

14546

No. 14546

Supreme Court of Illinois

Bletch

vs.

Johnson

STATE OF ILLINOIS,

SUPREME COURT,

THIRD GRAND DIVISION.

No. 13

J. W. Middleton & Co., Stationers, 196 Lake St.

Blotch

Johnston

1864

14546

1 The People of the State of Illinois
Now to whom these presents shall come,
Greeting
Know ye that we having caused to
be inspected the Records and proceedings
of our Circuit Court in and for the County
of Ingham do find there certain Records
and proceedings in the words and figures
following to-wit:

" State of Illinois
" County of Ingham "

" Now before the Hon. Charles
" B. Starr Judge of the 20th Judicial Circuit, of
" the State of Illinois at a term of the Circuit
" Court of said County begun and held at the
" Court House in Widdlerport on Monday April
" 20th 1857

" Present Hon. Charles B. Starr presiding
" Judge of the 20th Judicial Circuit
" State Attorney
" James H. Carr Sheriff &
" Thomas Vannum Clerk "

And afterwards to-wit On the
22d day of April A.D. 1857 there has
been filed in said Circuit Court a certain de-
claration and notice which reads in the

2 Words and figures following to wit

" State of Illinois } In the Circuit Court of Sangamon
" Sangamon County } County and State of Illinois
" To the April Term a d 1857

" Abner F. Johnson

" Andrew Blitch

" Abner F. Johnson Plaintiff

" in this suit complains of Andrew Blitch
" defendant, in this suit for that whereas
" on the first day of the month of November
" in the year of our Lord One thousand eight
" hundred and fifty, A. D. 1856, at the
" County of Sangamon and State of Illinois
" the said Plaintiff was possessed of the following
" described Real Estate to wit The North West
" Quarter of Section Number fifteen (15) in
" Township Number Twenty Seven (27) north
" of Range number Ten (10) East of the Third
" of principal Meridian containing One
" hundred and Sixty Acres of land and
" lying in the County aforesaid the title
" to which he claims in fee simple and the
" said plaintiff being so possessed thereof
" the said defendant did on the fifteenth (15)
" day of the month of November a d 1856
" enter into said premises and unlawfully

" withholds them from the plaintiff the paper
 " in thereof to the damage of the Plaintiff of
 " five hundred dollars and therefore he brings his
 " suit

" John Clark

" Attorney for Plaintiff

" Now Andrew Black you are notified, that
 " on the first day of the next term of the circuit
 " Court of Ingham's County or as soon thereafter
 " as counsel can be heard the foregoing declar-
 " ation in Testimony will be filed and thereupon
 " a rule will be entered requiring you to appear
 " and plead thereto within twenty days from
 " the entering of such Rule and that if you
 " neglect so to appear and plead judgment
 " by default will be entered against you
 " and the Plaintiff will Recover possession of
 " the premises described in said declaration

" John Clark

" Attorney for Plaintiff

" State of Illinois
 " Ingham's County

" Josiah J. Baker being duly
 " sworn deposes that he did on the 9 day
 " of _____ A.D. 1857 That I did deliver
 " to the wife of Andrew Black being a
 " white person over the age of ten years

= Andrien Mitch the defendant in this cause
 = a true copy of the foregoing declaration
 = and notice in this county and State aforesaid
 = Josiah J. Baker

= Given to before me this

= 22 day of April A D 1857

= Daniel W. Clark, Co. Court

And afterwards Towit on the 23^d
 day of April A D 1857 it being one of the
 regular days of the April term of the Ingham
 County Circuit Court for said year A D 1857
 the said Court being then duly organized
 and sitting in open Court for the transaction
 of Judicial business certain proceedings were
 had and entering of Record by said Court
 in the words and figures following Towit

= Albany F. Johnson

= 173

= vs

= Ejectment

= Andrew J. Mitch

= On Motion of Attorney

= for Plaintiff it was ordered that defendant

= be ruled to plead in twenty days

And afterwards Towit On the
 20th day of October A D 1857 it being
 one of the regular days of the October

term of said Court for said year, A.D. 1857
the said Court being then duly organized, as
aforesaid, certain other proceedings were
had and entered of Record by said Court
in the words and figures following to-wit.

" Asbury J. Johnson
vs
Andrew Blitch " Ejectment "

" And now comes Clark
" Attorney for Plaintiff herein and moves the
" Court that the defendant be called
" Thereupon
" the Court Ordered that the defendant be called,
" and he was called three times solemnly in
" Open Court, and comes not but wholly makes
" default herein And upon Motion of Plaintiffs
" attorney the Court ordered that Judgment
" by default be entered against said defendant."

And afterwards to-wit On the
23d day of October A.D. 1857 it appearing
One of the regular days of the October term of
said Court for said year 1857 the said Court
being then duly organized as aforesaid certain
other proceedings were had and entered
of Record, in the words and figures following
to-wit.

