

12640

No. _____

Supreme Court of Illinois

Patty.

vs.

Winchester, Impleaded.

71641  7

111 = 33

Richard D. Pugh

vs
Stephen W. Winters
in part to

147

1858

12640

X

Referred

Joseph S. Patten
Plff in Error

~~Levi H. Haffelt~~
Stephen Winchester
(imprisoned with Levi
Haffelt) Defendant
in Error

Supreme Court
April Term
1885-8

Error to County Court
of Brown County

And the facts
Joseph S. Patten Plff in error comes
and says that in the record proceeding
and in the rendition of judgment in this
cause manifest ^{error} appearing has been inter-
vened to the injury of the Plff and
for assignment of errors he shows to the
Court the following.

1. The Court below erred in refus-
ing ~~to~~ to allow the plaintiffs in error
to amend the appeal bond.
2. The Court below erred in dismissing
the cause.
3. The other errors.

~~After showing his~~ Plff
that the record given ~~at the~~ same time
must may be removed set aside or wholly
for naught entered

B. Brown
Atty

Plea before the County Court Peoria County State of
Illinois at a term thereof begun & held at the Court House in the City of
Peoria in said County on Monday February 1st 1858,

Be it remembered, that on the 31st day of Decem-
ber A.D. 1857, there was filed in the Clerk's Office of
the County Court of Peoria County, a Transcript
from Justice of the Peace, in words and figures
following, to wit,

" State of Illinois. } ss.

" County of Peoria. }

" Justices Court before the Undersigned
Trial of rights of Property,

" Notice having been given by Josiah S. Patty to
" Jos. W. Hunt Constable that he said Patty claimed
" two mules and two halters on said mules as his prop-
" erty; said mules having been levied on by virtue of
" two executions in the hands of said constable issued
" from this office, one in the case of S. Winchester vs.
" James W. Patty, the other, L. Gladfelter vs. James W.
" Patty, desiring to try the rights of Property,

" Notice having been given to Plaintiff in execution by
" said Constable that he would proceed to try the rights of
" said Property before Jno. D. Slygh a justice of the peace
" for said County on the 14th day of November A.D. 1857,

" And now on this 14th day of November 1857 the
" said parties as also the jurors herein, to wit, Johnson
" Updike, George Burkhardt, Elisha White, George Ives
" land, George Ross and John Mc Kinstry foreman,
" came, and on hearing the cause, the said jury gave
" their verdict as follows. We the jury find that the right
" of the property claimed is not in the plaintiff claimant,

Whereupon it is ordered that the defendants, plaintiffs
in execution, have judgment against the said claimant
and plaintiff herein for costs of suit.

The plaintiff herein gave notice of an appeal and
executed and filed his bond. The following are
names of Witnesses, Jno. J. Knap, G. W. Cackler,
Martin Dennis, Elijah Tapp, Robert Young, Charles P.
Smith, Amos Rice,

State of Illinois, }
Peoria County. } ss. I John D. Slygh one of the
justices of the peace within and for said County do hereby
certify that the foregoing transcript & judgment of J. S.
Patty vs Stephen Winchester & Levi Gladfelter is
truly copied from the files and books of my office.

Given under my hand and seal this 20th day of
November 1857. Jno. D. Slygh J.P. Seal

Fees in the above case
Justices fees \$5.84
Constables fees 13.00
Witnesses fees 7.00
Jurors fees 1.50

Endorsed. Jno. D. Slygh J.P.

Transcript of
proceedings in trial of
rights of property
Josiah S. Patty
vs
Stephen Winchester
& Levi Gladfelter

Filed Dec. 31st 1857
Charles Kettelle Clerk
for Geo. W. Kettelle
Exptg.

And afterwards, on the same day, there was filed
in the Clerk's Office of the said Court, an "Appeal
Bond" in words and figures following, to wit,

" Know all men by these presents, that we Josiah S.
" Patty and Charles P. Smith are held and firmly bound
" unto Levi Gladfelter and Stephen Winchester in
" the penal sum of three hundred dollars, lawful money
" of the United States; for the payment of which, will
" 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 14 day
" of November A.D. 1857.

