

No. 13971

Supreme Court of Illinois

Miller

vs.

Gray

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 142.

1860
Miller

vs

Gray

73071

STATE OF ILLINOIS, }
SUPREME COURT, } ss.

The People of the State of Illinois,

To the Sheriff of the County of

Bureau — Greeting:

Because, In the record and proceedings, and also in the rendition of the judgments of a plea which was in the Circuit — Court of Bureau County, before the Judge thereof, between

Smith Miller

plaintiff; and

Nathan Gray

defendant....., it is said that manifest error hath intervened, to the injury of the said

Smith Miller

as we are informed by his — complaints — the record and proceedings of which said judgments we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law: Therefore, We Command You, That by good and lawful men of your County, you give notice to the said

Nathan Gray

that he — be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April ~~next~~ ^{inst} to hear the record and proceedings aforesaid, and the errors assigned, if he — shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said

Nathan Gray

notice, together with this writ.

Witness, The Hon. John D. Eaton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 7th day of April in the Year of Our Lord One Thousand Eight Hundred and Sixty.

L. Deland

Clerk of the Supreme Court.

I have executed this writ this 28th day of April
 1860 by reading to the within named Nathan
 Gray
 D. C. Norton Sheriff
 Bu Co Ills
 By Samuel Scott Deft

142

John H. Allen

No. vs.

Nathan Gray

SCIRE FACIAS.

FILED April, 24, A. D. 1860

A. DeCane

Plait.

Ward's fees

deputy Sheriff 50
18 months travel 90
10

return

150

David G. Hunt



Smith Miller } Supreme Court
" } Illinois.
Nathan Gray }

State of Illinois } ss
La Salle County }

Edward H. Brackett
being duly sworn says he is the
Petitioner of Complainant in
said Cause - That the same
is a cause in Chancery involving
a large amount - That the
suit was commenced in the Bureau
Circuit Court, and adjourned
for final hearing at Ottawa
which hearing was had and
determined in December last.

The Court dismissing the
Complainant's bill and granting
leave to defendants "to withdraw
all papers filed by him as exhibits
in this cause and all papers presented
to witnesses by defendants at the time
of their examination which are
attached to their depositions of
said witnesses" without any order
to leave copies thereof - That

That at the hearing there was important testimony taken orally of which the judge has made no return to the Clerk's Office - That the record as returned shows on its face that the depositions ~~were~~ taken in the course of which there were a number have not been made a part of the record.

Affiant resides at Chicago ^{and his client in Bureau County} and understanding from an agent of ~~the~~ Complainants that process was not served in time for the present term he did not appear or say on the record or cause the same to be so understood that the record was imperfect, intending to allege diminution of the same, and also for the reason that he supposed service had not been had in time - Affiant states that said cause was dismissed on the 20th instant for the reasons that errors had not been assigned - Affiant respectfully asks on

behalf of his client that said
order of dismissal may be set
aside and said Cause
re-instated on the docket, and
that ~~the same may be~~
Certiorari may issue for the
correction of the record and
the Cause stand continued -

Subscribed and

Given to this 8. May

1860

J. Deland Clerk.

Edw. H. Bracken

Sup Court ^{No 142}

Smith Miller
vs

Nathan Gray

Chancery

Filed May 4, 1860

L. Keland Ch.

Affidavit of

Motion to let

aside over

of original

for Certification to

Amend record

E. D. H. Brackett

Comptroller

State of Illinois Supreme Court
Third Grand Division
April Term 1860

Smith Miller

142 -

vs

Nathan Gray

Suggestions for
Ords on motion
to set aside order
of dismissal &c

The Affidavit filed in support
of this motion sets forth no suf-
ficient reason why the motion
should prevail -

The motion is first that the
order dismissing the writ be
set aside and the only portion
of the Affidavit bearing upon
this portion of the motion is as
follows: "Affiant resides at
Chicago and his client in
the County of DuPage, and un-
derstanding from an agent
of Complainants that process
was not served in time for
the present term he did not
assign errors on the record

or cause the same to be done, understanding that the record was imperfect, intending to allege diminution of the same, and also for the reason that he refused service had not been had in time"

This Court will not exercise its discretion in granting this motion unless it affirmatively appears upon the face of the Affidavit that Affiant exercised due diligence in the care of this case, and this it does not show -

It was the duty of Counsel to attend upon this Court and examine the papers here filed & not trust to such loose and unreliable information as he acted upon here

The affidavit does not show that he was not informed of the rule to give in error which was taken on the

days before dismissal, only that he relied on this rumor

(By looking at the record the court
will observe that the service
was in time & by Plaintiff coun-
sel might have ascertained the
same fact by doing so also)

coming from his own client
that service was not in
time & there upon entirely neg-
lects to take any pains to
ascertain the fact -

If he has been misled it has
been by his own client and
his own negligence and
both of them should suffer
the consequences

The motion is second for
certiorari and in this regard
the Affidavit is insufficient
there is in it only a general
avowment that important
testimony has been omitted in
the record without giving this
court any intimation of what
it was that they might judge
whether it was material or
not to the determination of
the cause here

The Affidavit does not show that
the parol Testimony was reduced
to writing on the hearing. If
Pltff desired to have it in-
serted in the record he should
have preserved it by Bill
of Exceptions this he did
not do, for what does not
appear by his Affidavit
does not exist

If affiant knew that the record was ^{diminished} ~~insufficient~~ and intended to move for certiorari to supply omissions, he should have presented himself before the Court and entered his motion at an early day and shown to the Court by his affidavit whose testimony was omitted and the character of it - having failed to do so, and having failed to show any kind of diligence in attending upon the case this Court will not grant the relief asked.

Glover Cooky

+ Campbell

Smith Miller ¹⁴²

✓

Nathan Trap

Suggestions of
Dife on Motion
to let article
Dismissed

Amended