fourth Judicial Circuit) on Monday
the Second day of September AD one
thousand Eight Hundred and fifty

Be it remembered that heretofore, to wit, on the
21st day of September AD 1849 John M Wilson filed in
the clerks Office of the Circuit Court of the said County
of White, the following papers on an appeal from
the Judgment of a Justice of the Peace viz
" \$48.59. Carroll Ill. June 28th 1841

note
direct
on
On or before the first day of January next, we
or either of us promise to pay to the order of W. E. & R. E.
Stewart the sum of Forty Eight Dollars and fifty nine
cents, bearing ten per cent. Int from date until paid
for value rec^d
John M Wilson
James S Wilson "

substance
of
affidavit
(The affidavit was made by Stephen Fitzgerald as agent for N. G. Nettleton
stating that he feared whatever Judgment might be received on
the above note, would be lost unless John M Wilson should
be held to bail (on account that John M Wilson did not
reside in this County and James S Wilson did not reside
in this state), but as the affidavit is lost or mislaid
a true copy of it cannot be made, the above however
is the substance of it.)

" State of Illinois White County

Capias
The People of the State of Illinois, to any
Constable of said County Greeting -

You are hereby commanded to take the body
of John M Wilson if he shall be found in your County
and bring him forthwith before me, unless special
bail be entered, and if special bail be entered, you
will command him to appear before me at my office
in Carroll on the 10. day of Sept. AD 1849 at One O'clock
of said day, to answer the complaint of W. E. & R. Stewart
who sues for the use of N. G. Nettleton, for a failure to
pay him a certain demand not exceeding One hundred
Dollars, and hereof make due return as the Law directs.

Given under my hand and seal this 8th day
of Sept^r AD 1850

R. S. Graham J.P.

W. E. & R. Stewart who sues for
the use of N. G. Nettleton

Manuscript

John M & Jas S Wilson } Sept 8th 1849
Proper affidavit having been filed, forthwith
issued to H. Sumpter, Constable;

from

Capias returned executed by delivering the
said John M Wilson to the Office of the Justice
H. Sumpter C. W. C.

the

Justice's

This cause coming on to be heard, the Defendant
moved to dismiss on account of insufficiency of
cause &c which is overruled, no further defence
being made. It is considered that the Plaintiff
recover of the Defendant a Judgment for Eighty
five Dollars and 83 cents + Costs &c -

Docket

Sept 8th 1849. I enter myself security for
the Costs in this case (Signed, Stephen Fitzgerald)
Sept 8th 1849 Proper affidavit having been
made, Fi. fa. issued to H. Sumpter.
Fi. fa. Returned in obedience to an appeal
to the Circuit Court Sept 10th 1849.
H. Sumpter C. W. C.

Justice's Costs.

Aff ^{ts} 18 ³ / ₄	Docketing 12 ¹ / ₂	Summons 18 ³ / ₄	1.50
Judgt 25	aff ^t 18 ³ / ₄	Execution 25	1.68 ³ / ₄
Entering appeal 25	Bond 50		1.75
Transcript 25	Certificate 25		1.50
			<u>\$2.43³/₄</u>

Constables Costs

Serving Sum ^s 25	Serving (Ex) 50	taking bond 50	1.25
			<u>\$3.68³/₄</u>

State of Illinois White County p

I certify that the foregoing is a
Correct Transcript of the proceeding had before
in the above entitled cause, as the same
stands on my Docket at Page 65. Suit No 404
Given under my hand at my office in
Carroll Sept 10th 1849

R. S. Graham J. P.

affidavit

for

Execution

State of Illinois White County p
Stephen Fitzgerald being sworn on his
oath says that he verily believes there is danger
of losing the benefit of the Judgment which
W. E. & R. Stewart for the use of N. G. Nettleton, lately
recovered against John M Wilson unless execution

" issue forthwith - Stephen Fitzgerald
Sworn to & Subscribed before me Sept 8th 1849
R. S. Graham J.P.

Executions State of Illinois }
White County } p.

issued The People of the State of Illinois
to any Constable of said County Greeting
We Command you that of the Goods and
chattels of John M Wilson in your County you
make the sum of Eighty five Dollars & 3 cents
debt, and one Dollar 43^{1/100} costs which W. E & R,
Stewart who sues for the use of N. G. Nettleton, lately
recovered before me in a certain plea against
the said John M Wilson, and hereof make return
to me within Seventy days from this date
Given under my hand and seal this
8th day of Sept 1849

Constables Rec^d this P. fa. Sept 8th 1849 at 4 o'clock P.M.
R. S. Graham J.P.

Levy Seized this Execution Sept 8th 1849 on one two horse
carriage, one brown horse & one gray horse, harness
& and bridles
H. Sumpter C. W. C.

Return Returned in obedience of appeal to the Circuit
Court 10th Sept 1849
H. Sumpter C. W. C.