Asbury J. Johnson
 "100" 10 "Eckmire"

Andrew Black

"Comes now the plaintiff in
 "this suit by Clark his attorney and the defen-
 "dant appearing not neither in person or by
 "attorney the Court in accordance with the
 "judgment Entered at this term of this court
 "ordered that the Plaintiff in this cause
 "do recover of the defendant the lands
 "described in Plaintiffs declaration To-wit
 "The north West quarter of Section Number
 "fifteen (15) in Township Twenty Seven (27)
 "north of Range Number Ten (10) East of
 "the 3d principal Meridian in the County
 "of Iroquois and State of Illinois and that
 "a writ of possession issue for the recovery
 "of the same And it is further Ordered, that
 "the Plaintiff have and recover of and
 "from the defendant his costs and charges
 "by him laid out and expended in and
 "about the prosecution of this suit and that
 "execution issue thereon"

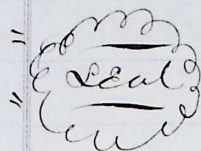
and afterwards To-wit On
 the 25th day of August A D 1858 there was
 issued out of the Office of the Clerk of
 the Circuit Court a "Writ of Possession"

which reads in the words and figures following

County
 "State of Illinois" The People of the State of Illinois to
 "Jroguis County" the Sheriff of said County.

"Greeting. Whereas Astbury
 "F. Johnson has lately in the Circuit Court held
 "in and for the County of Jroguis by the judg-
 "ment of the said court recovered against
 "Andrew Blitch the whole best quarter of
 "Section fifteen in Township number Twenty
 "Seven (27) North in Range No. Ten (10) East
 "of the third (3d) principal Meridian in
 "Jroguis County Illinois which said premises
 "have been and are still unjustly withheld from
 "the said Astbury F. Johnson by the said Andrew
 "Blitch whereof he is convicted as appears to
 "us of Record. And for as much as it is ad-
 "judged in the said Court that the said
 "Astbury F. Johnson have execution upon his
 "said Judgment against the said Andrew
 "Blitch according to the force form and effect
 "of his said Recovery -

"Therefore We Command you that
 "without delay you deliver to the said
 "Astbury F. Johnson possession of the prem-
 "ises so recovered with the appurtenances
 "and that you certify to us in what manner
 "you shall have executed the same



Witness Thomas Clark and the seal
of said court hereunto affixed at
Middleport in said County this
25th day of August A D 1888
" Thomas Hennen Clerk

And which said writ was
indorsed as follows to wit

" State of Illinois
" In Rogers County I did this 26th day
" of August A D 1888 Execute
" the within writ by going unto the within
" described premises & putting the within
" named Asbury T. Johnson into quiet and
" peaceable possession thereof

" James C. Carr Sheriff

" May 21. 1880 To. 100 Ref 10

By A. J. Hay deputy

" \$ 210

9

State of Illinois
 Morgan County

I Thomas Munson Clerk
 of the Circuit Court in and for said County
 in the State aforesaid do hereby certify
 that the above and foregoing is a true
 complete and perfect transcript of the
 Record of the proceedings of the Morgan
 County Circuit Court in the said within
 entitled cause between Astbury F. Johnson
 Plaintiff and Andrew J. Bletch defendant
 from the commencement of said suit up
 to and including the October Term A.D.
 1857 and also of all papers filed in
 said cause during the term aforesaid

In attestation of which I
 have hereunto set my hand and
 affixed the seal of said court
 at office in Middletown in
 said County this 2nd day of
 April A.D. 1861

Thomas Munson Clerk
 By A. H. Baylors depy

And now comes the said ~~Andrew~~
Bletcher by Wood his Attorney and
says that there is manifest error
in the foregoing record in this, to wit
1st The notice appended to said dec-
laration is insufficient

2 The affidavit of service of the Declaration
is insufficient

3 The Court had no jurisdiction of the
person of the defendant

4 The Court erred in rendering
judgment for the plaintiff -

Charles H. Wood
for Pltff. in Error

And now on this 22nd day of April 1864, comes
the defendant in error, Henry G. Johnson, and
says that in the foregoing record ^{proceedings} together with the
additional & amended record & proceedings of
said Circuit Court in said cause filed herein
at the present term of this Court, viz: on the
19th day of April 1864, there is no error for
which the said judgment of said Circuit
Court should be reversed and appealed
therefrom, that the same be affirmed &
Cooper & Mayo
for appellee =

¹³
Asberry & Lohuston
163 " 42
Audron J. Bleich

Record

Filed April 3rd 1861

A. L. Linnell
Clerk

Fees on Transcript \$2.50

Wood

1.

