

No. **8744**

Supreme Court of Illinois

Thomas A. Buckland

vs.

Elbridge Goddard

71641  7

State of Illinois, S.S.

In the Supreme Court of said State.
First Grand Division.

Thomas A. Buckland.

Plaintiff in error.

vs

Elbridge Goddard

Defendant in error

} Error to Fayette.

The said defendant in error, is hereby notified that the said plaintiff in error has filed, in the Clerk's office of this Court, a Transcript of the Record of the Circuit Court of Fayette County, in this Cause, and send out his writ of error therein, returnable on the first day of the November Term, 1864, of this Court, that a Scirefacias has been issued against said defendant, directed to the Sheriff of Fayette County, returnable on the first day of the next Term of this Court, to be holden at the Court house in Stone River, on the first Tuesday after the second Monday in November, 1864, and an Affidavit having been filed, showing satisfactorily that the said defendant does not reside in the State of Illinois, he is therefore hereby notified to appear before this Court, on the return day of the Scirefacias aforesaid, and join in

the errors ^{assigned} in said Case, otherwise judgment
will be entered against him by default.

Witness, Noah Johnston, Clerk
of said Court, this 6th day of
September A.D. 1864.

Noah Johnston cllk

John O'Neil &
T. J. O'Neil }
Attys. for Dcty in case

Buckland
by
Goossard

1864

MOUNT VERNON, NOVEMBER-TERM 1864.

THOMAS A. BUCKLAND, } Plaintiff in Error.
vs. }
ELBRIDGE GODDARD. } Defendant in Error.

BRIEF OF POINTS AND AUTHORITIES CITED FOR DEFENDANT IN ERROR.

This was an action of assumpsit commenced by attachment by defendant in error, in the Fayette Circuit Court, against plaintiff in error. Writ made returnable to October Term, 1861, and a levy upon land

The Bill of Exceptions filed at that term of the Court is the only part of the record the Court need specially to consider.

The Bill of Exceptions shows that Attorney for plaintiff in error, the defendant below, filed an affidavit of one Vancourt (who was a stranger to the suit), stating that the defendant in error, was not at the time of commencement of the suit a resident of the State of Illinois.

Whereupon the plaintiff in error moved the Court to dismiss the attachment suit for the reason that no bond for cost had been filed by defendant in error, for the cost of suit.

Whereupon one of the attorneys for defendant in error, filed an affidavit in said cause stating in substance that he was informed and believed that defendant in error, was a resident and citizen of Illinois and had been for some time past. That affiant had corresponded with him at Chicago where he lived,—that he informed affiant that he was a resident of Illinois.

That thereupon defendant in error moved the Court for leave to file an amended attachment bond in said cause.

A copy of the bond is set out in the bill of Exceptions. The bill of Exceptions then concluded in the following words, viz:

"To all of which rulings of the Court the said defendant by his attorneys excepts and excepted to at the time and files this his bill of exceptions and asks that this his bill of exceptions may be made a matter of record in said attachment suit herein and signed and sealed by the Court which was accordingly done."

The above is the entire bill of exceptions.

The motion of plaintiff in error was of a dilatory character.

The bill of exceptions fails to show that upon the hearing of said motion the affidavit of Vancourt was presented to the Court as evidence of any fact.

Vancourt who made the affidavit was a stranger to the suit and the Court was not bound to take notice of it.

There was a counter affidavit by the attorney for defendant in error, showing that he was a resident of Illinois.

The bill of exceptions fails to show, that, on the hearing of said motion any evidence was offered to prove that a bond for cost had not been filed at the commencement of the suit.

This was an attachment suit and if defendant in error was a non-resident it is doubtful if a bond for cost other than the attachment bond was necessary.

The attachment bond secured the plaintiff in error against all costs and damages, and a bond for cost, as to him, would have been useless.

The officers of the Court asked for no indemnity for cost

The Court below did right in permitting defendant in error to amend the attachment bond. The plaintiff in error was not prejudiced by it.

The bill of exceptions fails to show that the affidavits set out in the bill in support of, and against the motion of plaintiff in error was the ONLY evidence offered on the hearing of the motion—or in fact ~~which~~ ^{what} evidence if any was heard. This is fatal

Miller vs. Meztger—16 Ills., 390, and authorities there cited. Trustees of Elizabethtown vs. Lefler—23 Ills., 90. Warner vs. Carlton—22 Ills., 415.—30 Ills., 158.