Appeal Know all men by these presents that we John M
Wilson Oliver H. P. Wilson and William Wilson are
held and firmly bound unto W. E. & R. Stewart
who sues for the use of N. G. Nettleton in the penal
Bond sum of One hundred and ninety Dollars, lawful
money of the United States, for the payment of which
well and truly to be made we bind ourselves, our heirs
and administrators jointly severally and firmly
by these presents - Witness our hands and seals this
8th day of Sept 1849 - The condition of the above
obligation is such, that whereas the said W. E. & R.
Stewart who sues for the use of N. G. Nettleton did on
the 8th day of Sept 1849 before R. S. Graham a Justice
of the peace for the County of White, recover a Judgment
against the above bounden John M Wilson for the sum
of Eighty five Dollars and 3 cents from which Judgment
the said John M Wilson has taken an appeal to the
Circuit Court of the County of White aforesaid and state
of Illinois. Now if the said John M Wilson shall

prosecute his appeal with effect and pay what Judgment may be rendered by the Court upon dismissal or trial of said appeal, then the above obligation to be null and void, otherwise to remain in full force & virtue.

Taken and approved by me at my Office in Carui Sept 8th 1849
John M Wilson
O. H. P. Wilson

R. S. Graham J.P.

and afterwards to wit on the 20th day of October 1849 Summons issued out of the said clerks office in the following words and figures viz

Summons issued from Court

State of Illinois }
White County } ss
The People of the State of Illinois to the Sheriff of said County Greeting
We command you to summon Nelson G Nettleton if he shall be found in your County personally to be and appear before our Circuit Court for said County on the first day of the next term thereof, to be held at the Court house in Carui on the fourth Monday in the month of March next, to answer John M Wilson on an appeal from the Judgment of a Justice of the Peace, and have you then there this writ
Witness Solomon Tories clerk of our said Court at Carui this 25th day of October A.D. 1849
Solomon Tories clerk

(Endorsed)
November 17th 1849 I acknowledge service of the within N. G. Nettleton

And afterwards to wit a said March Term of said Court, began and held on Monday the 25th day of March A.D. 1850, to wit on Tuesday the 2nd day of said Term of said the following proceeding were had to wit

Nelson G Nettleton Assessee
vs
John M Wilson
on appeal

First order at

their attorneys. At this day come the parties by their attorneys, whereupon the Defendant moves the Court to dismiss this suit for want of a sufficient affidavit, (the affidavit being made by a stranger) and for want of jurisdiction in the Justice of the Peace, which motion is resisted by the plaintiffs attorneys, argument being heard, and the Court not being sufficiently

March Term 1850

advised took time &c

And afterward to wit on Thursday the 28th day of March 1850 being the 4th day of said Term of said Court, the following proceedings were had viz

" Nelson G Nelson &c

John M Wilson

} On appeal

And now at this day again comes the Parties by their Attornies, And the Court now being fully advised what Judgment to give on the motion of the said Defendant to dismiss this suit made on Tuesday last, do order and adjudge that said motion be overruled, whereupon the said Defendant further pleaded in abatement of this suit, that the said Defendant is, and was at the time of his arrest on the said Capias, an attorney and Counsellor at Law, that ^{the} said writ was issued and the said Defendant arrested thereon, during the last term of this Court, that the said Defendant was also a suitor in and at said last Term of this Court, which plea is resisted by the Plaintiffs attorney, and after argument heard for and against said plea in abatement, It is ordered and adjudged that said plea be overruled, and thereupon the said Defendant plead in bar to this suit, the Statute of Limitations which said last mentioned plea is also resisted by the said Plaintiffs attorney, and after argument of the parties being had, and the Court not being sufficiently advised took time and this cause is Continued &c

And afterwards to wit at the September term of said Court began and held at the Courthouse in Carris on the 2nd day of September AD 1850 to wit on Wednesday the 3rd day of said Term of said Court, the following proceedings and final Judgment was had viz

" Nelson G Nettleton

John M Wilson

} On appeal

and the At this day came the parties by their Attornies and the Court now being fully advised what Judgment to render upon the issue herein, do Consider and adjudge that the Judgment of the Justice of the peace had herein be affirmed for \$87.63, And

that the said Plaintiff, recover of the said Defendant the said sum of Eighty seven Dollars and 63 cents together, with his Costs about his suit as well before the Justice of the peace, as in this Court expended, and may thereof have execution &c

State of Illinois }
 White County } ss

I, Solomon Vories Clerk of the Circuit Court in and said County, do hereby Certify that the foregoing six Pages, Contain a full true and Correct Transcript, of the proceedings & papers had in said Court in the case entitled Nelson G. Kettleton vs John M Wilson (Except the affidavit upon which the Justice issued the capias, the substance whereof is stated in a note or memorandum on the first Page hereof) as the same remains of Record in my Office

In testimony whereof I have hereunto set my hand and affixed the Seal of said Court at Carme this 17th day of September
 AD 1850
 Solomon Vories CLK

