

No. 13265

Supreme Court of Illinois

Clark

vs.

Swaney

STATE OF ILLINOIS,

³⁵³
SUPREME COURT.

Third Grand Division.

³⁵³
No. ~~226~~

353

Clark

vs

Laney

13260

1861

Supreme Court Third Division
April Term 1861 -

Swamy et al }
 } Motion to dismiss
Clark } appeal

Campbell for Clark sug-
gests that the appeal should be
dismissed & damages awarded in
said cause -

The judgment was for over \$1300 -
July 9th 1860. & the collection of the
judgment has been stayed ever
since by the appeal which the
appellants have failed to pro-
ceed -

It is not denied that the
judgment has been rendered on
the bond filed. And no evi-
dence is offered to show the fact
so to be -

The certificate of the Clerk is
that the bond was filed in ac-
cordance with the order of said
Court. The Appellants object
to the appeal being dismissed because
their bond may not have been

a sufficient one -

I suggest that the Appellants alone can question the sufficiency of the bond if they do not it will be treated as good, it is for their benefit alone that it is filed, and Appellants cannot take advantage of their own wrong in not filing a good bond - It is enough that it purports to have been filed in accordance with the order of the Court unless we (Appellants) can object to it -

Lastly it is urged by Appellants that the bond is not now on file & the files a further record of the cause to show this to be the fact -

This Record undoubtedly does show that the bond as well as all of the rest of the papers in the case are ~~not~~ not now on file in the Clerk's office, An examination of said Record by the Court will show that ~~there~~ not a single paper

papers in the case is now on file in the clerk's office, with Declaration, pleas &c are also gone as well as the bond

I do not wish to express any opinion whatever with regard to the manner of this loss but would suggest that it is manifestly to the great disadvantage of the Appellants that they are gone -

If he cannot dismiss this appeal he cannot proceed to collect his judgment if a bond has been filed of that fact the clerk has no doubt would be justified in refusing to issue execution -

If the papers bonds should happen to be found after this Court has adjourned Appellants would have to wait another year before the appeal could be dismissed

I think it is sufficient that the

Clark certifies that a bond was
filed in accordance with the
order of the Court we do not
question its sufficiency -

They only show that it is
not now on file (All the
papers in the case having dis-
appeared) & do not even pre-
tend that it was not filed

If they intend to prosecute this
appeal why have they not ta-
ken some steps in that direc-
tion? If they could not find the
papers so as to have them filed
during the first three days of
the term they might have got
the time extended & continued
their search & we would cer-
tainly have aided them in it
but they have quietly slept
till now undoubtedly relying
upon this technical ground up-
on which to resist the motion
to dismiss

Swearing
353
Clark
Sugestions
for appeal

Motion
to Dis.
appe

Filed May 9-1861
G. Leland
Clerk

Compl
for appeal

Supreme Court - Apr. 7. 1861 -

Swaney & Swaney

vs } An Mo to dismiss appeal.
Black } 3

T. L. Dickey for Swaney & Swaney -
Suggest to the Court - that no order should
be made either to dismiss the supposed
appeal - or for damages

Because -

It is not shown to the Court that
~~the appeal was ever consummated~~
An appeal bond was filed within the
time limited by the order of the Court
below -

I There is nothing in the transcript of the
record showing it -

II The only thing offered the Court to this
point is a Statement in the Certificate
of the Clerk - "that a bond was duly
filed in accordance with said order of
Court"

The clerk has no authority by law to
certify to any thing except ~~that~~ to verify
a copy of what is of record - His certificate
that some thing was done or was not done
is not competent evidence for any

purpose — unless he says it remains of record.
Again if the Clerk could certify to
a general history of what has been
done — this certificate does not show
when said bond was filed — nor
who executed said bond — nor to whom
the bond was payable — nor in what
penal sum the bond was — nor who
was the Security — & the Clerk is not
to judge whether it was duly done in
accordance with the Court's order.
The Clerk is not in law competent to pass
on any such questions & therefore
this little interlineation in the Clerk's
Certificate goes for nothing —

III In point of fact — there is no such bond
on file — the Clerk has no knowledge
that any appeal bond was ever filed
and there is no note or memorandum
of record or otherwise in that office
showing that any appeal bond was
ever filed in the case — & the
statement in this Certificate by the Clerk
was made upon the statements of
others & not from anything remaining
in his office — It will not do to open
so dangerous a practice as to render judgment
for damages in an ex parte proceeding
upon such a state of case
T. Lyle Dickey