The Court will presume that the Circuit Court decided correctly ^{unless} ~~when~~ it affirmatively appears that all the evidence is set out

The record shows that after the disposal of the motion the defendant below plead to the merits of the case and went to trial. This of itself was a waiver of all rights under the motion.

Besides the pleadings the clerk below has copied all the papers and affidavits filed in the cause. These are no parts of the records as has been repeatedly decided by this Court, and the plaintiff in error should be taxed with the cost of that part of the record.

The assignment of error by plaintiff in error is not well taken. There is no error on the record. The judgment of the Court below should be affirmed.

S. W. MOULTON, Att'y for Defendant in Error.

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Berkeland
in Buch
Goddard

134

Julien, Nov. 14 - 1864,
N. Johnston City
— 11 —

State of Illinois, S.S.

Office of the Clerk of the Supreme Court.

First General Division.

I do hereby Certify, That a writ of error has issued from this Court for the reversal of a judgment obtained by Elbridge Goodenow vs Thomas A. Burkland, in the Circuit Court of Tazewell County, Illinois, at the May Term A.D. 1863, in a certain Action of Attachment, which writ of error is made a Supersedeas, and is to operate as a Suspension of the Execution of the judgment; and as such, is to be obeyed by all concerned.

Given under my hand and the Seal of the Supreme Court, at Mount Vernon, this 19th day of December. A.D. 1863.

Noah Johnston Clerk

March 1st - 1864

I Have duly served this writ on
William Hankins Clerk of the Circuit
Court of Fayette County Illinois by Reading
the same to him

Fees paid 50
Returning 10
60

Gas H. Fulton } Sheriff
of Fayette County Illinois

8
Supreme Court.
First Grand Jurisdiction.

Thomas A. Burkland.
Plaintiff in error.

vs

Colbridge Goodland -
Defendant in error.

Writ of Superseas

1864

MOUNT VERNON, NOVEMBER-TERM 1864.

THOMAS A. BUCKLAND,	}	Plaintiff in Error.
vs.		
ELBRIDGE GODDARD.	}	Defendant in Error.

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A copy of the bond is set out in the bill of Exceptions. The bill of Exceptions then concluded in the following words, viz:

"To all of which rulings of the Court the said defendant by his attorneys excepts and excepted to at the time and files this his bill of exceptions and asks that this his bill of exceptions may be made a matter of record in said attachment suit herein and signed and sealed by the Court which was accordingly done."

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The Court below did right in permitting defendant in error to amend the attachment bond. The plaintiff in error was not prejudiced by it.

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The assignment of error by plaintiff in error is not well taken. There is no error on the record. The judgment of the Court below should be affirmed.

S. W. MOULTON, Att'y for Defendant in Error.

8 —

Bunkerland
in Brook
Gaddard

Brf

Filed, Nov. 14 - 1861

N. Johnston City
— 11 —

Vandalia Illinois Dec 7th 1863
Mr N Whinn
Sir

About a week since I recd.
from Judge Bruce a note stating that he
had awarded expenses in case of Buckland
vs Goddard. By same mail I recd from
Judge Ouelong a note stating that you
sought my authority for giving Buckland
bond. As my Genl Warrant of Attorney
extended to other business I at once
sent to him for Special Warrant of
Attorney for this case which I enclose
you. I also enclose first

Please attend to the matter
as once & let me hear from you

Truly yr friend
Davis Hawthorne

We have a large
regimental drill on
commence your staff

Now all men by these presents that I
Thomas A Buckland of the City & County of St Louis
State of Missouri do hereby constitute and appoint
Peris Winthous Attorney of the County of Fayette and
State of Illinois my true and lawful Attorney
for me and in my name to sign seal & deliver
a cost and appeal Bond in the case of Thomas
A Buckland adversus Elbridge Goddard taken by
writ of error from Fayette County to the Supreme
Court of the State of Illinois in the first Grand di-
vision & said bond being given for the penal
sum of seven thousand Dollars & hereby ratify
his acts in taking said case to the supreme
court by writ of error & further ratify the
signing of said bond by him in my name &
declare the same to be as valid as if done by me
in my own proper person & my own proper
hand writing

