

12431

No. _____

Supreme Court of Illinois

Burns

vs.

Henderson

71641  7

Be it Remembered that heretofore to wit on the eighteenth day of February in the year of our Lord one thousand eight hundred and fifty seven there was filed in the office of the clerk of the Circuit Court of Peoria County in the State of Illinois, a transcript of a judgment of J. A. McCoy, a Justice of the Peace of said County and of the proceedings in a certain cause before him which with the certificate of said Justice thereto attached is in the words and figures following to wit:

x Adam Henderson vs Suit brought on Note and
 David Burns interest for \$ 77. 21 on
 application of Jeff Summers
 issued to Wm McCormick Const December 15. 1856
 returnable December 20th at 1 O'clk P.M. returned
 dock 12th duly served

December 20. 1856. Judgment rendered against
 the defendant by default for seventy seven dollars
 and twenty one cents debt and costs of suit
 Debt \$ 77. 21
 costs 86 1/4

State of Illinois ss
 Peoria County J. A. McCoy Justice of the
 Peace in and for said County Do Certify
 that the above transcript, and the papers annexed
 contain a full and perfect statement of all the
 proceedings and of the judgment before me in the
 above entitled cause
 Dated this 16th day of February AD 1857
 J. A. McCoy J. P.

Also on the same day there was filed by the said Justice of the
 Peace in the clerk's office of the said Circuit Court a summons
 issued by him in said cause in words and figures following to wit:

Sum 18 3/4
 Dock 12 1/2
 W. Sum 30
 Judg 25
 Bond 50
 Trans 25
 Cer 25

212431-2

State of Illinois, Peoria County SS

The people of the State of Illinois to
any Constable of said County, Greeting:

You are hereby commanded to Summon David
Burns to appear before me at my office in Peoria
on the 20th day of December inst at 1 o'clock P.M.
to Answer the Complaint of Adam Henderson
for a failure to pay him a certain demand not
exceeding \$300; and Hereof make due return
as the Law directs. Given under my Hand and
Seal this 15th day of December, 1856

J. A. Mc Coy *J. A. Mc Coy*

J. P.

Which Summons was endorsed as follows to wit: Served
this summons by reading to David Burns this
17th day of Dec 1856.

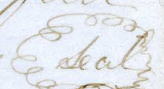
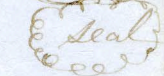
M. Mc Cormick Const.
Also on the same day the said Justice filed with the papers in said suit
in the said Clerks office a note in words & figures following to wit:

\$76. 25. Thirty days after date I promise
to pay Adam Henderson or order the
full and just sum of Seventy six dollars and
25/100 for value received with interest at six
per cent per annum till paid
Peoria Oct 1st 1856

David Burns
Also on the same day there was filed in the said Clerks office with
the other papers in said suit by the said Justice an appeal bond
which is in the words & figures following to wit:

Know all Men by these presents, that we
David Burns and are held and firmly
bound unto Adam Henderson in the penal
sum of one Hundred & Sixty 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 and severally,
firmly by these presents. Witness our Hands and

Seals, this 3rd day of January A.D. 1857
 The condition of the above obligation is such,
 that whereas the said Adam Henderson did
 on the 20 day of December 1856 before J. A. McCoy
 a Justice of the Peace for the County of Peoria
 recover a judgment against the above bounden
 David Burns for the sum of seventy eight
 07 dollars; from which judgment the said David
 Burns has taken an appeal to the Circuit Court
 of the County of Peoria, aforesaid and State of Illinois
 Now if the said David Burns shall prosecute
 his appeal with effect and shall pay whatever
 judgment may be rendered by the Court upon
 dismissal or trial of said appeal, then the above
 obligation to be void, otherwise to remain in full
 force and effect

David Burns 
 J. S. H. Murden 

Approved before me at my office, this 7th
 day of January 1857
 J. A. McCoy, J. P.

And thereupon to wit on the twenty eighth day of May A.D. 1857
 there was filed in the office of the Clerk of the Circuit Court of said
 County an affidavit of Adam Henderson, which is in the words and
 figures following to wit:

Affidavit

x Adam Henderson vs David Burns
 Peoria County Circuit Court May Term 1857

Appeal from J. P.

Adam Henderson appellee and plaintiff in the
 above entitled suit being first duly sworn doth
 depose and say, that soon after the appeal in said
 suit and on or about the 19th of February A.D.
 1857. I was served with summons from the Circuit
 Court in said suit by the Sheriff of Peoria County
 or his Deputy and further deponent saith not
 subscribed and sworn to before me this 28th day
 of May 1857, Adam Henderson
 Bernard Bailly, J. P.