" The condition of the above obligation is such, that
" whereas the said Levi Gladfelter & Stephen Winchester
" did, on the 3^d day of November 1857 before John D.
" Slygh a Justice of the Peace for the County of Peoria,
" recover a judgment against the above bounden Josiah
" S. Patty, for the sum of twenty seven $\frac{34}{100}$ Dollars;
" from which judgment the said Josiah Patty has taken
" an appeal to the County Court of the County of Peoria
" aforesaid, and State of Illinois: Now if the said Josiah
" Patty 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.

" (Approved before me, at my office, Josiah S. Patty
" this 14 day of November, 1857) Charles P. Smith
" Jno. D. Slygh, J.P.

Endorsed

" Appeal Bond

Filed Dec. 31st 1857
Charles Kettelle Clerk.
per Geo. W. Kettelle.
Spty

And afterwards, on the same day, there was issued from the Clerk's Office of the said Court. Summons which is in words and figures following. to wit.

"State of Illinois. }
"Peoria County. }

"The People of the State of Illinois, to the
"Sheriff of said County— Greeting: We command
"you that you summon Levi Gladfelter and Stephen
"Winchester if he shall be found in your County,
"personally to be and appear before the County Court of
"said Peoria County, on the first day of the next Term
"thereof, to be holden at the Court House in Peoria, in said
"Peoria County, on the first Monday of February 1858,
"to answer unto Josiah Pally in a suit lately ap-
"pealed to our County Court from before Jno. S. Slygh
"a J. P. of said County. And have you then and there this
"Writ with an endorsement thereon, in what manner you
"shall have executed the same.

"Witness, Charles Kettelle, Clerk of our said Court,
"and the Seal thereof at Peoria, aforesaid, this 31st
"day of December A. S. 1858.

"Seal

Charles Kettelle Clerk,
per Geo. H. Kettelle Spty "

Endorsed

"County Court Summons,
"Peoria County Court.
"Josiah S. Pally
"Levi Gladfelter and
"Stephen Winchester
"Summons to Appear

"State of Illinois. }
"Peoria County. }
"I have duly served the within by
"reading the same to the within
"named Stephen Winchester
"this 19th day of January 1858
"Levi Gladfelter is not in my
"County, as I am therein com-
"manded.
"J. W. Smith, Sheriff
"J. W. Hunt Spty

"Fees, Service. 50
"Mileage, 28. 140
"Return \$ 2.00
"Filed in County Court this
"day of 185 Clerk "

" Now all men by these presents, that we Josiah S.
" Patty and Charles P. Smith are held and firmly bound
" unto Levi Gladfelter and Stephen Winchester in
" the penal sum of three hundred 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 14 day
" of November A.D. 1857.

" The condition of the above obligation is such, that
" whereas the said Levi Gladfelter & Stephen Winchester
" did, on the 3^d day of November 1857 before John D.
" Slygh a Justice of the Peace for the County of Peoria,
" recover a judgment against the above bounden Josiah
" S. Patty, for the sum of twenty seven $\frac{34}{100}$ Dollars;
" from which judgment the said Josiah Patty has taken
" an appeal to the County Court of the County of Peoria
" aforesaid, and State of Illinois: Now if the said Josiah
" Patty 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.

" (Approved before me, at my office) Josiah S. Patty
" this 14 day of November, 1857) Charles P. Smith
" Jno. D. Slygh, J.P. "

Endorsed

" Appeal Bond

Filed Dec. 31st 1857
Charles Kettelle Clerk.
per Geo. H. Kettelle.
Spty

And afterward, to wit, on the first day of February A.D. 1858, there was filed in the Clerk's office of the said Court, a Motion to Dismiss, which is in words and figures following, to wit,

" State of Illinois }
" County of Peoria. } ss.

" In the County Court.

" Josiah S. Palty }
" vs }
" Levi Gladfelter & }
" Stephen Winchester }

Appeal by Plf. from trial
right of property.