N. G. Kettleton }
 vs } Costs Bill
 John M Wilson }

1849	Sept 25	1850	March	To Filing papers 50	Docketing cause 12 1/2	writ & filing 56 1/4	1.183 1/4
				" Entering motion to dismiss 20	Order of time 20		40
				" Entering appearance & attorney			15
				" Entering plea in abatement 20	Entering plea of Similitations 20		40
				" Order of time 20	Continuance 20		40
				" making Trust for Sup ^r Court 62 1/2	cut 25		2.53 3/4
				John M Wilson			1.87 1/4

vs }
 N. G. Kettleton } Costs Bill

1850	Mar	" Entering appearance of atty 10	Order overruling mot to dis 20-30				
		" order overruling plea in abate 20					20
	Sept	" Docketing 10	order overruling plea of Similitations 20				30
		" order affirming 20	Entering Judgment 25				45
		making Cost Bill 30					30
							1.55

Sheriffs cost serving 50	10 miles 45	Pat writ 10		1.35
Justice & constables cost as stated on 2 nd Page				3.68 1/4
				5.23 3/4
				5.76 1/4

a copy attest

Almon Toris. \$1000

State of Illinois Supreme Court 1st Division
November Term: A.D. 1850

And now at this day comes the said John M. Wilson, who is Plaintiff in Error, by Constable his Attorney, and says, that in the said cause and the foregoing record thereof, there is manifest error, in this, to wit:

First - The court erred in not quashing, affidavit and writ & dismissing suit, because such affidavit was made by a stranger and not by the plaintiff in the suit, and for want of jurisdiction in the Justice of the Peace
Secondly, The court erred in giving judgment for plaintiff on the said plea in abatement but should have rendered judgment on such plea against Plaintiff for costs of suit as well before the Justice of the Peace as in the White Pine Court.

Wherefore the said plaintiff in error prays the judgment of this court on the said record and that the judgment of the said court below may be reversed &c.

Constable,

Attorney for Plaintiff in Error,

* Thirdly - The court erred in affirming the judgment of the Justice of the Peace, for debt & costs, but should have reversed the same & set costs of Plaintiff &c.

Constable Atty. &c.

And now at this day comes the said defendant in Error by Lincoln his Attorney, and says that in the said record there is no error, and that the same is correct, and the judgment therein set forth by the laws of the land sustained and should be affirmed, Wherefore and to which end he asks judgment &c.

Lincoln for deft

Transcript

Nelson G Nettleton

or

John M Wilson

180

Wilson v. Nettleton.

This suit was originally brought before a justice of the peace. The defendant was arrested on a warrant, founded on an affidavit made by an agent of the plaintiff. He moved to dismiss the action, because the writ was improvidently issued. The justice overruled the objection, and entered a judgment in favor of the plaintiff. The defendant appealed to the circuit court, where he renewed the motion to dismiss. The motion was denied, and he then pleaded in abatement, that ^{he} was arrested on the warrant during the sitting of the circuit court, which court he was attending as a suitor, and as an attorney at law. The court overruled this defence, and affirmed the judgment of the justice.

The only objection taken to the process, under which the arrest was made, is that it was founded on an affidavit made by an agent of the creditor. It is contended, that the oath must be made by the creditor personally, and cannot be made by a

person acting on his behalf. The statute declares
-es; "If, previous to the commencement of a suit,
the plaintiff shall make oath that there is
danger that the debt or claim of such plaintiff
will be lost, unless the defendant be held to bail,
and shall state, under oath, the cause of
such danger, so as to satisfy the justice
that there is reason to apprehend such
loss, the justice shall issue a warrant" &c.
N. S. ch. 59, S. 22. What is the real object of
this provision? It is, that a debtor may be
held to bail, whenever it is satisfactorily
made to appear on ~~an~~ oath, that the
creditor will otherwise be in danger of
losing his debt. There is no good reason
why an agent charged with the collection
of the debt, may not be permitted to make
the oath, and sue out the process. He can
ascertain and state the cause, which are
to satisfy the justice of the propriety of
issuing the warrant, as well as the creditor.
He may have a personal knowledge of the
facts, while the creditor may be ignorant

of this instance; and if the latter is alone
allowed to make the oath, he can only
swear as to his belief of the truth of infor-
-mation derived from others. We think the
design of the statute is ^{Equally} considered, whether
the oath is made by the creditor or his
agent. Any other construction of this statute
might deprive a creditor, who resides
at a distance from his debtor, of the
benefit of its provisions altogether. The
delay in obtaining correct information
of the condition of his debtor, and in
transmitting the necessary affidavit,
might render abortive any attempt
to enforce the payment of the debt. The
consequences to the debtor are the same,
whether the oath is made by the creditor
or his agent. If he is arrested on a
warrant carelessly sued out by the
agent, he has a clear remedy against
the principal.

The plea of privilege came too late.
It was a defence of a dilatory character,
not affecting the merits of the action,

and should have been interposed before
the justice. If there made and considered,
it might have been renewed in the
highest court. It was waived, by the
failure of the defendant to insist upon
it at the first opportunity.

The judgment is affirmed, with costs.

Wilson v. Artlett

Opinion

Heard

8778