In witness whereof I have hereunto
set my hand & seal this seventh day of
December 1863

T. A. Buckland Seal

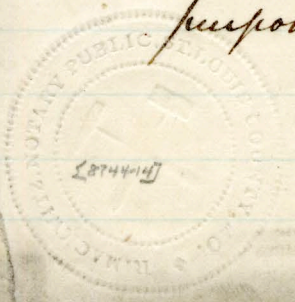
State of Missouri

County of St Louis

Be it remembered that on this seventh day of
December Eighteen hundred and sixty three before me the
undersigned a Notary Public within and for the County
aforesaid personally came Thomas A Buckland who is per-
sonally known to me to be the same person whose name is sub-
scribed before to the foregoing power of Attorney as party thereto
and he acknowledged the same to be his act and deed for the
purposes therein mentioned

In witness whereof I have hereunto set my hand and
affixed my notarial seal the day and year first above
written

Wm. A. Smith
Notary Public



Thos A. Buckland

by

Elbridge Goddard

Power of Atty to Lewis
Guthrie Esq.

1864

Filed Dec. 19-1863.

St. Johnstown N.Y.



Vandavia N.Y. Dec 17th 1863

Dr Sir

I have corrected the bond
as desired - It was only a clerical
error. Find it enclosed

Yrs &c

Davis Greenhouse

State of Illinois,
SS
In the Supreme Court of said State,
First Grand Division.
Thomas A. Buckland Plaintiff in Error,
VS.
Elbridge Goddard, Defendant in Error.
Error to Fayette

The said defendant in error is hereby notified that the said plaintiff in error has filed, in the clerk's office of this court, a Transcript of the Record of the circuit court of Fayette county, in this cause, and sued out his writ of error therein, returnable on the first day of the November Term, 1864, of this court, that a scirefacias has been issued against said defendant, directed to the sheriff of Fayette county, returnable on the first day of the next Term of this court, to be holden at the court-house, in Mt. Vernon, on the first Tuesday after the second Monday in November, 1864, and an affidavit having been filed showing satisfactorily that the said defendant does not reside in the state of Illinois, he is therefore hereby notified to appear before this court, on the return day of the scirefacias aforesaid, and join in the errors assigned in said cause, otherwise judgment will be entered against him by default.

Witness Noah Johnston, clerk of said court, this 6th day of Sept., A. D., 1864.
Judge O'Melveny & Tevis Greathouse, Esq., Attorneys for Plaintiff in Error, Noah Johnston, Clerk
September 9th, '64.

State of Illinois, S.S.

Supreme Court of said State -

1st Grand Division

Thomas A. Buckland,

vs

Elbridge Goddard.

John N. Satterfield, Editor and
proprietor of the "Mount Vernon Star",
a newspaper published in the town of
Mount Vernon - Jefferson County, Illinois,
being first duly sworn, says the Annuaire
Notice to the defendant in the above
Exhibited Cause, commanding him to
appear before the Supreme Court of Illinois,
at the Court House in Mt. Vernon on the first
Tuesday after the second Monday of November,
1864, was first published in the issue of
said "Star" of 9th September A.D. 1864, and
thence afterwards for four consecutive
weeks, as appears by the files of the said
paper preserved in the office of said
"Star", the first insertion of said notice
having been not less than sixty days
before the return day mentioned in said
Notice - that is to say sixty days before the 15th
day of November, 1864.

Sworn to and Subscribed
before me, the 3rd day of
Nov: 1864.

Noah Johnston Clerk

John N. Satterfield
Editor & Publisher

No 8—

Buckland

res

Goddard

Agt of Printer - as
to publication of Notes
and his Receipt for
pay therefor -

Felia, Nov. 3 - 1864.

N. Shustan City

Received of N. Shustan Three dollars -
paid for - for publishing the above
note - Nov. 3 - 1864.