Said thereupon on the same day there was filed in the office of the Clerk of said Court an affidavit of Enoch P. Sloan Clerk of said Court which with a copy of a summons thereto attached is in the words and figures following to wit:

affidavit

Adam Henderson vs David Burns
Appeal by defendant
to the Circuit Court
Peoria County
May Term 1857

Enoch P. Sloan clerk of said Court, being first duly sworn doth depose and say that the transcript in said case was filed in my office on the 18th February A.D. 1857 and that a summons was issued to the appellee on the same day and delivered to the Sheriff of Peoria County returnable to the February Term of said Court and that to the best of my knowledge and belief the copy of summons hereto attached is a correct copy of said summons and further deponent doth not
Enoch P. Sloan clk

Sworn to before
N. H. Purple

Notary Public
Peoria City Ills
(Copy of summons attached)

* The People of the State of Illinois, To the Sheriff of Peoria County - Greeting: We Command you to summon Adam Henderson, if he may be found in your County, to appear before our Circuit Court on the first day of the term thereof to be held at Peoria, within and for the said County of Peoria on the 4th Monday of February next, then and there in our said Court to prosecute your suit against David Burns lately appealed from the Judgment of John A. McShay one of the Justices of the Peace in and for said County and State, by said Burns, to our Circuit

Court and make return of this writ with an endorsement of the time and manner of serving the same, on or before the first day of the term of the said Court to be held as aforesaid

Witness, Enoch P. Sloan clerk of our said Court and the seal thereof at Peoria this 18th day of February in the Year of our Lord one thousand eight hundred and fifty seven
Enoch P. Sloan clerk



There was also attached to the above an affidavit of F. W. Smith Sheriff of Peoria County which is in words and figures following to wit;

Affidavit
x Francis W. Smith Sheriff of Peoria County being first duly sworn doth depose and say that to the best of my knowledge and belief I received the said summons described in the foregoing affidavit at the time mentioned therein and that I have no doubt I duly served and returned said summons as I find upon my Book of charges for service a charge of about that date for the service of said summons and further deponent saith not
Sworn to before me
this 28th of May 1857
Enoch P. Sloan clerk
F. W. Smith Sheriff

Proceedings in the Circuit Court at a term thereof began and held at the Court House in the City of Peoria in and for the County of Peoria and State of Illinois on the second Monday of May in the Year of our Lord one thousand eight hundred and fifty seven, it being the eleventh day of said month. Present the Honorable Elisha N. Powell Judge of the 16th Judicial Circuit in said State; Francis W. Smith, Sheriff & Enoch P. Sloan clerk, to wit:-

Thursday, March 28th 1857
Adam Henderson
David Burns vs Appeal

This day came the plaintiff by Johnson his attorney and the defendant by Grove & Co his attorney. Plaintiff moves the Court for leave to file in this Cause a Copy of Summons & the service thereof, for the reason that the original had been misplaced and cannot be found; and the Court being satisfied in the premises allows said Motion and orders that a Copy of said Summons and return be filed among the papers in this Cause; It is ordered by the Court that a jury be empannelled to try the issues in this Cause, whereupon came a jury of twelve good and lawful men to wit; Stewart Neill, W. G. Arledge, George Ford, Thomas Cutler, Jacob H. Wells, Thoson Adams, Charles Greenleaf, John Batten, Jacob Parst, L. M. Doup, George Zimmerman, and David D. Snyder, who were duly chosen, tried and sworn to well and truly, try the issues in this Cause and a true verdict give according to the evidence, upon their oaths aforesaid, do say, we the jury find for the plaintiff and assess his damages at the sum of seventy nine dollars and thirty cents. Therefore it is considered by the Court that the said Adam Henderson have and recover of the said David Burns, the sum of seventy nine dollars and thirty cents his damages aforesaid assessed with five per centum added thereto for delay and also his costs and charges by him about his suit in this behalf expended in this Court as well as the costs below and that he have execution therefor. Defendants Counsel then prayed an appeal to the Supreme Court of this state, which is allowed on defendants giving bond in the penal sum of two hundred dollars with James F. Murden as security, and conditioned according to law. said bond to be filed with the Clerk of this Court in twenty days —

And thereupon to wit on the 28th day of May 1857. There was filed in the office of the clerk of said Circuit Court a bill of exceptions in said cause, which is the words and following to wit:

State of Illinois vs In Peoria County Circuit
Peoria County ss Court

Adam Henderson vs David Burns On appeal

Be it remembered that on this day the plaintiff called up this cause & insisted upon a trial offered to read to the Court the following affidavits & a copy of the summons to wit:

Adam Henderson vs David Burns Peoria County Circuit Court May Term. 1857

Appeal from J. P.
Adam Henderson Appellee and plaintiff in the above entitled suit being first duly sworn doth depose and say, that soon after the appeal in said suit and on or about the 19th of February A.D. 1857. I was served with summons from the Circuit Court in said suit by the Sheriff of Peoria County or his Deputy and further deponent saith not, —
Subscribed and sworn to before me this 28th day of May 1857

Bernard Bailey J. P.
Adam Henderson vs David Burns Appeal by defendant to the Circuit Court Peoria County May Term 1857

Enoch P. Sloan clerk of said Court, being first duly sworn doth depose and say that the transcript in said case was filed in my office on

the 18th February AD 1857 and that a
Summons was issued to the appellee on the
same day and delivered to the Sheriff of
Peoria County returnable to the February
Term of said Court and that to the best of
my Knowledge and belief the Copy of Summons
hereto attached is a correct Copy of said
Summons, and further deponent, saith not,
Sworn to before Enoch P. Sloan clk
N. H. Purple
Notary Public
Peoria City Ills

Francis W. Smith Sheriff of Peoria County
being first duly sworn doth depose and say
that to the best of my Knowledge and belief
I received the said Summons described
in the foregoing affidavit at the time
mentioned therein and that I have no doubt
I duly served and returned said Summons
as I find upon my Book of charges for
service a charge of about that date for
the service of said Summons. And
further deponent, saith not
Sworn to before me F. W. Smith, Sheriff
this 28th of May 1857
Enoch P. Sloan

The People of the State of Illinois, to the Sheriff
of Peoria County - Greeting: We Command
you to summon Adam Henderson, if
he may be found in your County, to appear
before our Circuit Court on the first day of the
term thereof, to be held at Peoria, within and
for the said County of Peoria on the 4th Monday
of February next then, and there in our said
Court to prosecute your suit against David
Burns, lately appealed from the judgment of

John A. McCoy one of the Justices of the Peace
in and for said County and State, by said Burns
to our Circuit Court, and make return of this writ
with an endorsement of the time and manner of
serving the same on or before the first day of the
term of the said Court to be hold as aforesaid.

Witness Enoch P. Sloan, Clerk of our said Court
and the seal thereof at Florida, this 18th day
of February in the year of our Lord

One thousand eight hundred and fifty seven
Enoch P. Sloan clerk

Seal

* To the reading of which the defendant objected
but the Court overruled said objection & permitted
the plaintiff to read said affidavits to which
decision of the Court the defendant then & there
objected & excepted

The Court then called
the Cause for trial to which the defendant objected
for the following reasons

- 1 The Court has no jurisdiction to try the Cause
- 2 The Plaintiff has no right to prosecute said Cause
in this Court
- 3 This Court has no jurisdiction of the parties.
- 4 That by the uniform practice of this Court for the past
fifteen years an appellant could not be forced
to trial unless the appellee was summoned more
than ten days before the first day of the term of the
Court at which the trial was had, or two sum-
mons returned, not found - But the Court
overruled said objection & ordered a Jury to be
called to the overruling said objection and calling
a Jury the defendant then & there at the time
objected & excepted.

The Jury being empan-
-nelled & sworn, the plaintiff offered a note in
evidence in words & figures following;

\$ 76.25

Thirty days after date I promise to pay
Adam Henderson or order the full and just sum

*

Francis W. Smith, Sheriff of Peoria County, being first duly sworn doth depose and say that to the best of any knowledge and belief I received the said Summons described in the foregoing affidavit at the time mentioned therein and that I have no doubt I duly served and returned said summons, as I find upon my book of charges for service a charge of about that date for the service of said summons and further deponent saith not.

