

13354

No. _____

Supreme Court of Illinois

Stone

vs.

Holloway et al

Robert Stone	}	Supreme Court
vs		3 ^d Grand
Robert Holloway & Henry M. Boggess		Division

Appellees move the Court to dis-
miss the Appeal herein for fol-
lowing reasons

1st There is no sufficient appeal
bond filed herein.

2^d The paper copied into record as
an appeal bond does not describe
the judgment appealed from.
The appeal bond recites a judgment
on 6th October 1857

The record shows that Court con-
vened on 21st Sept. 1857 and that
judgment was rendered on 15th day
of the term which would be on
7th October 1857

The judgment is for the recovery
of a possession of a tract of land
and for costs, the bond recites
a judgment for — Dollars —
Cents and Costs of Suit, and is
in all respects illegal & insufficient.

Wm. W. Williamson
William W. Williamson

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Stone
vs

Holloway v Boggess

Motion to dismiss
Appeal

Filed April 27, 1858
L. Deland
clerk

13854

1861

Robert Stone } Supreme Court
 vs } 3 Grand Division
 Robert Holloway }
 & others }

Jackson Grimshaw being first duly sworn deposes and says that it was as he verily believes the intention of said Appellees to join in error in this Cause and go to trial on the merits of the record herein and that George F. Harding the Attorney for Appellant knew that such was their intention. Affiant states that he is informed and believes that said Appellees had spoken to affiant's partner Archibald Williams to attend to said Cause if he should be in attendance at this term of this Court and that until very recently it was said Williams' intention to have been in attendance at this term and if he had been he would have attended to said suit for Appellees. That said Williams was recently notified that several cases now pending in the Supreme Court of United States at a term thereof now holding at Washington D. C. were about to be reached for trial and that his immediate presence was necessary at Washington City to attend to said Causes. That affiant until Sunday morning last had not seen his said partner

for two weeks affiant having been attending to business in the Adams Circuit Court while affiant's said partner was attending the Circuit Court of the District of Columbia. Said Williams returned from the District Court late on Saturday night last and on Sunday morning when he and affiant met he informed affiant that he (Mrs. Williams) would start for Washington City on Monday, the next afternoon and that affiant must come to this Court. Said Williams named one or two cases in which he had been employed and spoke of there being other cases which he had been requested to attend to and to which he wished affiant to attend if they were on the docket - he did not particularly mention this case, but affiant is informed by Mr. Gundy who arrived here on 23rd April 1858 that said Appellee informed him Gundy that ^{they} ^{had spoken to} Williams ^{about this case} and expected him to attend to said cause. Affiant states that the firm of Williams, Gramsman & Williams ^{of which} ^{affiant & said Williams are} ^{partners} returned from said Appellee under which he would have attended to said cause if he had on his arrival in Ottawa as hereafter stated discovered that the said herein had

Appellant
shown
his
before

is filed in this ~~Cause~~ Court.
 Affiant states that on Monday after-
 noon last 19th inst. said A. Williams
 his partner started for Washington ^{for purpose} ~~to~~
 before stated, ~~but~~ that on Monday
 morning 19th inst. Affiant was obliged
 to go to the Brown Circuit Court
 which commenced that day and
 where Affiant was acting as Attor-
 ney in several cases which he
 was compelled to attend to.
 That said Brown Court adjourned on
 the evening of the 20th inst. and
 Affiant returned to his home in
 Quincy Illinois by the first train
 after adjournment to sit on morning
 of 21st inst. and started on after-
 noon of 21st by first passenger
 train that went North, or passenger
 train by which he could have
 reached this place and travelled
 without loss of time all night
 and reached this place about
 7 o'clock in the morning of 22nd
 inst. & ~~then~~ said Harding a short time after
~~affiant arrived~~ ^{after} before sitting of court ^{that morning}
 that Affiant came into the Supreme
 Court room ~~at~~ ^{before} opening of Court
 on morning of 22nd inst. and was
 present during the making of mo-
 tions and taking defaults & was
 also present in the Court room
 during most of the sitting of the Court
 on that day. That Affiant as soon
 as he ^{came} into the Court room
 took the bar docket and looked

over it for cases in which he
or his business firm were interested.
That the said bar docket con-
tained only the cases down to
No. — not including this case.
That if affiant had seen said
case in said docket he would
have attended to it both from the
general request of affiant's partner
Mr. Williams and the general re-
tainers of affiant's firm in business
in which said appellees were in-
terested. That affiant was not
aware that the bar docket did
not contain all the cases that had
been placed on the docket and
did not discover that such was
the case until the morning of
23rd inst. when Mr. Gundy told
affiant that this was one of the
cases that Mr. Williams was ex-
pected ^{to have been requested} to attend to by appellees
as they appellees had informed him
said Gundy. That affiant again
examined said bar docket to
find said case and was then
for the first time informed by
Mr. Forkpatrick member of the bar
that this and a number of other
cases were on the Clerks docket
and not on the bar docket.
Affiant on examination of said
Clerks docket discovered about the