To all to whom these presents shall come, Greeting:
Know Ye that we having caused to be inspected the Records and proceedings remaining in the office of the Clerk of the Circuit Court in and for the County of Iroquois and State of Illinois, do find therein certain Records and proceedings in the words and figures following, to wit:

"State of Illinois,

"Iroquois County, ss

"Whereas the special Term of the Iroquois County —
"Circuit Court was not holden on the first day of December,
"as heretofore appointed, by reason of the unfinished State
"of the Court House; And Whereas it is considered necessary
"for the prompt and efficient administration of justice,
"that a Special Term of the Circuit Court should be
"holden in said County — Therefore be it remembered That
"I Charles R. Starr Judge of the 20th Judicial Circuit of the
"State of Illinois, by virtue of the power vested in me by the
"Laws of the State of Illinois, do hereby order and appoint
"a special Term of the Circuit Court to be holden in and
"for the County of Iroquois, in said State of Illinois on the
"second Monday of January A.D. 1859. Given under my
"hand at Chambers in Vacation, this 7th day of December 1858

"Charles R. Starr

"Judge of the 20th Judicial Circuit of
"the State of Illinois."

" United States of America

" State of Illinois.

" Joquins County, ss " Pleas before The Honorable Charles

" R. Starr Presiding Judge of the

" twentieth Judicial Circuit of the State of Illinois, at a

" special Term of the Circuit Court of said Joquins County

" begun and held at the Court House in the Town of

" Middleport in said County on Tuesday the Eleventh

" day of January A.D. 1859.

" Present Hon Charles R. Starr Presiding Judge of the 20th Judicial Circuit

" Theodore Ayres Sheriff of Joquins County.

" Thomas Bennett Clerk of the Circuit Court.

And afterwards, to wit, on the seventeenth day of January
in the year of our Lord one thousand eight hundred and
fifty nine it being one of the regular days of the January
Special Term of the Joquins County Circuit Court in the State
of Illinois for said year A.D. 1859 the said Court being then
duly organized and sitting in open Court for the transaction
of business the following proceedings were had and
entered of Record by the said Court, to wit:

" Asbury F. Johnson

" 251

vs

" Andrew Bletch

} Ejectment

" This day comes the defendant by Wood

" his attorney and enters his motion to set aside the

4

" To the plaintiff in the above entitled cause
" or to John Clark his Attorney,

" Gentlemen

" Please to take notice that on the ensuing term of
" the Troquois Circuit Court to be holden at Middleport
" on the 21st day of February AD 1860 on the first day
" thereof or as soon thereafter as counsel can be heard
" I shall apply on motion to have the Judgment in said
" cause set aside and for a new trial therein —
" when and where you are requested to appear and
" oppose said motion if you see proper so to do,

Charles W. Wood

Attorney for Defendant

" State of Illinois }
" Woodford County }^{ss}

I, N B Meek Sheriff of said County of
" Woodford do hereby certify that I have served the
" within writ by reading the same to the within^{named}
" John Clark, attorney and also delivering a true copy
" of the within to said Clark this 14th day of February AD 1860

N B Meek



Sheriff of Woodford Co Ill

" Shffs fee
" Service 50
" mileage 50
" Copy 50
" Return \$1.15

Said Motion reads in words & figures, to wit:

" Asbury F. Johnson
" vs
" Andrew Bletch

" Troquois Circuit Court
" Feb Term AD 1860.

5

" Now Comes the defendant and moved the Court to vacate the Judgment in said Cause and grant a new trial herein for the following among other causes — — — — —

1st There is no such person as Andrew Bletch

2nd Because Jacob Bletch owns the land and no other person —

3^d There was not a sufficient service to warrant a Judgment against any body —

4th Because the requirements of the Statute have not been complied with —

Charles H. Wood atty
for A & L. Bletch

and following on the 21st day of February AD 1860 the same being one of the regular days of the February term of said Court for said year and said Court being then duly organized and sitting in open Court for the transaction of business the following proceedings were had and entered of Record by said Court in words and figures following, to-wit:

" Asbury Johnson }
" 26 85 } Ejectment
" Andrew Bletch }

" and now comes C. H. Wood attorney for defendant and renews the motion previously entered in this Cause to set aside the Judgment.

C.

And afterwards on the 23^d day of February A.D. 1860 it being one of the regular days of said February Term for the year aforesaid and said Court being duly organized and sitting in open Court as aforesaid the following were transactions had and entered of Record by said Court - to wit:

" Asbury Johnson
" 26 vs } Ejectment
" Andrew Bletcher

" And now comes John Clark into Court the
" former attorney for the Plaintiff in this Cause and
" disclaims that he is now acting as attorney for the
" Plaintiff and on motion of Defendant this Cause is
" continued to serve a notice on the Plaintiff

And afterwards to wit. on the 12th day of June A.D. 1860. The same being the first day of the Regular June Term of said Court for the year A.D. 1860 - and said Court being duly organized for the transaction of business and sitting in open Court as aforesaid the following proceedings were had and entered of Record by said Court - as follows to wit:

" Asbury F. Johnson
" 18 vs } Ejectment
" Andrew Bletcher

" And now comes C.H. Wood attorney

7 " for defendant into Court and withdraws the motion
" entered in this cause to set aside the default
" in this cause.
" And on motion the order to reinstate this case heretofore
" entered by this Court is hereby vacated.

State of Illinois
Inguois County ss.