F. W. Smith, Sheriff

Sworn to before me this 28th of May 1857
Enoch P. Sloan, Clerk }

of seventy six dollars, and $\frac{25}{100}$ for value received
with interest at six per cent per annum till paid
Peoria Oct. 1st 1856

David Burns
To which the

defendant then & there objected & excepted but the
Court overuled said objected and allowed the note
in evidence To which the defendant then & there
objected & excepted & prayed the Court to sign ^{Seal} this
his bill of exceptions and made part of the
record in this cause which is done

E. N. Powell ^{Seal}

And afterwards to wit on the nineteenth day of June in the year
of our Lord one thousand eight hundred and fifty seven there was filed
in the Clerk's office of said Court an appeal Bond which is in the
words and figures following to wit:

Know all men by these presents that we David
Burns as principal and James F. Murden as
Surety are held and stand firmly bound unto
Adam Henderson in the sum of two hundred
dollars lawful money of the United States to the
payment of which will and truly to be made
we bind ourselves our heirs and assigns firmly
jointly & severally sealed with our seals & dated
this 15th day of June AD 1857

The Condition of the
above obligation is such that whereas the above
named Adam Henderson at the May Term
of the Peoria County Circuit Court ^{AD 1857} recovered
Judgement against the above bounden Burns
for the sum of seventy nine dollars damages
and thirty cents and
costs of suit from which Judgement the said
David Burns prayed an appeal to the Supreme
Court of the State of Illinois which was allowed
by the Court on said Burns executing an
appeal Bond with James F. Murden as security

for the sum of two hundred dollars within twenty days. Now if the above bounden David Burns shall prosecute His said appeal with effect, and pay whatever judgement may be rendered in said Cause in the Supreme Court in Case said judgement shall be affirmed and pay all costs, interest & damages then this obligation to be void otherwise to remain in full force and virtue

David Burns 
Approved by me James P. Murden 

State of Illinois }
Peoria County } I Enoch S. Sloan Clerk of the Circuit Court in and for said County and State do certify that the foregoing is a full and complete transcript of papers filed and of the proceedings of our said Court in the cause wherein Adam Henderson is Plaintiff and David Burns is defendant as the same appears on file and of record in my office.

Given under my hand and the seal of said Court at Peoria the tenth day of March in the year One Thousand Eight Hundred and Fifty Eight
Enoch Sloan, Clerk

146

\$ 3.75

Burns

by
Henderson

Filed April 20, 1858

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6 R.

Maria Burns } In the Supreme
 Plaintiff in Error } Court
 vs } April Term 1858
 Adam Henderson }
 Defendant in Error } Appeal from Peace

And the said Plaintiff in Error comes and says that in the record proceedings and in the rendition of judgment in this cause manifest ^{error} injury hath intervened to the injury of the Plaintiff in Error and for assignment of errors shows the following

1. The Court below erred in ^{not} overruling the objections of the Defendant below
2. The Court below had no Jurisdiction to try the Cause
3. The Plaintiff below had no right to prove unto his suit in the Court below.
4. The Court below should have assumed the Appeal
5. The Circuit Court has no Jurisdiction to try Appeals

Wherefore the said Plaintiff prays that the Judgment rendered in this Cause may be reversed set aside and void by your right ordering

Ground for Appeal

DAVID BURNS,
Plaintiff in Error,
vs.
ADAM HENDERSON,
Defendant in Error.

IN THE SUPREME COURT,
ILLINOIS.
APRIL TERM, 1858.

APPEAL FROM PEORIA CIRCUIT COURT.

Henderson sued Burns before a Justice, and recovered judgment.

Burns appealed to the Circuit Court, and filed Bond with the justice.

At the May Term, 1857, the court called the cause for trial, to which the defendant objected, for the following reasons :

1. The court has no jurisdiction to try the cause.
2. The plaintiff has no right to prosecute said cause in this court.
3. This court has no jurisdiction of the parties.
4. That the appellee was not summoned. The court overruled the objection and called a jury, and the defendant excepted,
5. The plaintiff below offered a note in evidence, and the defendant below excepted. Verdict and judgment for plaintiff below, and Burns appealed to this court.

The plaintiff here assigns the following errors upon the record.

1. The court below erred in overruling the objections of the defendant below.
2. The court below had no jurisdiction to try the cause.
3. The plaintiff had no right to prosecute his suit in the court below.
4. The court below should have dismissed the appeal.
5. The circuit court had no jurisdiction to try appeals.

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18 Ill 580
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The only point relied on by the plaintiff in error is that the court below had no jurisdiction to try the appeal.

By the 4th section of the act approved Feb. 9th, 1855, entitled An Act to extend the jurisdiction of the county court of Peoria County, it is provided that "*All appeals from the decisions of Police Magistrates and Justices of the Peace, made or rendered in said county shall be taken to the County Court.*"

It is claimed on the other side :

1. That the act above quoted, so far as it divests the Circuit Court of jurisdiction to try appeals, is unconstitutional; and the 8th section of article five, constitution of 1848, is relied upon, which provides that "SAID COURTS (CIRCUIT) SHALL HAVE JURISDICTION IN ALL CASES AT LAW AND EQUITY, AND IN ALL CASES OF APPEALS FROM ALL INFERIOR COURTS."