" Stephen Winchester one of the above
" named defendants moves the Court here to dis-
" miss this suit for want of sufficient appeal bond,
" Charles C. Bonney,
" atty for sd defendant."

Endorsed

" Palty vs
" Winchester
" Mo. to dismiss

Filed Feb. 1st 1858
Charles H. Hittelle Clerk
for Geo. W. Hittelle
atty

And afterwards, to wit, on the second day of February A.D. 1858, there was filed in the Clerk's office of the said Court, a Bill of Exceptions, which is in words and figures following, to wit,

" Bill of Exceptions
 " Josiah S. Patty
 " vs
 " Stephen Winchester } In the County Court of
 " Levi Gladfelter } Peoria County
 " Be it remembered that on
 " this day this cause came on to be heard upon the
 " motion of Josiah S. Patty for leave to amend his
 " appeal bond forthwith. But the Court overuled
 " said motion and dismissed the appeal. To which
 " decision of the Court overuling said motion to amend
 " said appeal bond and in dismissing said appeal the
 " said Josiah S. Patty then & there at the time
 " objected & excepted & prayed that his bill of excep-
 " tions might be signed and sealed and made part
 " of the record in this cause, which is done,
 " Wellington Loucks Seal
 " County Judge "

" "Patty
 " vs
 " Winchester
 " Bill of Exceptions
 " Endorsed
 " Filed Feb 24 1855
 " Chas. Kettelle clk.
 " per Geo. W. Kettelle
 " repty "

Proceedings of the County Court of Teona County State
of Illinois began & ended at the Court House in the
city of Teona in said County on Monday
February 1st 1858. for judicial and other business.

Presiding Hon^{ble} Wellington Conkles Judge
Charles Kettelle Clerk and Francis W. Smith
Sheriff.

Josiah S. Patty
vs.

Levi Gladfelter

Stephen Winchester

Appeal from J. P.

Final Right Property.

This day came the said Plaintiff
by Henry Grove and the said defendants, by Charles
E. Bourne and this cause came on to be heard on this
motion of the said defendants, to dismiss this Suit
for Insufficiency of an Appeal Bond, Thereupon the
said Plaintiff by Henry Grove his atty. comes and
enters his cross motion for leave to amend said Bond.
The Court being fully advised in the premises doth
over-rule the said Cross-Motion of said Plaintiff and
sustains the said defendants motion to dismiss.

Thereupon, it is Ordered by the Court that the said Cause
be dismissed at Plfs Costs, and it is conceded by the Court
that the said Levi Gladfelter and Stephen Winchester do have
and recover of and from the said Josiah S. Patty, their costs
and charges by them about the Suit in their behalf ex-
pended and that they have Execution therefor. Thereupon
the said Plaintiff by his attorney prays an appeal of this
Cause to the Supreme Court of this State which was or-
dered to be allowed on his entering into Bonds in the penal
sum of Two Hundred dollars Conditional according to Law.
with William Stewart, as security within Ten Days.

Know all men by these presents that we
Josiah S. Patty and William V. B. Stewart are
held and stand firmly bound unto Stephen
Winchester and Levi Gladfelter and to each of
them in the penal sum of Two hundred dollars law-
ful money of the United States of America to the pay-
ment of which well and truly to be made, we bind
ourselves, our heirs, executors, administrators and
assigns, jointly, severally and firmly by these presents
sealed with our seals and dated at Peoria this 2^d
day of February A.D. 1858.

The condition of the above obligation is
such that whereas the above named Stephen
Winchester and Levi Gladfelter at the Februa-
ry Term A.D. 1858 of the County Court of Peoria
County recovered judgment against the above bounden
Josiah S. Patty for costs and for the dismissal of
an appeal from a decision of a Justice of the Peace
on the trial of the right of property from which judg-
ment of said Court said Patty prayed an appeal to the
Supreme Court of the State of Illinois, which has been
allowed. Now if the said Josiah S. Patty shall duly
and diligently prosecute his appeal and shall pay
all judgments and all costs and damages and in-
terest in case said judgment should be affirmed by
said Supreme Court then this obligation to be void,
otherwise to remain in full force

Josiah S. Patty (Seal)
W. V. B. Stewart (Seal)

State of Illinois
County of Peoria

I Charles Kettelle Clerk of the County Court Peoria
County State of Illinois do hereby certify that the foregoing is a true trans-
cript of the papers & records in the suit of Sarah L. Patten vs. Stephen
Winchester & Levi Gladfelter in said Court. Also a true copy of the ap-
pear Bond filed in said cause.