open
of
the

and
Affiant
Clerk

opening of this Court on Morning
of 21st inst. that the said Cause
had been docketed on 21st inst.
and a rule then taken by said
George H. Harding, to join in error
by 22nd inst. and that on
Morning of 22nd inst. the Cause
had been reversed for non proder
in error - that affiant at once on
opening of Court entered this motion
that on the afternoon of 22nd inst.
said Harding ~~case~~ told affiant
that he had taken a number
of defaults that Morning for non
proder in error and asked af-
fiant whether the Court would
set them aside and on what terms
that affiant told said Harding
that he had never attended this
Court in this division before and
did not know much about what
its practice would be as in the
Springfield Division of this Court
where affiant had practiced the
Attorneys were not in the habit
of reversing litigated cases for
non proder or by default.
That affiant then said to said
Harding that he hoped he
(Harding) had not been reversing
any of Mr. Williams cases by
default as he knew that af-

plaint was here to attend them
said Harding answered that he
had not that Mr. Williams
was not interested in any of these
cases which he had reversed.
On the morning of 23rd inst. when
affiant discovered that this cause
had been reversed he applied
to said Harding to agree to set
aside the default, which he
declined. Affiant then reminded
said Harding of what had
passed between him and said
Harding the afternoon before, when
he replied that he did not
believe that Mr. Williams was
certainly in the case because
Holloway or Boggess one of ap-
pellants & (affiant does not recollect
which he named) had informed
him said Harding a short time
before the sitting of this court that
they intended to get either Mr.
Williams or Mr. Browning to attend
to the case in this court, & had
not determined which. Affiant
states that after an examination of
the record filed by said appellant he
as an attorney of this court believes that
the aforesaid appeal must have been
originally taken merely for delay and
that the judgment of the court below
would on the hearing of this cause
be affirmed, that the assignment of
error is frivolous and the appeal

Mr. Williams
not
the
appeal

and entirely insufficient - and
that the Marshal insists in
obtaining this reversal has become
Mr. Harding well knew that there
was no merits in his said appeal
& that he pressed said default
for the purpose of avoiding a trial
on the merits with fully knowledge that
appellant intended to try said cause at this term on its merits
appellant therefore asks that said de-
fault be set aside and a hearing
on the merits allowed.

Subscribed & sworn to
before me this 23^d day of
April 1858

J. Ireland Clerk
by J. D. Rice Deputy

J. Grisham

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Robert Stone

vs

Robert Holloway & others

App'dt

Filed April 20 1848

Leland

Clk

1848

Robert Stone
 vs.
 Robert Holloway &
 Henry M. Rogers

} Supreme Court
 3. Grand
 Division

Said Appellees move the Court to
 set aside defaults and reversal
 and permit them to join in errors
 for following reasons

- 1st The record filed herein by ap-
 pellant is irregular and unskillfully
 copied & certified so that no trial
 could have been had upon it.
 The affidavit which has the form-
 dation of writ, precedes caption of
 record & does not form part of
 it - purports to have been first
 filed in Circuit Court of Warren
 County when in truth the said
 affidavit should appear in said
 record with a transcript from
 a justice as forming part of
 an appeal case. pending in
 said Warren Circuit Court.
 It was in other respects insufficient & does
 not comply with the can in the rules of this
 court.
- 2nd The appeal never was properly
 pending in this Court - the ap-
 peal bond has wholly unim-
 plemented and never caused by
 its operation an appeal to be
 pending in this Court.
 The Court as the record shows
 convened on 21st Sept. 1857.
 The judgment was rendered in

Appellees favour an 15th day term which would be on 15th of October 1857.

The appeal bond recites judgment as rendered on 15th October 1857.

Appeal bond recites judgment as on 6th October 1857 for — Dollars — Cents and costs of suit, the judgment which the Court has reversed by default as shown by the record was upon 7th October 1857 in an action of forcible entry and detainer and was for costs of suit and a recovery by appellees vs. appellant of the possession of a tract of land described in the judgment.

See pages four and five for date of judgment and its form see pages 20 & 21 for appeal bond.

3- The affidavit filed herewith is sufficient for the Court in the exercise of a sound discretion to set aside this reversal.

4- The motion upon which this reversal has been made was not filed in writing as required by the rules of this Court.

That the law of the case was
correctly decided and that
appellees have merits. They refer
to Case of Brooks vs. Bryner
18 Illinois 5-39 which settles
the law of this case in favor
of appellees.

Wherefore appellees ask that
the order reversing this cause
be set aside, ~~and~~ ^{and} ~~the~~ ^{the} ~~case~~ ^{case}.

Yours truly
William Crismon & William
for appellees.

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Robert Stone

vs

Robert Holloway
et al

Motion to set
aside several
by default