I Thomas Beuneeu clerk of the Circuit Court in and
for the said County in said State do hereby certify that
the above and foregoing is a true and complete
copy of the proceedings of the Inguois County Circuit
Court had in said within entitled cause since
the October Term ad 1857 of said Court. And
I further certify that the same also contains
a true copy of all the papers filed in said cause
since the said October Term 1857.

In attestation of which I hereunto
set my name and the seal of said
Court at Middleport this 18th day of
April ad 1864.

Thomas Beuneeu
Clerk



13

42

Astrucy F. Johnson

vs

Andrew Bletcher

Record

Filed Apr. 19. 1864.
L. Island
Clk.

Andrew Bletcher } In the Supreme Court
 vs. } 3^d Grand Division
 Asbury F. Johnson } April Term 1863
 Error to Illinois =

Jonathan K. Cooper, being first duly sworn
 says on oath, that he is of counsel for said
 defendant in Error in this Court; and ap-
 pellant states on information & belief, that
 the Record, ^{in this cause,} copied into this Court by the
 Clerk of the Circuit Court of said Illinois
 County is incomplete, in this - the said
 Record only purports to embrace the proceedings
 of the Circuit Court of said Illinois County,
 up to & including the October Term 1857, & there-
 of, whereas appellant is informed & believes that
 other proceedings were subsequently had in said
 cause in said Court, which appellant
 is advised, are, or may be material to
 the proper determination of the standing
 rights of the plaintiff in Error & parties
 in this Court -

Subscribed & Sworn to
 before me this 27th 1873

L. Leland Clerk
 per J. R. R. Sec'y.

Jonathan K. Cooper

^{29. 47}
Auden Blitch
res.
Ashington Johnson
affidavit

Feb. 22, 1860,
L. Island
Ch.

Curran
Allard
Lester

STATE OF ILLINOIS, SS. }

Supreme Court, Third Grand Division, at Ottawa: } The People of the State of Illinois,

To the Clerk of the Circuit Court of Knox County

GREETING.

WHEREAS, in a certain plea between

Asbury F. Johnson

plaintiff and

Andrew J. Bletcher

defendant lately depending in the Circuit Court of said County, wherein judgment was rendered for the said

Johnson

and against the said

Bletcher

and the said Bletcher having sued out a writ of error for the reversal of the judgment of said Court, rendered against him

as aforesaid, to the Supreme Court, held at Ottawa, on the first Tuesday after the first Monday in April, and in pursuance of the said writ of error - a transcript of the record and the proceedings in the plea aforesaid was transmitted. And, also, whereas it hath been suggested, on the part of said

Asbury F. Johnson

that the said record has been diminished, inasmuch as the proceedings had in said case in said Circuit Court subsequent to the October Term thereof A.D. 1857 have

~~not~~ not been sent up; and forasmuch as the said Supreme Court are not satisfied that there is a sufficient record sent in the plea aforesaid, but in the record there is a diminution: YOU ARE, THEREFORE, HEREBY COMMANDED, That, without delay, the said diminution therein you cause to be transmitted to the Supreme Court, to be held at Ottawa, on the forthwith

next, without any diminution or addition whatsoever, to the end that speedy justice may be done in the premises, according to law; whereof you are in no wise to fail; and send you then there this writ.

Witness The Hon. Pinckney H. Walker
John D. Catron, Chief Justice of said Court,
and the seal thereof, at Ottawa, this 14th day of January,
in the year of our Lord one thousand eight hundred and sixty-four.

L. Seland
Clerk of the Supreme Court.

Bleech & Johnson
Certiorari to
App. Term 1864.

Filed April 19, 1864
L. Nelson
Clk.

Andrew Bletch } In the Supreme Court =
vs. } 3^d Grand Division =
Ashby F. Johnson } April Term 1864 =
Error to Illinois =

Brief & argument for Dept in Error =

The points made by the plaintiff, under his assignment of Errors, relate wholly to the sufficiency of the notice & proof of service upon him, as defendant below =

The printed abstract is hardly full enough to present these fairly = The Record shows the suit brought to the April Term 1857 of the Illinois Circuit Court - That affidavit of service was made on the 22nd, April 1857, and declaration filed, & rule to plead entered, on that day = The caption of the declaration is entitled of the April Term 1857, and the notice attached in forms the dept that on the first day of ^{the next} ~~that~~ term of said Court, or as soon thereafter as counsel can be heard, said declaration will be filed, and a rule entered requiring him to appear & plead in twenty days, and in default thereof judgment will be entered against him, and the plff will recover costs &c = The notice seems to be full, & in the usual form, and not at all open to the objection taken = As set out in the Record, it is not wanting in the third requirement named in plff's Brief - On the contrary, it in terms contains it =

Now is there ground for the suggestion

that defendant could not "know when the
"next term of the court would be". The affidavit
of Baker, made, as above stated, on the 22nd of
April 1857, shows that the declaration & notice were
served on defendant on a day prior to that date,
but still in the year 1857. It was on the 9th of
some month in that year; but the name of the
month being left out, we cannot fix the month any
more definitely than to say it could not have been
any month after April; And as by law there was
no term of said Court in 1857, prior to said April
Term, which commenced on the 3rd Monday, and
of course after the 9th of the month, the defend-
ant could be at no loss in determining what the
"next" term of said Court meant, and consequent-
ly, when the "first day" of said term, (of which he
was bound to take notice) would come, if he received
the notice on any day in 1857, prior to the first day
of said April Term, as he certainly did.