Witness my hand & official seal at Peoria this
25th day of February A.D. 1858.

Charles Kettelle Clerk
per Geo. H. Kettelle Jly. ex.

State of Illinois

In the Supreme Court
for the Third Grand Division
at Ottawa -

Joshua S. Patts, appellant
~~Plaintiff in error~~
versus

Stephen Winchester & {
Levi Gladfetter } appellees
~~defendants in error~~

And the said Stephen
Winchester and Levi Gladfetter
appellees in this cause, by
Charles LeBourey their counsel,
came and say that there is no
error, either in the record and
proceedings aforesaid or in the rendi-
-tion of the judgment aforesaid
and the said appellees pray that
the said Supreme Court here
may proceed to examine as well
the record and proceedings aforesaid
as the matters aforesaid alone
- assigned for error, and that
the judgment aforesaid, in form
aforesaid given, may be in all
things affirmed, and so forth.

Charles LeBourey
for appellees

Joseph S. Patty
vs.

L. Gladfelter
J. Winchester

Transcript

Peoria County Court
Peoria County.

Fees Transcript \$2.00 pd by
Henry Cora & J. S. Patty

\$3.00

Josiah S Patten Plaintiff in Error

vs

Stephen Winchester impetator
with Levi Haskins Defendant
in Error

In the Supreme
Court Illinois
Held April Term 1858

Stephen Winchester
the defendant in error by Charles Le Bonney comes
and moves the issue of Pardon in this cause and
enters his appearance and contents and says
that this cause may be set down for trial without
the issue of a writ of error.

Per curiam March 13 1858.

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Joseph S. Paddy
by

Macapetto

Filed April 20. 1831
L. Leland
clerk.

JOSIAH S. PATTY,	}	IN THE SUPREME COURT.
<i>Plaintiff in Error,</i>		
<i>vs.</i>		
STEPHEN WINCHESTER,		THIRD DISTRICT OF ILLINOIS.
IMPLEADED WITH		
LEVI GLADFELTER,		ERROR TO THE COUNTY COURT
<i>Defendant in Error.</i>		OF PEORIA COUNTY.

THIS was a proceeding commenced before a Justice of the Peace for the trial of the right of Property, in which the Plaintiff in error was claimant, and WINCHESTER and GLADFELTER were Plaintiffs in the executions under which the property had been levied.

On the trial before the Justice, the Jury found the property did not belong to the Plaintiff, and the Justice rendered judgment against him for costs. The Plaintiff, on the rendition of the verdict, gave notice that he should appeal to the County Court of Peoria County, and on the same day executed an appeal bond, with SMITH as surety. The appeal bond was filed with the Justice, and approved by him the same day. The papers were filed by the Justice in the County Court, and summons issued to Appellees, and returned served as to WINCHESTER.

At the February Term, A. D. 1858, of the County Court, WINCHESTER entered a motion to dismiss the suit, for want of a sufficient appeal bond. (No particular objection was pointed out.)

The Plaintiff entered a motion for leave to amend the appeal bond forthwith. The Court overruled the motion, and refused to allow the Plaintiff in error to amend the bond, and the Plaintiff excepted.

The Court then dismissed the suit, and the Plaintiff excepted.

The Plaintiff now assigns the following errors on the record :

1. The Court below erred in refusing to allow the Plaintiff in error to amend the appeal bond.
2. The Court below erred in dismissing the Cause.
3. Other errors.

On the argument below, the counsel for the Defendant in error relied mainly upon two points.

1. That the appeal bond was not sealed.
2. That it was approved by the Justice, and had not been approved by the Clerk of the County Court within five days of its execution.

