No. 11946

Supreme Court of Illinois

Ward

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vs.

People

71641 7

Kane

John Ward

vs

The People of the St.

3 P. D.

1852

11946

Pufaul

State of Illinois
Kane County ss }

The People of the
State of Illinois } Kane County Circuit Court
of the May Term A.D. 1852
v
John D Ward }

It is agreed between the parties to this Suit that the same was originally an action of Debt brought against the defendant before a Justice of the peace of Kane County Ill. to recover the penalty of twenty five dollars for an alleged violation of an act entitled an" act to prohibit the retailing of intoxicating drinks" approved Feb 1st 1851 upon the trial before the Justice of the peace the defendant appeared and pled Not guilty after hearing the evidence the justice found the defendant guilty and gave judgment against him for twenty five dollars debt and Costs of Suit the defendant took an appeal to the next Term of the Circuit Court and at the above term of said Circuit Court to Wit. On the 11th day of May A.D. 1852 on the 2d day of said term the Hon Isaac G. Wilson presiding A.B. Coon. State attorney for said Circuit filed a motion to dismiss the appeal for the reasons that the aforesaid act giving justice of the peace jurisdiction to hear and determin any violation of said act gave no right of appeal from the judgment of the justice of the peace Consequently the judgment was final and no appeal could be. And afterwards to Wit on the 12th day of May A.D. 1852 said Motion come on to be heard before the Court and was resisted by the defendants Counsel the Court after being fully advised Sustained said Motion

SLI 946-1

and ordered the appeal dismissed to which the defendant by his Counsel excepts

Now it is agreed between the parties that the Supreme Court may decide the cause upon the above agreed State of facts as fully as if a bill of exceptions was Signed and the whole record sent up and the only question to be determined by the Supreme Court is whether an appeal will be from the judgment of the Justice of the peace in the above case

Geneva Kane County Ill. May 22d 1852

Signed John Ward Defts
David Eastman Counsel
A.B. Coon States Attorney
for the 13th Judicial Circuit
of said State

State of Illinois
Kane County } ss

I Charles B Wells Clerk of Kane County Circuit Court Do hereby Certify that the foregoing is a True and perfect copy of the agreement on file in my office relating an appeal in the above entitled Cause

In Witness Whereof I have hereunto Set my hand and Seal of said Court at Geneva this 9th day of June A.D. 1852

Charles B. Wells
Clerk

The People of Illinois
Rape
vs.
John Ward

Transcript

Filed June 29. 1852.
L. Leland Clk.

Error to Kane

John D. Ward
Plaintiff in Error
V.S.
The People of the
State of Illinois
Dft. in Error

Supreme Court,
Third Grand Division
of the State of Illinois,
of the June Term 1852

The plaintiff in error in the above entitled cause, relies upon the following points and authorities.

1 The right of appeal from judgments of justices of the peace, is not restricted by express enactment, or legitimate inference, to judgments rendered by virtue of any particular statutes; but is expressed in general and comprehensive terms, as follows, — "Appeals from judgments of justices of the peace shall be granted in all cases except on judgment confessed". Rev. Stat. Chap. 79 §50.

2 The appeal is not the prerogative of a court, but the right of parties, which, being expressed in "general terms," should be "liberally construed, in order that the true intent and meaning of the General Assembly may be fully carried out." Rev. Stat. Chap. 90, §36.

3 The only restriction which the statute makes to the right of appeal is, "on judgments confessed"; and Courts have no authority to create ~~A~~ other restrictions.

4 As Courts cannot take jurisdiction by implication; so, when jurisdiction is given "in all cases",

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of a certain ~~class~~ kind, they have no authority to restrict it by implication, to a certain class of such cases. The Circuit Court, therefore, has appellate jurisdiction "in all cases", (with the above exception,) and it is error not to exercise it.

5 Jurisdiction is given to justices of the peace "to hear and determine all complaints, suits, and prosecutions, of the following description":- (Vid. Rev. Stat. Chap. 59, §17,)- "For all debts and demands claimed to be due _____ in which the action of debt or assumpsit will lie". (Ibid. Div. 1st. 2.) The act, ("to prohibit the retailing of intoxicating drinks", approved Feb 1st. 1851, §3.) under which this "prosecution" was originally instituted, makes the action for the penalty that of "Debt." and therefore the appeal lies by §58, of Chap. 59, - Rev. Stat.

6 "The most universal and effectual way of discovering the true meaning of a law, when the words are dubious, is by considering the reason and spirit of it, or the cause which moved the legislator to enact it" &c. Bouv. Inst. of Amer. Law, No. 90 Rule 5. — People V.S. Utica Ins. Co. 15 John. 381, — Black. Com. (Introd.) §2, No. 59.

7 But the words are not "dubious', and if they were, "the reason and spirit", "which moved the legislature to enact it", (the right of appeal,) being to secure to the people a full, free, and impartial administration of justice, by affording means of correcting erroneous judgments, should be conclusive in favor of the right "in all cases".

8 Appeals from justices judgments, and trial de novo, are statutory rights, (1 Scam 511) and remedial of the Common Law.

9 "Remedial statutes are those which are made to supply such defects, and abridge such superfluities, in the Common Law, as arise either from the general imperfection of all human laws, from change of time and circumstances, from the mistakes and unadvised determinations of unlearned, (or even learned,) judges, or from any other cause whatever". Black. Com, Introd. §3. №87. Bouv. Inst. of Am. Law. №109

10 It cannot be supposed that "the true intent and meaning of the General Assembly" was, to remedy a part only, of the "mistakes and unadvised determinations" which might occur, and leave the remainder without a remedy;

11 "There are three points to be considered in the construction of all remedial statutes; — the old law, — the mischief, — and the remedy; that is, how the Common Law stood at the making of the act, — what the mischief was, for which the Common Law did not provide, — and what remedy the parliament hath provided to cure the mischief. And it is the business of the judges so to construe the ~~Law~~ act as to suppress the mischief and advance the remedy". Black. Com Introd. §3 №87 P1 — Kent's Com. №464, P3 — 4 Scam. 502.