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Clark

vs

Sweeney et al

Dickey's suggestions
against me to dismiss
appeal & for damages

Filed May 4th 1861

L. Leland

Clerk

Lyle Dickey

Charles Clark
12 12
Barnett Swaney
Benjamin Ong &
David Swaney

Ordy

This day the Plaintiff again Comes by Glover, Cook & Campbell his attorneys, and The defendants Swaney by W. H. L. Wallace their attorney and after hearing The arguments of Counsel the Court overule the defendants Motion for a new trial. It is therefore Considered by the Court, That the Plaintiff have and recover of the defendants Barnett Swaney and David Swaney, Eleven Hundred and Thirty Two Dollars, for his debt, and one Hundred and Seventy Six Dollars and Three Cents for his damages, both computed together amounting to the Sum of Thirteen Hundred and Eight Dollars and Three Cents, also his costs and charges by him herein expended and that he have execution Therefor,

Said Defendants attorneys now pray an appeal herein to the Supreme Court which prayer is granted, upon Condition That Said defendants within Thirty days from this date file an appeal bond payable to the Plaintiff in the Final Sum of Two Thousand Dollars with Joshua Mills as his Security, Defendants attorneys to have Thirty days to prepare, tender and file a bill of exceptions "

State of Illinois
Seaballs County

I, Absalom B. Moore
Clerk of the Circuit Court in and for
Said County do hereby Certify, That
the foregoing instrument of Writing is
a full, true & perfect copy of the record,
from Laws Record "B" which was
entered of Record on Monday July 9th
The Same being one of the days of
the June Term of Said Court for 1860,
~~and that~~ a true was duly filed in accordance with said order of court,
Witness my hand, and the
Seal of Said Court this 3^d
day of May 1861.

A B Moore
Clerk

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Barnett Swaney As
as

Charles Clark

Filed May 8. 1861
L. Liland
Clark

State of Illinois }
La Salle County }
Plas before the Honorable Madison
E. Hollister Circuit Judge for
the Ninth Judicial District
in and for said State, and the presiding Judge of the
La Salle County Circuit Court, at a term of said Court
commenced and held at the Court house in Ottawa
on the first Monday in the month of November the
same being the first day of November in the year of
Our Lord one thousand eight hundred and fifty eight,
And of the Independence of the United States of
America the Eighty third

Present, The Honorable Madison E. Hollister,
Presiding Judge.

John F. Nash Clerk
Washington Bushnell States attorney
Eni L. Waterman Sheriff

Be it remembered that on Thursday the 4th day
of November A. D. 1858, the same being one of
the days of the November term of said Court for
said year, an order was entered of record in said
Court, in the word and figures following, to wit;

Charles Clark }
135- } Debt.
Barnet Swaney, }
Benjamin Ong }
David Swaney }

This day the Plaintiff comes
by Glover & Cook his attorneys

And on their motion the defendants Swaney
are ruled to plead herein on or before next
Monday morning."

On Wednesday, February 9th 1859, the same being
one of the days of the February term of said Court
for the year 1859, an order was entered of record
in said Court in the words and figures following,
to wit;

"Charles Clark

39 vs

Debt,

Barnet Swaney

Benjamin Ong,

David Swaney

This day the plaintiff comes
by Glover & Cook his attorneys
and the defendants by W. H.
S. Wallace their attorneys, and

after hearing the arguments of counsel the Court
overrule the ~~plea~~ defendants demurrer to plaintiffs
declaration. "

On Saturday, February 19th 1859, the same being
one of the days of the February Term of said Court
for the year 1859, an order was entered of record in
said Court in the words and figures following,
to wit;

"Charles Clark

39

vs

Debt.

Barnet Swaney, Benjamin Ong,
& David Swaney.

On motion of the

Plaintiff by Glover & Cook his attorneys, it is ordered by the Court that this cause be continued and that Jones summons issue to defendant Ong."

On Thursday June 16th 1859, the same being one of the days of the June term of said Court for said year, an order was entered of record in said Court in the words and figures following, to wit;

"Charles Clark	}	
27	vs	Debt.
Barnet Swaney	}	By agreement of parties
		it is ordered that this cause
be continued."		

On Wednesday, November 9th 1859, the same being one of the days of the November Term of said Court for the year 1859, an order was entered of records in said Court, in the words and figures following, to wit;

"Charles Clark	}	
23	vs	Debt.
Barnet Swaney,	}	This day the defendants
Benjamin Ong &	}	Swaney by W. H. L. Wallace
David Swaney	}	their attorney move the Court
to Strike the plaintiffs second		
application from the files, The Plaintiff by Glover		

* Cook His attorney enters a cross motion for
leave to file a second replication to said defend-
-ants pleas, which cross motion is sustained by the
Court. "

On Wednesday February 22, 1860. the same being
one of the days of the February Term of said Court,
for said year, the following order was entered in said Cause, to wit:

"Charles Clark }
"15 " } Debr

"Barnet Swamey. }

"Benjamin Ong & David Swamey.

