

No. 13886

# Supreme Court of Illinois

Hopkins

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vs.

Moir et al.

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71641  7

Supreme Court  
Oblows term 1858

181 Hopkins et al  
vs  
Moir et al

182 Hemmington et al  
vs  
Moir et al

183 Phelps et al  
vs  
Moir et al

And now comes the  
appellies in the above cases and  
shows to the Court and suggest ~~that~~  
~~that~~ this Court has not jurisdiction  
of these cases to Reverse the  
Judgments of the Circuit Court  
therein, and that ~~it~~ <sup>they</sup> should be heard  
therein in voiding the said order  
~~of reversal~~ reversal and  
shows the following:

1<sup>st</sup> In case 181; The Court allowed  
an appeal upon bond being filed  
in their way to be approved by the  
~~court~~ clerk, requiring no  
security whatever.

2<sup>nd</sup> The bond was filed in vacation  
with certificate of the clerk approv-  
-ing the same

3 There was not approval of the security by the Court, nor was any security required by the Court

4 The bond filed contains no obligation to pay the judgment be appealed from. This is omitted.

1 In case 182. The Court allowed the appeal upon defendant's entering into bond with security to be approved by the clerk in 30 days - in vacation

2 The Court did not approve the security and the bond was filed in vacation certified by the clerk or approved by him

1 In case 183. The Court allowed the appeal upon filing bond with security to be approved by the clerk in 40 days - in vacation

2 The bond is approved by the clerk or his officer and by him certified or approved.

3 The Court did not approve the bond or security.

In each of the above cases the bond is taken in vacation - at the clerk's office and by him

If the Court does not sustain the motion, the effect is that judgments are reversed without an appeal which this Court can lawfully sustain and hear!

Certified or taken taken and approved and security approved by him at his office.

It is submitted that these cases were never <sup>properly</sup> in this Court and that in reversing the judgments this Court had not jurisdiction. The Court must fix the terms of the bond and approve the security and this remedy being statutory, the Court can provide no other mode of appeal, and if they do the act is void.

This Court hold that the statute must be complied with in the filing of the record, and that if not ~~file~~ filed <sup>in</sup> time, this Court cannot allow it to be filed after.

4 Conn 581; 3 Conn 168;  
4 Gil, 1; 3 Conn 540.  
Statute' title "practice" "appeals"  
etc

We submit that the act of the Circuit Court of appro-ving the security and fixing upon the terms of the bond, cannot be dispensed with. For can the Court, as in one of these cases, dispense with security with

over for Mein  
Harris & Mein  
for Mein

These appeals were dismissed by appellants  
before the three days for filing the records  
~~had~~ had expired & when the appellants  
could not move without the permission  
of appellants. When there was no receipt  
City of rights. Having no right to  
be in Court against the consent  
of appellants he ~~deserves~~ Reversed  
our judgments!

W. P. 1  
181 18-2-2  
183

H. P. 181

M. 1

H. P. 181

M. 1

H. P. 181

M. 1

H. P. 181

M. 1  
Motion to set  
aside order

Filed April 27, 1858.  
A. W. L. Clerk.

No 181 Supreme Court

William B Hopkins vs

James Mear vs

- Appeals ~~to~~ move to ~~dismiss~~  
set aside the default herein:
- 1 Because there is no appeal  
and was never pending in this  
Court
  - 2 The security was not  
approved by the Circuit  
Court
  - 3 The bond contains no oblig-  
ation to pay judgment  
reversed
  - 4 The case is <sup>not</sup> in this  
Court by appeal

Henry Mear for  
Mear

5 A default taken within  
first three days of court

181

Hopkins Ave

in

Moor Ave

notion

Filed April 27, 1858

Shelton

Clk

~~In order required~~

~~Clk to affirm~~  
curtesy.

No 182

Humphreys

my  
Moir

The Appellee, moves to  
set aside the default &  
reversal

- 1 Because there was no  
appeal in this Court
- 2 The bond was not approved  
by the Court
- 3 ~~Bond~~ Security not  
approved by the Court
- 4 Appeal had no valid  
obligation
- 3- Appeal irregular

Harris & Merrim  
for Moir

6 Default taken within first  
three days of Court

182

Huntington

in

Albion

moti

Filed April 27, 1858,

L. Leland

Clk.