12 In reference to the above, the "mischief" to be suppressed are, "the mistakes and unadvised determinations of unlearned judges", and to restrict the interpretation of the clause of the statute granting appeals in "all cases", would reverse the rule, by suppressing the "remedy", and perpetuating the "mischief."

13 Therefore, "statutes that are remedial, and not penal, are to receive an equitable interpretation, by which the letter of the act is sometimes restrain-

ed, and sometimes enlarged, so as more effectually to meet the beneficial end in view, and prevent a failure of the remedy. They are construed liberally, and ultra, but not contra the strict letter". Kent's Com. Vol. 1. Part 3. № 465.

14 If the "real intent and meaning of the General Assembly" were, to afford an adequate "remedy" to the whole "mischief", though the words of the statute were ambiguous, the intention shall prevail. — "The real intention, when accurately ascertained, will always prevail over the literal sense of terms". — "When the expression in a statute is special or particular, but the reason is general, the expression should be deemed general". Kent's Com. Part 3, № 462. — Black. Com. Introd. § 2 № 59. — Bouv. Inst. of Am. Law. № 90

15 "In construing statutes, courts are to look at the language of the whole act, and if they find, in any particular clause, an expression, not so large and extensive in its import, as those used in other parts of the statute, if, upon a view of the whole act, they can collect, from the more large and extensive expression, used in other parts, the real intention of the legislature, it is their duty to give effect to the larger expression". — Mason v. S. Finch, 2 Scam. 223.

16 The "subject matter" of § 50 of Chap. 59, et. seq. of the Revised Statutes, are the right of appeal from Justices' judgments, and a trial on the merits de novo. The expression, "all cases", in said section, qualifies the right of appeal. It is the only expression which qualifies, or designates, the extent of that right, (except

ting "judgments confessed,") and is not used in relation to any certain jurisdiction of a justice of the peace, and has but an incidental connection therewith. The law is, — "As to the subject matter, words are always to be understood as having a regard thereto, for that is always supposed to be in the eye of the legislator, and all his expressions directed to that end". Bouv. Inst. of Am. Laws, № 90, Rule 3, — Black. Com. (Introd.) §3, № 60. P 3. The right, or subject matter, therefore, refers to appeals from judgments, and is coextensive at all times with the jurisdiction of a justice of the peace, unless expressly limited.

17 "As to the effects and consequences, the rule is, that where words bear either none, or a very absurd signification, if literally understood, we must a little deviate from the received sense of them". Black. Com. Introd. §2, № 60, P 3, — Kent's Com. Vol. 1, Part 3, № 462, — Bouv. Inst. &c., № 90, Rule 4, "Therefore it follows, that we may not "deviate from the received sense", unless to avoid such consequences, and especially when the consequences will be produced by such deviation, which this rule is intended to obviate.

But,

18 "Words are generally to be understood in their usual and most known signification", (Black. Com. Introd. §2, № 59, P 1, — Kent's Com. Vol. 1 part 3, № 462 & notes a & e, — Ibid. 460 & note a;) to which Bouvier adds, "Unless they appear plainly to have been used in another sense". Bouv. Inst. &c., № 90, et seq. Robertson et Al. V. County Com. 5 Gilman. 567

19 "A statute ought to be so construed, if possible, that every word shall have some force and effect,

and that no clause, sentence or word, shall be void, superfluous, or insignificant." Bouv. Inst. &c. № 90, Rule 7.

XX 20 Hence, "When the law is clear, it must not be eluded under the pretence of grasping its intention". 21 Wend. 211.

21 "Statutes are to be construed prospectively, unless the contrary intention of the legislature be clearly expressed". Bouv. Institutes of Am. Law, № 90, - Rule 8, - 2 Scam. 499.

Therefore, appeals should be allowed from judgments rendered under statutes made subsequent to the enactment of the law giving the right of appeal, as well as from judgments under prior statutes, for "the contrary intention of the legislature" is not "clearly expressed".

22 Appeals are from, and have reference solely to, the "judgment", - not to the date of the law under which they were rendered, (Rev. Stat. Chap. 69, § 50.) The prospective construction, therefore, of this clause of the statute, should not be partial, but sufficiently ample "to suppress the mischief and advance the remedy", (Vide Ante 14) - "so as more effectually to meet the beneficial end in view, and prevent a failure of the remedy". (Vide Ante 13.)

23 The right of appeal, "in all cases", is as strongly and clearly given by statute from judgments rendered by justices of the peace, as from judgments of the Circuit Courts to the Supreme Court; and in the latter case, it has been uniformly held, that the right is only limited by express statutory restriction. The Supr-

reme Court has declared it to be "a matter of right". Emerson v. S. Clark, 1 Scam. 596, — Morris et al. v. City of Chicago, 11 Ill. 652.

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Ward vs People

Pltffs. brief & authorities

Filed July 21. 1882
Leland Clk.

John D. Ward
Plaintiff in Error,
v.
The People of the
State of Illinois,
Deft in Error.

Supreme Court,
Third Grand Division,
of the June Term 1852.
State of Illinois

I do hereby enter myself security for costs in the above entitled cause, and acknowledge myself bound to pay or cause to be paid all costs which may accrue in this action either to the opposite party or to any of the officers of this court, in pursuance of the laws of this State.

Dated this 23d day of June A.D. 1852

Edward A. Allen L.S.

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Kane

John Ward

vs

People &c

Secy. Ja cuts

Filed June 29. 1852

Leland Clk.