" By agreement of parties it is
"ordered that this cause be continued with leave
"to form new issues"

On Wednesday June 13th 1860 the same being
one of the days of the June Term of said Court
for said year, the following further order was entered
in said Cause, to wit:

"Charles Clark }
"12 " } Debr

"Barnet Swamey et al } By agreement of parties,
" it is ordered that this

"Cause be set for trial on next Tuesday
"afternoon."

On Wednesday June 20th 1860 the same being
one of the days of said June Term for said year
the following further order was entered in
said Cause, to wit:

"Charles Clark }
"12 " } Debr

"Barnet Swamey }

"Benjamin Ong & David Swamey

" This day the plaintiff

" comes by Glover. Cook & Campbell his attorneys
 " and the defendant- Barnes Swaney and David
 " Swaney by W. H. L. Wallace their attorney.
 " and after hearing the arguments of counsel
 " the Court overrule the plaintiffs demurer to
 " defendants second, third and fourth pleas.
 " Thereupon on motion of plaintiffs attorneys
 " it is ordered by the Court that they have
 " leave to file double replications.
 " And now come the following jurors of
 " a jury to wit: Daniel Arnold, E. C. Gould,
 " Harvillan Kupp, J. H. Fredenburgh, D. A
 " Chase, V. Morry, William Reigart, P. L. J.
 " Ashlin, B. F. Woodbury, John Willis, Samuel
 " Parker and Samuel Cooper who are duly elected
 " tried and sworn to well and truly try the
 " issues herein according to the evidence.
 " And after hearing a part of the testimony,
 " the further hearing of this cause is postponed
 " until the coming in of the Court tomorrow
 " morning"

On Thursday June 21st 1860 the same
 being one of the days of said June term
 for said year, the following further order
 was entered of record in said cause,
 to wit:

" Charles Clark }
 " 12 } Debs
 " Barnes Swaney }
 " Benjamin Osgood } David Swaney

" This day the parties hereto
 " again come by their attorneys, together
 " with the jury sworn herein, and after

"hearing the balance of the testimony and
"the arguments of counsel, the jury retire
"to consider of their verdict"

On Friday June 22^d 1860 the same being
one of the days of the June Term of said Court
for said Year, the following further order was
entered in said cause, to wit:-

"Charles Clark }
"12 " " } Debt
"Barnet Swaney, 3

"Benjamin Ong & David Swaney

"This day the parties hereto
"again come by their attorneys together with
"the jury sworn herein, who return into court
"with the following verdict, to wit:- "We the
"jury find that the defendants Barnet Swaney
& David Swaney owe to the plaintiff and
"jointly detain from him Eleven hundred
"and thirty-two dollars for his debt" and
"assess his damages at one hundred and
"seventy five dollars and three cents"

"Said defendants counsel move the
"Court for a new trial"

On Monday July 9th 1860, the same being
one of the days of the June Term of said
Court for said Year, the following further
order was entered of record in said cause
to wit:-

"Charles Clark }
"12 " " } Debt
"Barnet Swaney, 3

" Benjamin Ong & David Swamy
" This day the plaintiff again
" comes by Glover, Cook & Campbell his attorneys
" and the defendants Swamy by W. H. Waller
" their attorney, and after hearing the arguments
" of counsel the Court overrule the defendants
" motion for a new trial.

" It is therefore considered by the Court that
" the plaintiff have and recover of the defendants
" Barner Swamy and David Swamy Eleven
" hundred and thirty two dollars for his debt;
" and one hundred and seventy six dollars
" and three cents for his damages, both computed
" together amounting to the sum of thirteen
" hundred and eight dollars and three
" cents, also his costs and charges by him
" herein expended and that he have execution
" therefor.

" Said defendants attorneys now pray an
" appeal herein to the Supreme Court, which
" prayer is granted upon condition that
" said defendants within thirty days from
" this date file an appeal bond payable
" to the plaintiff in the penal sum of two
" thousand dollars with Joshua Mills as
" his security. Defendants Attorney to have
" thirty days to prepare, tender and file a bill
" of exceptions."

State of Illinois } S.S.
Safallie County }

I, Abaalam B. Moore
Clerk of the Circuit Court in
and for Said County do hereby Certify, that
the foregoing, is a true, perfect, & complete
copy of the record, now remaining in my office
in the above entitled cause, And that no
appeal Bond is on file, and that there is
no memorandum of the filing of any
appeal bond herein, And further
that the Statement made by me, in a
Certificate given a few days ago, That
such appeal bond was filed, was
made from Statements of others, believed
by me, and not from anything to be
found in my office,

Witness my hand and the
Seal of Said Court at Ottawa
this 8th day of May AD 1861
A. B. Moore
Clerk



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Clark

vs

Swunay

Transcript of Record

Filed May 9th 1861

L. Leland

Clark