1. It is admitted that the appeal bond was not sealed, and therefore defective.

2. It is claimed however, that by the tenth section of chapter 91, Title Right of Property, PURPLE's Statute, page 1026,

"That the Justice, in case of an appeal, shall take the bond." See latter part of the Section.

It is conceded that the 12th section provides for filing the bond with the Circuit Clerk.

But whatever construction may be given by the Supreme Court to 10th and 12th sections, Plaintiff in error submits that the case comes within the Act approved Feb. 18, 1847, PURPLE's Statute, page 1029, Sec. 11, in these words :

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Josiah D. Pally
vs
Stephen Winchester

to allow Bond to be amended

be reversed, and the cause remanded with direction to the Court below

amended, and in granting the writ the Court should therefore

It is submitted that the Court below with direction to the Court below

Justices of the Peace must be taken to be of the County of Peoria County,

by the 4th Section of the Act extending the Jurisdiction of the County

be fixed by the Court, execute and file a good and sufficient bond.

such informality or insufficiency: Provided he will in a reasonable time, to

shall have executed such bond shall in nowise be prejudiced by reason of,

taken or approved by an unauthorized person or otherwise, the party who

judged informal or otherwise insufficient on account of its having been

trial of the right of property, if the bond required to be given shall be ad-

Filed April 20, 1838

L. Sedgwick
Clerk

This case has
been submitted

✓

GROVE

No. 147 in error

State of Illinois
In the Supreme Court at Ottawa
Josiah S. Patty
appellant

Stephen Winchester
Levi Gladfetter
appellees.

Appeal from
Peoria County
Court.

Appellees Points & References.

- 1 It is contended by the appellees that "to appeal from the judgment on the trial of the right of property the appeal-bond must be delivered to, and accepted by the clerk within five days. If there be any limitation whatever, that limitation is five days."

Statute of "Right of Property",
Purples Statutes 1026, Sec. 12.
Pearce et al v Swan 1 Scam.
266.

- 2 The provision of the 10th Sec. that the justice may take the appeal-bond, is either irreconcilably in conflict with

the 12th Section, and so void;
or if it means anything,
it means only that when the bond
has been accepted by the clerk, it
may be left with the justice to
supersede all further proceedings.

Chapter 24 Rev. Stat - "Revised
Statutes" Sec. 24 Purples Statutes
1024 - Ill & Mich. Canal v. Chicago
14 Ill. 334 and cases cited -

3 The act of Feb. 18. 1847 - P.
S. 1029, does not aid the appellant.
The 'unauthorized person' must
pretend to be a person author-
ized by law to act. A remedy
is here provided for mistakes
of fact only, not for mistakes
of law.

Bray v. Fessenden 11 Ills. 544.

A contrary construction will
open a door to all kinds of fraud-
ulent tricks and devices to evade
the law in such cases. The party
may have his bond approved by
the constable or any men accom=

=modating neighbor, — may file that bond in the clerk's office in five, twenty, fifty or any other number of days, and yet if the reasoning on the other side be good, he would be entitled to file an amended appeal-bond. The absurdities which would flow from such a construction as the appellant here prays, show conclusively that such a construction can have no sanction in sound reason or in the law of the land.

The judgments of the court below ought to be affirmed.
See also Schooner Constitution v

Woodworth 1 Scam. 512. touching the principle of instruction here involved.

4 The appellant allowed the December and January Terms of the County Court to pass without action and made his application to the Court only at the February Term. The bond was given November 14.

1857- and ~~it~~ ~~was~~ ~~not~~ ~~until~~ the
application of the appellant to
amend was not made till the
2d day of February 1858-

Nor was the appeal-bond filed
in the office of the county
clerk till the 31. December
1857-

Charles C. Downey
attorney for
appellees

Appellees Brief -

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Josiah S. Patten

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Winchester et al

Supreme Court

Filed April 20. 1858

in deland
clerk

JOSIAH S. PATTY,	}	IN THE SUPREME COURT.
<i>Plaintiff in Error,</i>		
<i>vs.</i>		
STEPHEN WINCHESTER,		THIRD DISTRICT OF ILLINOIS.
IMPLEADED WITH		
LEVI GLADFELTER,		ERROR TO THE COUNTY COURT
<i>Defendant in Error.</i>		OF PEORIA COUNTY.