If the construction of the 8th section contended for be the proper one, then the jurisdiction of all other courts would be taken away.

Jackson vs. Kemble, decided at last term :—

The 18th section declares "that the jurisdiction of County Courts shall extend to all Probate and such other jurisdiction as the General Assembly may confer in civil cases."

This court decided, in Edwards vs. Vandemack, 13 Illinois, page 633, that appeals were only allowed in cases provided by statute.

It is submitted that the right to appeal to either court is not a constitutional right, but is subject to legislative control.

It may be said that the plaintiff in error, having appealed from the decision of the Justice, is not in a position to question the jurisdiction of the circuit court. The answer to this is that he entered no appearance in the circuit court. He filed his bond before the Justice, and when the court called the case for trial, he objected on the ground that the court had no jurisdiction.

Beeseman vs. City of Peoria, 16 Ill., 484.

Whatever may be the right of the plaintiff to question the jurisdiction of the circuit court, the interest of the public requires that a construction be given by the supreme court to the 8th section of article 5 of the constitution, and that it be settled whether the General Assembly have the power to prevent appeals from being taken to the circuit courts.

As the population and business of the state increase, some relief to the circuit courts must be afforded, to prevent a failure of justice; and the framers of the constitution must have intended that the jurisdiction of the county courts could and should be extended whenever, in the judgment of the General Assembly, it became necessary.

Hence numerous Acts have been passed regulating appeals, and the right has not been questioned except in Peoria County. There the circuit court holds that the Act of 1855, so far as it takes away the right of appeal to the circuit court, is unconstitutional and void.

GROVE,

for Plaintiff in error.

146 = 46

David B. Boring
vs
Adams Henderson

Filed April 20th 1838
B. Belmont
Clerk

141

For Plaintiff in error.

GROVE,

the circuit court, is unconstitutional and void.

holds that the Act of 1825, so far as it takes away the right of appeal to the not been questioned except in Peoria County. There the circuit court

These provisions have been passed regulating appeals, and the right the General Assembly, if become necessary.

county courts could and should be extended whenever, in the judgment of framers of the constitution must have intended that the jurisdiction of the circuit courts must be afforded, to prevent a dilution of justice; and the the the prohibition and business of the state increased, some relief to the to prevent appeals from being taken to the circuit courts.

rights, and that it be settled whether the General Assembly have the power be given by the supreme court to the 2^d section of article 2 of the constitution of the circuit court, the interest of the public requires that a construction Whenever may be the right of the plaintiff to question the jurisdiction

David Burns } In the Supreme
Plaintiff in Error } Court Illinois
vs } April Term
Adam Henderson } A.D. 1858
Defendant in Error } at Ottawa

Appeal from Circuit Court
Pena County -

But the single
question of jurisdiction is made
by the plaintiff in error in this case.

It is not competent
for the legislature to divest the juris-
diction of the Circuit Court - which
was vested in it - by the Constitution
unless it is competent for the legisla-
ture to abrogate the whole Constitution
or any part thereof by enactment

This would be a novel doctrine
even after the Dred Scott decisions
The 8th Section of the Constitution con-
fers jurisdiction in appeals from all
inferior courts on the Circuit Court

The 18th Section provides that the
legislature may extend the jurisdiction
of the County Courts - but does not
give authority to grant exclusive

jurisdiction - or to annul any jurisdiction previously conferred by the same instrument -

It might be competent to grant jurisdiction to the County Courts concurrent with the Circuit Court - but not in any respect to annul the jurisdiction of the Circuit Court - ^{Because such power is not given in the 16th section} The provision for future legislation in the 18th section is too loose - and too general, to confer exclusive jurisdiction except in probate cases -

The case of Edwards vs Vandemark, cited by defendant below, does not apply to this case - The question settled in that case was only whether the appeal was taken in the manner prescribed by the statute - The defendant below having brought his case to the Circuit Court by appeal, ought to be stopped from questioning the jurisdiction to which he has resorted -

It is at least a novel way of defeating the collection of a note - The argument Ab inconvenienti might have some force in a Constitutional

Convention - possibly in a legislature
but not in the Supreme Court in
this case -

E. G. Johnson
Counsel for defendant

David Burns
appellant
vs
148

Adam Henderson
appellee

Argument of
Defendant in error

Filed Apr. 27. 1858.
Ireland
Ct.

John

146 = 46

David Burns

vs

Adam Henderson

Opinion

146

Burns

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~~X~~

Replaced