18-3

Philly  
ny  
Moir

Moir moves to  
set aside the default and  
renew

- 1 Because there was no  
appeal pending in this  
Court.
- 2 The bond was not approved  
by the Court
- 3 The bond security  
was not approved by  
Court
- 4 The ~~bond~~ bond is  
defective & appeal  
irregular  
Moir v. Stein  
for Moir
- 5 Default taken within first  
three days of Court

183

Phelps

y

Muir

Motion

Filed April 27, 1858.  
L. Leland  
@ Chi.

Wm. J. Supreme Court 3<sup>d</sup> Term Division

No. 183- Stephen J. Phelps  
vs. 3 Appell from Henderson  
James & Robert Moir

Moir & Brothers  
vs. 182. vs. Appell from Henderson  
Phelps et al

No. 181 James  
vs. Appell from Henderson  
James

J. H. Bacon who is a physician,  
and residing at Fort Madison Iowa  
deposes and says that on Friday night  
last, G. M. Harris the attorney of the appellants  
in the above cases, was taken seriously  
ill; that from his Friday night notice  
last Wednesday night at ten or eleven  
o'clock officious attended his Harris,  
that said Harris was attacked with a  
fever and ~~chills~~ of an apparently  
nervous character and that from  
all appearances in the opinion of  
officious, said Harris could not  
in the ordinary course of recovery  
from such attack, have with safety  
or propriety come from his  
residence in Oquokka to the place  
so as to have been in attendance on  
this Court on yesterday. And

officers believe said Harris could  
not without hazard to his health have  
been in attendance on this court.

Subscribed & sworn  
before me this 23<sup>d</sup> day  
of April 1858. -

L. Leland Clerk  
by J. B. Rice Depute

J. H. Rice

Vol 181. 1852  
2183

officers  
to not make report

Filed April 23. 1858  
L. Leland  
Clerk

181-2-3

1858

181 } Phelps v. Tottus }  
 182 }                    } }  
 183 }                    } }

The defendant is too late with his motion - He was in default for not joining in Error and for that reason the Judgment was reversed - He moved to set aside the Order, the motion is allowed upon the ground of Continuance - He withdrew his motion and gets an order that the Suite be remanded.

He now moved again to set aside all these orders, and to dismiss the appeal upon new technical grounds of informality in the appeal Bond.

The motion ought not to prevail. It ought to be considered as waived by the prior orders made by the Court and by the consent of Appellee.

The Court has Jurisdiction of appeals even though there may be a technical informality in the appeal Bond. It is not like a case where an appeal does not lie. It is a good appeal unless Exception is taken to the Bond in apt time.

The Objection to the Bond is that  
under the direction of the Court the  
Clerk approved the Security - and  
to own the additional objection that  
the Judgment to be paid is not stated,  
the latter is a mistake of the Clerk  
in copying the bond out if the  
Case depends upon that point alone  
we will correct the record by sending  
for a true copy of this bond.

We insist that under the law there  
is no impropriety in the Court,  
directing the Clerk to approve the Bond  
Especially when, as in this case  
no objection or exception is taken  
or made to the order. If otherwise  
it would be considered improper  
It ought to be presumed that it  
was made by consent of parties

Harding & Pugh  
for Appellant

Reply: The motion to set aside  
the default, is interposed only  
to enable the appellee to get the record  
before the court that they may  
move ~~by~~ <sup>in their</sup> defense either by joining  
in error, or to dismiss the appeal.  
Until by overriding the record  
default they cannot move.

That motion also being withdrawn  
is the same as if never made.

It may be withdrawn for the purpose  
of presenting other causes and  
cannot prejudice appellee.

But the court will always  
never any suggestion enabling  
it to discover that it has acted  
without jurisdiction and will cor-  
-rect the error upon suggestion. Now,  
this motion is to dismiss the ap-  
peals which may involve the overriding  
of the judgments by Reversal of the  
reverses below, but this arises  
out of the fact that there was no  
appeals pending, the Court not  
having approved the security and  
in one case not requiring security.

Over

The Court could not adopt  
a new mode of appeal, or  
one unknown to the Statute,  
and having done so, the  
appeal taken before the clerk  
— bonds and recognition approved  
by him — in violation — and not  
by the Court, one void and  
~~and not~~ confer no jurisdiction  
— on or this Court.

Wm. H. Wain  
for Wain

Nov 18, 1827  
183

Appellants  
Deacons, &  
appellants reply  
on motion to  
dismiss —