It may be well to add that the law constituting
the 20th Judicial Circuit, and fixing the terms
of Court in Ingham's County for the 3rd Mondays
of April & October, went into force on the 7th of
February 1857, prior to which, Ingham was in the
7th Judicial Circuit, and the times for hold-
ing courts therein were the 4th Mondays of
April, and the 12th Mondays of October
in each year. — Laws of 1857, p. 16 = Purp. Stat. 1. 342 =
Next as to the proof of service, the

objections to which we shall consider in their inverse order: And first - It is said the Affidavit states no time when ~~when~~ the service was made, nor does it show definitely ^{with} ~~on~~ whom the declaration was left = As already indicated, the service was made either on the 9th of April 1857, or on the 9th of some month in that year, prior thereto - ~~By~~ March, February or January - This is clear from the ^{face of the} affidavit itself, & the date of the jurat annexed to it = And it is wholly immaterial in which of those months the service was made - It was not too late if made on the 9th of April, and if made in either of the other months named, could not mislead - In the case of a summons or other process which must be served a given number of days before the term, certainty as to the exact time of service is often requisite; and the cases referred to by Jeff in his Brief are all of this character - Not so here, where no particular time needs to intervene between the service and entering the default - The ~~cont~~ twenty days allowed for filing plea, after rule taken, constitute the protection ~~on~~ intended by the law, on this score, in these ejectment cases =

As to designation of the person with whom this declaration was left, we think the objection equally fails - This court we know has said in at least two cases, *Townsend vs. Gigg* 2 Scam. 366, and *Montgomery vs. Brown*, 2 Gilman. 584, that where service is upon another than the defendant, the name should appear in the return =

But this is clearly for purposes of identification - to make it practicable to trace the thing up, if the return is charged to be untrue. This object is as fully met here as if the name were given. The service is upon the wife of Andrew Bletcher, the "defendant in this cause". The giving her name could add nothing to this in the way of designating the person meant =

The only other point made is, that the proffer "does not show that the declaration was kept at the dwelling house of defendant," And Sec. 11 of the Ejectment Act is relied on to sustain the objection. Whether the case falls under this or Section 12, does not, we think, appear. But as the latter substitutes "residence" for "dwelling house" there is perhaps no material difference in this respect. In another ^{particular} however which, tho' not noticed in the Brief, may still be raised, there is a difference which we deem it well simply to allude to, as the Affidavit is silent also on that point. It is this, that while Sec. 11 says the person with whom the copy is kept shall be "of the family", Section 12 requires nothing of that kind. But to return. Must the affidavit ^{show} ~~show~~ ^{show} in ~~all~~ ^{every} ~~part~~ a literal compliance with the statute in all respects? And can nothing be left to intendment? If so, then we admit this proffer is defective. But now of the case, we think go so far. And it is quite certain if this be the law, that the practice in this State has been pretty generally erroneous.

Sec. 11, for instance provides that the copy of declaration may be left with another, for the defendant, "if ~~he~~^{he} ~~is~~^{is} absent" - while Sec. 12 allows the service in this way, "if he cannot be found" - Now we presume very few, if any, of the affidavits of service of declarations &c. in actions of Ejectment, in this State, have ever set out affirmatively that the defendant was absent from his dwelling house, in the one case, or could not be found, in the other - And yet the courts have supplied ^{this} by intendment, otherwise the service could not be held good - So here, we suppose, the court might reasonably presume that the wife of defendant was a member of his family - that she lived at home with him, and was found there when the copy of declaration & notice were left with her, nothing in the affidavit appearing to the contrary - Ordinarily certainly, from no other person would the notice be so likely to reach the party, as from his wife - And hence a special propriety in leaving the papers with her when the defendant himself is absent, or cannot be found -

It may be well also to notice another provision of this statute, to the effect, (see Sec. 12) that where the service is made otherwise than on the defendant personally, the rule to plead shall be entered only upon "special order of the court" - Such order was had here, and not only so, but six months or more elapsed between the order for the rule to plead, and the entry of the default - Where therefore the deliberate action of the court is thus required

And that, it is submitted that more will be
inferred in favor of the right of the court to act,
than where the action is taken by the party, merely,
as of course = And of this latter character are
the cases cited by plaintiff in error - None of them
arising under this Statute =