John A. Satterfield

State of Illinois
Fayette County } Know all men by these
presents that we Tho^s A Buckland and
Jesse Weller are held and firmly bound
unto Elbridge Goddard in the sum of
seven thousand dollars lawful money of
the United States for the payment of which
well and truly to be made we bind our-
selves our heirs and administrators
firmly by these presents witness our
hands and seals this first day of October
1863

The condition of the above obligation
is such that whereas Elbridge Goddard
did recover a judgment against the above
bondman Tho^s A Buckland for the sum
of three thousand two hundred and nineteen
dollars and cost ^{of suit} before the circuit Court of Fayette
County at the May term 1863 of ~~suit~~ from
which said judgment the said Tho^s A
Buckland has taken an appeal to the Su-
preme Court of the State of Illinois. Now
therefore if the said Tho^s A Buckland -
shall prosecute his said appeal & writ
of error with effect and shall pay what-
ever judgment may be rendered against him
together with cost upon the disposition
of said appeal & writ of error then the foregoing
bond to be null & void otherwise to remain in
full force and effect dated at Vandalia
this day and year above written

Thomas A Buckland Seal
by & Geo^s H. H. H. atty in fact
Jesse Weller Seal

Thomas A. Buchlauer.

Plaintiff in error.

vs

Salvage Goddard

Defendant in error.

Superior Court.

1864

Filed Dec. 19. 1863.

N. Johnston cly
11.

State of Illinois,
SUPREME COURT,
First Grand Division.

SS

The People of the State of Illinois,

To the Clerk of the Circuit Court for the County of payette Greeting:

Because, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of payette county, before the Judge thereof between

Elbridge Goddard plaintiff and

Thomas A. Buckland defendant it is said manifest error hath intervened to the injury of the aforesaid Thomas A. Buckland as we are informed by his complaint, and we being willing that error, if any there be, should be corrected in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given; you distinctly and openly without delay send to our Justices of our Supreme Court the record and proceedings of the plaint aforesaid; with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at **Mount Vernon**, in the County of Jefferson, on the 1st Tuesday after the 2^d Monday of December next, that the record and proceedings, being inspected, we may cause to be done therein; to correct the error, what of right ought to be done according to law.

WITNESS, the Hon. John D. Cator Chief Justice of the Supreme Court and the seal thereof, at MOUNT VERNON, this nineteenth day of December in the year of our Lord one thousand eight hundred and sixty-three.

Noah Johnston
Clerk of the Supreme Court.

8
SUPREME COURT.
First Grand Division.

Thos. A. Buckland

Plaintiff in Error,

VS.

Elbridge Goddard

Defendant in Error.

1864

WRIT OF ERROR.

Issued. Made a
Supersedeas
and FILED. 19th
Dec. 1863.
A. Whiston Clk

This writ of Error is made a Supersedeas, and is
such, is to be obeyed by all concerned.
December 19. A. & 1863.
A. Whiston Clk

State of Illinois
Hegette County

On this 28th of October 1863
personally appeared before me William Hankins
Clerk of the Circuit Court of Hegette County
State of Illinois Jesse Weller who being
duly sworn says that he is worth in money
and available property subject to execution
Thirty thousand dollars over & above all
exemptions and indebtedness said prop-
erty consisting of lands and personal prop-
erty in the Counties of Hegette Effingham
Clinton and Marion in the State of
Illinois Jesse Weller

Subscribed & Sworn to
tho Oct 30th 1863
Wm Hankins Clerk

Thos. A. Buckland
vs
Edw. Goddard

Affidavit of
Jesse Miller.

1864

Filed Dec. 19. 1863.
N. Johnston clerk

State of Illinois }
Fayette County }
Thos St. Buckland }

ad.

Elbridge Goddard }

Sup. Court
1st Judicial Division

Ferris Theatres being first
duly sworn says that Elbridge
Goddard is not a resident of the
State of Illinois.

Announced to Theatres
before me Sept 5th 1864 }

Wm. Hankins Clerk



Buckley
vs
Goddard.

Affidavit of
Necessaries of
Life.

Filed Sept. 6-1864.
N. Johnston Clk

Vandavia Ms Sept 5th 1864
Dr Sir

Find enclosed affidavit
of new residence & five dollars
for publication of the same
If you is not enough let
me know & I'll remit
more
Yrs in haste
Levi Greathouse

8

Bucklenn
in
Godman

Order for Notes
in paper.

Julia, Sept. 6 - 1864.
St. Johnston City

IN THE SUPREME COURT OF ILLINOIS,

FIRST GRAND DIVISION-----NOVEMBER TERM, 1863.