THIS was a proceeding commenced before a Justice of the Peace for the trial of the right of Property, in which the Plaintiff in error was claimant, and WINCHESTER and GLADFELTER were Plaintiffs in the executions under which the property had been levied.

On the trial before the Justice, the Jury found the property did not belong to the Plaintiff, and the Justice rendered judgment against him for costs. The Plaintiff, on the rendition of the verdict, gave notice that he should appeal to the County Court of Peoria County, and on the same day executed an appeal bond, with SMITH as surety. The appeal bond was filed with the Justice, and approved by him the same day. The papers were filed by the Justice in the County Court, and summons issued to Appellees, and returned served as to WINCHESTER.

At the February Term, A. D. 1858, of the County Court, WINCHESTER entered a motion to dismiss the suit, for want of a sufficient appeal bond. (No particular objection was pointed out.)

The Plaintiff entered a motion for leave to amend the appeal bond forthwith. The Court overruled the motion, and refused to allow the Plaintiff in error to amend the bond, and the Plaintiff excepted.

The Court then dismissed the suit, and the Plaintiff excepted.

The Plaintiff now assigns the following errors on the record :

1. The Court below erred in refusing to allow the Plaintiff in error to amend the appeal bond.
2. The Court below erred in dismissing the Cause.
3. Other errors.

On the argument below, the counsel for the Defendant in error relied mainly upon two points.

1. That the appeal bond was not sealed.
2. That it was approved by the Justice, and had not been approved by the Clerk of the County Court within five days of its execution.

1. It is admitted that the appeal bond was not sealed, and therefore defective.

2. It is claimed however, that by the tenth section of chapter 91, Title Right of Property, PURPLE'S Statute, page 1026,

"That the Justice, in case of an appeal, shall take the bond." See latter part of the Section.

It is conceded that the 12th section provides for filing the bond with the Circuit Clerk.

But whatever construction may be given by the Supreme Court to 10th and 12th sections, Plaintiff in error submits that the case comes within the Act approved Feb. 18, 1847, PURPLE'S Statute, page 1029, Sec. 11, in these words :

“That upon the trial before the Circuit Court of any appeal from the trial of the right of property, if the bond required to be given shall be adjudged informal or otherwise insufficient on account of its having been taken or approved by an unauthorized person or otherwise, the party who shall have executed such bond shall in nowise be prejudiced by reason of such informality or insufficiency: Provided he will in a reasonable time, to be fixed by the Court, execute and file a good and sufficient bond.”

By the 4th Section of the ‘Act extending the Jurisdiction of the County Court of Peoria County,’ Laws of 1855, page 194, “All decisions of Justices of the Peace must be taken to the County Court.”

It is submitted that the Court erred in refusing to allow the Bond to be amended, and in dismissing the cause; and the Judgment should therefore be reversed, and the cause remanded, with directions to the Court below to allow Bond to be amended.

GROVE,

For Plaintiff in error.

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Josiah S. Potts

vs.

Stephen Winchester

Filed April 29, 1838

Le Seind

Clk

GROVE

For Plaintiff in error

to allow Bond to be amended

be reversed, and the cause remanded, with directions to the Court below amended, and in dismissing the cause; and the Judgment shall therefore

It is submitted that the Court erred in refusing to allow the Bond to be Justices of the Peace must be taken to the County Court."

Count of Peoria County, Laws of 1826, page 104. "All decisions of By the 4th Section of the Act extending the Jurisdiction of the County be fixed by the Court, execute and file a good and sufficient bond."

such informality or insufficiency: Provided he will in a reasonable time, to shall have executed such bond shall in no wise be prejudiced by reason of taken or approved by an unauthorized person or otherwise, the party who judged informal or otherwise insufficient on account of its having been trial of the right of property, if the bond required to be given shall be refused upon the trial before the Circuit Court of any appeal from the