But we suppose these objections come too
late = If the defendant below was in the actual
possession of the land, he had very positive no-
tice of these proceedings in time to save all his
rights - a writ of possession having issued, and
the plaintiff put in the possession of the prem-
ises ^{within a year} from the rendition of the judgment - So
that he might either have come in & moved
to vacate the judgment, and for the reasons
now alleged against it, or have taken a new
trial under the Statute, if he desired = The for-
mer of these courses he actually adopted
^{afterwards,} as shown by the additional record
filed at this term - from which it will be
seen that at the January Special Term of ¹⁸⁵⁹
said Court, he appeared by his attorney, had
the cause reinstated on the docket, entered
his motion to set aside the judgment,
and for the same reasons, among others, now
assigned for error - That the cause was, on

his motion continued from time to time until the 12th of June 1860, when he withdrew his motion, and had the order to reinstate the case therefor entered, ~~related~~ - (See Additional Record, filed April 19/64, p. p. 2 to 8 inclusive) = Having thus voluntarily appeared and submitted himself to the jurisdiction of the Circuit Court in the case, we submit that he is now estopped from denying that jurisdiction that his appropriate relief was to ^{have} followed up his motion to judgment, when, if successful, he would have gained all he can now do, and if unsuccessful then by a reversal in this Court; and if unsuccessful, the way would have been at once open for an appeal or writ of Error to this Court. Failing to do this, and having ~~the~~ voluntarily abandoned his case, pending on his own motion, before a tribunal competent to grant him the relief sought, and having so long slept on his rights, he cannot now be permitted to go behind his own acts, and seek a reversal in this Court, for the want of jurisdiction in the Court below to act against him in the case =

Ottawa, April 22/64 =

Cooper & Maffs
for Dept in Error

¹³
Andrew Bletcher
vs. 42
Ashbury F. Johnson

Argument for
~~app~~ ~~dept~~
in error =

Filed April 25
1864
J. Leland clk

IN THE SUPREME COURT,

April Term, 1861.

ANDREW J. BLETCH,
Plaintiff in Error,
vs.
ASBURY F. JOHNSON,
Defendant in Error.

} *Writ of Error to Iroquois.*

ABSTRACT OF RECORD.

Rec. p. 1 22nd April, 1857. Declaration and notice in ejectment filed.
2 Declaration in the usual form.
3 Notice to Andrew Bletch, that on the first day of next term of the Circuit Court of Iroquois county, or as soon thereafter as counsel can be heard, the foregoing declaration in ejectment will be filed, and thereupon a rule will be entered requiring him to plead thereto within twenty days.

AFFIDAVIT OF SERVICE.

3

4

22nd April, 1857. Rule on defendant to plead in twenty days.

5

20th October, 1857. Defendant called and defaulted.

- 6 23rd October, 1857. Final judgment for plaintiff, that he recover
possession of the premises.
- 7 Writ of possession issued, 25th August, 1858.
- 8 26th August, 1858. Sheriff's return putting plaintiff in possession.

ERRORS ASSIGNED.

1. The notice appended to said declaration is insufficient.
2. The affidavit of service of the declaration is insufficient.
3. The court had no jurisdiction of the person of the defendant.
4. The court erred in rendering judgment for the plaintiff.

13 ~~to~~ ~~2~~ 42

Blatch

for

Johnson

Abstract

Filed Apr. 23 - 1862

L. Leland

Clark

SUPREME COURT OF ILLINOIS:

THIRD GRAND DIVISION.

April Term, A. D. 1864.

Asbury ANDREW BLETCH, Plff in Error, }
vs. } Error to Iroquois.
~~ASLING~~ F. JOHNSON, Deft in Error.

ADDITIONAL RECORD.—ABSTRACT *made by Asbury in Error*

- P. V.* 2-3 Jan. 17, '59, motion entered by deft below, Bletch, to set aside judgment rendered against him at the Oct. Term, 1857, of said Circuit Court.
- " 3 Nov. 17, '59, cause continued on motion of deft, Bletch.]
- " " 3-4 Feb. 21, '60, notice to plff, Johnson, and his Att'y, Clark, of motion to set aside said judgment and for new trial, to be made at Feb. Term, 1860, of said court. Filed Feb. 21, '60, with proof of service on Clark. Motion
- " 5 filed same day, set out.
- 1st. That there is no such person as Andrew Bletch.
- 2d. That Jacob Bletch owns the land.
- 3d. That service of notice insufficient to warrant judgment.
- 4th. Statute not complied with.
- " 5 Renewal of motion by deft to set aside said judgment.
- " 6 Feb. 23, '60, disclaimer of Clark, as Att'y, and continuance of cause on motion of deft.
- " " 6-7 June 12, '60, withdrawal of motion by deft, and order to reinstate case before entered, vacated on motion of deft.

Blotch 42

no.

Solomon
add^d & record
abstract

SUPREME COURT

April Term, 1864

WILLIAM H. HARRIS, PLAINTIFF,

vs.

JOHN H. HARRIS, DEFENDANT.

Case No. 11, of April Term, 1864.

Report of the Court.

1864.

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Filed April 23, 1864
J. L. Leland Clerk

SUPREME COURT OF ILLINOIS:

THIRD GRAND DIVISION.

April Term, A. D. 1864.