Backlund

by
Grattan

} Error to Fayette.

The filing Attachment Bond under chapter 9, Sec. 5, p. 97, Purples' Statute, does not dispense with the necessity of filing a bond for costs, if plaintiff in attachment is at the time a non resident, as required in chapter 26, Purples' Statute, p. 275, Sec. 1.

Because the Bond for costs is a security for all the costs which shall accrue in the "action" to the opposite party. The Attachment Bond, at most, secures only such costs as may be recovered by reason of the wrongfully suing out the writ.

2. On the "bond for costs," the Clerk can issue his fee bill (without suit) for collection, but no costs can be collected from the parties executing the Attachment Bond until suit on the Bond prosecuted to judgment.

The Attachment Bond for "all costs" which shall be awarded in any suit which may be brought for the WRONGFULLY suing out the attachment, is in a numerous class of attachment cases, no security for costs.

1. Where the attachment was rightfully sued out, but by reason of informalities, it is quashed.

2. When properly sued out, but no personal service nor property nor garnishee indebted to defendant in attachment can be found.

3. When rightfully sued out but by reason of irregularities it is quashed, or where the property levied upon has been in trial of right of property, decided not liable to the attachment, yet personal service is had and plaintiff proceed to judgment in PERSONAM, no suit would lie on the Attachment Bond.—Sharp, vs. Hunter, 16 Ala. Rep., p. 765; Pettit, vs. Mercer, 8, Rep., p. 51; Smith, vs. Story, 4, Humphrey Rep. 169.

But if even the bond in attachment was a security for the costs as well when rightfully, as wrongfully sued out, it would fail to be so to any but the defendant in attachment, who alone could maintain suit upon it, (13 Grattan Rep 139) and being a non resident the officers are without a remedy.

H. K. S. O'Leary
for Plaintiff

Bucklana

Godman

1864

Filed Dec. 19-1863.
 N. Johnston City

8. 4. 1864
 1864

State of Illinois,
SUPREME COURT,
First Grand Division.

SS

To the Sheriff of Haystack County.

Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Circuit Court of Haystack county, before the Judge thereof between

Elbridge Goddard plaintiff and

Thomas A. Buckland defendant it is said that manifest error hath intervened to the injury of said Thomas A. Buckland as we are informed by his complaint, the record and proceedings of which said judgment, we have caused to be brought into our Supreme Court of the State of Illinois, at Mount Vernon, 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 Elbridge Goddard

that he be and appear before the justices of our said Supreme Court; at the next term of said Court, to be holden at **Mount Vernon**, in said State, on the first Tuesday after the second Monday in November next, to hear the records and proceedings aforesaid, and the errors assigned, if he shall think fit; and further to do and receive what the said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said Elbridge Goddard notice together with this writ.

WITNESS, the Hon. John D. Catron Chief Justice of the Supreme Court and the seal thereof, at MOUNT VERNON, this nineteenth day of December in the year of our Lord one thousand eight hundred and Sixty-three.

Noah Johnston
Clerk of the Supreme Court.

Oct 31st - 1864

& Return This Writ the said
Elbridge Goddard not found
in my County

Just Returning 10

as H. Fulton } Sheriff
of Jayette County Illinois

8
SUPREME COURT.

First Grand Division.

Wm. A. Buchanan

Plaintiff in Error,

VS.

Elbridge Goddard

Defendant in Error.

SCIRE FACIAS.

FILED.

1864

The writ of error issued and filed in this Cause,
is made a Supersedeas, and is to operate
as a Suspension of the execution of the
judgments, and as such, is to be obeyed by
all concerned. Dec. 19. A.D. 1863.

Noah Johnston Cllk

IN THE SUPREME COURT OF ILLINOIS.

FIRST GRAND DIVISION-----NOVEMBER TERM, 1863.

Thomas A. Buckland ~~~~~

vs
Elbridge Gooden

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NKS O'Melaney
for plaintiff

Thos. A. Buckland

by
Elbridge Goodhue

1864

Filed Dec. 19. 1863.
N. Y. Superior Ct.

FIRST CIVIL DIVISION
IN THE SUPERIOR COURT OF THE CITY OF NEW YORK
JANUARY 12TH 1864

Wm. H. D. ...