ANDREW BLETCH, Plff in Error,

vs.

~~ASHE~~ F. JOHNSON, Deft in Error.

Error to Iroquois.

ADDITIONAL RECORD.—ABSTRACT

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¹³
Blitcher

vs.

Johnson
add & second
abstract

Filed April 23, 1864
J. C. [unclear] clerk

SUPREME COURT OF ILLINOIS

THIRD CIVIL DIVISION

John Johnson, v. J. C. [unclear]

JOHN JOHNSON, Defendant,
vs.
J. C. [unclear], Plaintiff.

COMMISSIONER OF THE LAND OFFICE

JOHN JOHNSON, Defendant,
vs.
J. C. [unclear], Plaintiff.

JOHN JOHNSON

JOHN JOHNSON, Defendant,
vs.
J. C. [unclear], Plaintiff.

JOHN JOHNSON, Defendant,
vs.
J. C. [unclear], Plaintiff.

JOHN JOHNSON, Defendant,
vs.
J. C. [unclear], Plaintiff.

JOHN JOHNSON, Defendant,
vs.
J. C. [unclear], Plaintiff.

JOHN JOHNSON, Defendant,
vs.
J. C. [unclear], Plaintiff.

JOHN JOHNSON, Defendant,
vs.
J. C. [unclear], Plaintiff.

JOHN JOHNSON, Defendant,
vs.
J. C. [unclear], Plaintiff.

JOHN JOHNSON, Defendant,
vs.
J. C. [unclear], Plaintiff.

JOHN JOHNSON, Defendant,
vs.
J. C. [unclear], Plaintiff.

JOHN JOHNSON, Defendant,
vs.
J. C. [unclear], Plaintiff.

JOHN JOHNSON, Defendant,
vs.
J. C. [unclear], Plaintiff.

JOHN JOHNSON, Defendant,
vs.
J. C. [unclear], Plaintiff.

JOHN JOHNSON, Defendant,
vs.
J. C. [unclear], Plaintiff.

JOHN JOHNSON, Defendant,
vs.
J. C. [unclear], Plaintiff.

JOHN JOHNSON, Defendant,
vs.
J. C. [unclear], Plaintiff.

JOHN JOHNSON, Defendant,
vs.
J. C. [unclear], Plaintiff.

JOHN JOHNSON, Defendant,
vs.
J. C. [unclear], Plaintiff.

JOHN JOHNSON, Defendant,
vs.
J. C. [unclear], Plaintiff.

JOHN JOHNSON, Defendant,
vs.
J. C. [unclear], Plaintiff.

JOHN JOHNSON, Defendant,
vs.
J. C. [unclear], Plaintiff.

JOHN JOHNSON, Defendant,
vs.
J. C. [unclear], Plaintiff.

JOHN JOHNSON, Defendant,
vs.
J. C. [unclear], Plaintiff.

JOHN JOHNSON, Defendant,
vs.
J. C. [unclear], Plaintiff.

JOHN JOHNSON, Defendant,
vs.
J. C. [unclear], Plaintiff.

JOHN JOHNSON, Defendant,
vs.
J. C. [unclear], Plaintiff.

JOHN JOHNSON, Defendant,
vs.
J. C. [unclear], Plaintiff.

JOHN JOHNSON, Defendant,
vs.
J. C. [unclear], Plaintiff.

JOHN JOHNSON, Defendant,
vs.
J. C. [unclear], Plaintiff.

JOHN JOHNSON, Defendant,
vs.
J. C. [unclear], Plaintiff.

JOHN JOHNSON, Defendant,
vs.
J. C. [unclear], Plaintiff.

JOHN JOHNSON, Defendant,
vs.
J. C. [unclear], Plaintiff.

JOHN JOHNSON, Defendant,
vs.
J. C. [unclear], Plaintiff.

JOHN JOHNSON, Defendant,
vs.
J. C. [unclear], Plaintiff.

STATE OF ILLINOIS, }
SUPREME COURT, } ss.

The People of the State of Illinois,

To the Sheriff of the County of

Deznois

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 Deznois County, before the Judge thereof, between
Asbury F. Johnson

plaintiff, and Andrew Blitch

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

Andrew Blitch

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

Andrew

Asbury F. Johnson

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, 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 Asbury F. Johnson

notice, together with this writ.

Witness, The Hon. John D. Eaton, Chief Justice of our
said Court, and the Seal thereof, at Ottawa, this 5th
day of April in the Year of Our Lord One
Thousand Eight Hundred and Sixty one

Henry Deland

Clerk of the Supreme Court.

By J. H. Deland

Dy

13 60 163 29
No. *Albany F. Johnson*
vs.

Andrew Bleck

SCIRE FACIAS.

FILED *April 16* A. D. 1861

L. Leland

Clerk.

*not found
in the county-*



Andrew J. Bletcher } Supreme Court of Ill.
vs. } 3^d Grand Division =
William F. Johnson } April Term 1864 =

And now comes said defendant in Error
and moves to dismiss this Cause, and the writ of
Error ~~herein~~ for the reasons following -

1st = Because it appears ~~by~~ said Record that the
proceedings & judgment in said Circuit Court
were not against this plaintiff in Error,
Andrew J. Bletcher, but against one
Andrew Bletcher -

2nd = Because it does not appear from said Rec-
ord that said plaintiff in Error, Andrew J.
Bletcher, is in any manner injured or affect-
ed by the judgment & proceedings in said Cause
in said Circuit Court -

Respectfully
for said plaintiff in Error

¹³
Andrew f. Bletcher
⁴²
vs.
Henry F. Johnson
Motion to disqualify

Filed Apr. 20. 1864
L. Seland
Clerk.

Andrew B. Leitch } In the Supreme Court
vs. } April Term 1864
Ashley F. Johnson } Error to Illinois -
 } Causes the defendant
in Error, Ashley F. Johnson, and moves the
Court for a rule on the ~~the~~ plaintiff in Error
to assign Errors on the Additional & Alameda
Record filed by him herein, and that he
also file abstracts thereof -

Cooper & May
for Dept in Error -

¹³
Andrew Bleda ⁴²
²¹⁵
John F. Johnson

Motion for
new agreement of
cross road at
street =

Filed Apr. 22. 1864
J. L. Leland M

Andrew C. Blitch

Plaintiff in Error

vs

Ashury F. Johnson

Defendant in Error

Supreme Court
April Term 1864.

Additional Points for Pltff. in Error.

At the last term of this court the defendant in Error applied for a Certiorari, which was allowed to send up an additional record -

That record shows that after the judgment in this case was rendered more than two years, the Plaintiff in Error moved to have the judgment below in this cause set aside - The only possible point that the defendant in error can make on this record is, to show that the court below somehow acquired jurisdiction of the person of the defendant below -

It would seem however to be an incontrovertible proposition that if the court had not jurisdiction at the time it rendered the judgment, no subsequent fact arising could by relation

back, give the court jurisdiction - This court has decided incidentally in a case either in 28th or 29th Illinois that a court must have acquired jurisdiction at the time it rendered the judgment or it does not have it at all. And such would seem to be the dictate of common sense -

Is it to be held, that a party after judgment, by coming in to court and seeking to relieve himself of it, protesting at the same time that it never had the right to render it against him, thereby gives to the court jurisdiction to do what it had done before he appeared, and had no right to do? The proposition is absurd upon the face of it -

Hence, as this subsequent appearance gave the court no jurisdiction prior to the judgment, and as the notice and service of the declaration are fatally defective

The judgment before ought
to be reversed -

Wood & Long
for Pltffs. in error

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Andrew J. Bletcher

vs

Johny F. Johnson

Points of Pltff. in Error

Filed April 21. 1864

L. Leland M

Jameson & Morse, Printers, 14 La Salle St., Chicago.

SUPREME COURT OF ILLINOIS.

APRIL TERM, A. D. 1862.

60 ANDREW J. BLETCH,
Plaintiff in Error,
vs.
ASBURY F. JOHNSON,
Defendant in Error. } *Error to Iroquois.*

POINTS OF PLAINTIFF IN ERROR.

cc. I.

There are three indispensable requisites in a notice appended to a declaration in ejectment, made so by statute, and if either of these be wanting, the notice is insufficient:

- 1st. It should state the day when the declaration will be filed.
- 2d. That a rule will be entered upon filing the same, requiring the defendant to appear and plead within twenty days.
- 3d. That if he neglect so to appear and plead, judgment by default will be rendered against him, and the plaintiff will recover possession of the premises.

Ejectment Statute, Sec. 10.
1 Purple's Statutes, page 505.

This notice is wholly wanting in the third requirement. Neither could the defendant know when the next term of court would be.

II.

The affidavit of service is wholly insufficient. It does not show that the declaration was left at the dwelling house of the defendant.

Statute of Ejectment, Sec. 11.

1 Purple's Statutes, page 505.

The affidavit does not state any *time* when the declaration was served, nor does it show definitely on whom it was served, and was therefore a void service.

Wilson vs. Greathouse, 1 Scammon's Reports, 175.

Clemson vs. Hamm, 1 Scammon's " 176.

Ogle vs. Coffey, 1 Scammon's Reports, 239.

Belingall vs. Gear, 3 Scammon's Reports, 575.

Parden vs. Dwire, 23 Illinois, 574.

A service of process must be made strictly according to the statute, and so shown by the return of the officer, or the court will not have jurisdiction of the person.

Boyland vs. Boyland, 18 Ill. Rep., 551.

This being so, the rule to plead in twenty days ^{extended} ~~extend~~ on the 22d day of April, 1857, and the default of the 20th October, A. D. 1857, were proceedings *coram non judice*, and consequently not binding on the defendant below.

WOOD & LONG,

Att'ys for Plaintiff in Error.

60 22 13
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Andrew J. Bledet

vs

Asbury S. Johnson

Plffs Points

Filed April 23rd 1862
L. Leland
Clerk