

No. 14720

Supreme Court of Illinois

Oliver

vs.

Hart.

71641  7

14720

STATE OF ILLINOIS,

Apr. 5 1864

SUPREME COURT,

THIRD GRAND DIVISION.

No. 79

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

Reporter
Oliver

vs

Hart

Pratt

In the Supreme Court of Illinois.

FRANKLIN OLIVER, PLAINTIFF IN ERROR,	} <i>Writ of Error to Iroquois.</i>
vs. JOHN P. HART,	
DEFENDANT IN ERROR.	

ABSTRACT OF RECORD.

Record page

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| 2 | Summons issued Feb. 6th, A. D. 1861. |
| 3 | Transcript of record on change of venue from Livingston county, filed Aug. 13th, 1861. |
| 5 | Venue of this cause changed from Livingston to Iroquois county, 30th March, 1861. |
| 7 | Motion to suppress depositions, overruled Dec. 11th, 1861. |
| 9, 10, 11 | Declaration of plaintiff Oliver, filed 30th day of January, A. D. 1862. |
| | 1st count on a promissory note in the sum of fifty dollars. |
| | The usual common counts. |
| 12 | Copy of note sued on and account. |
| 14, 15 | Plea of general issue and of payment. |
| 16 | Copy of bill of Hart against Oliver. |
| 17 | Feb. 21st, 1862, motion to dismiss the cause. Cause dismissed. |
| 17 | Motion to reinstate case June 19th, 1862. Motion to reinstate cause |
| 18 | overruled. Final judgment. Plaintiff excepts. |

BILL OF EXCEPTIONS.

20 Sets up that there was an agreement between Charles J. Beattie, attorney for Oliver and Woodford, G. McDowell, attorney for John P. Hart, to take depositions in this cause at Pontiac, Livingston county, on the 20th day of February, (which was during the first week of February term of Iroquois Circuit Court,) and that the causes should be tried the second week. That McDowell appeared and cross-examined the witnesses at the taking of the depositions. That while these depositions were being taken at Pontiac, Hart, by another attorney, appears in court in violation of the understanding and agreement, and procures a dismissal of the cases. Sets up that Oliver has a good cause of action, and was ready for trial at the time agreed upon, but was deceived by the confidence he placed in the attorney of Hart, in this, that he violated the agreement, and thereby the suits were dismissed.

20 Agreement that the foregoing shall be the Bill of Exceptions in the case.

ASSIGNMENT OF ERRORS.

22 1st. The court erred in dismissing the case without a trial upon the merits.

2d. The court erred in refusing to enforce the fair and uncontradicted agreement between the parties.

3d. The court erred in overruling the motion to reinstate the cause, and in rendering final judgment for the defendant.

22 Order for a supersedeas.

POINTS OF PLAINTIFF IN ERROR.

1st. The stipulation of Hart's attorney that this case should not be pressed to trial before the second week of the term of the Iroquois Circuit Court, was binding upon Hart.

2d. The court erred in dismissing this case during the first week of said Iroquois Circuit Court, upon the motion of Hart, through the agency of other counsel employed by him for that purpose, while the principal attorneys of both Hart and Oliver, were engaged in taking depositions in this case, to be used in the trial thereof, at or after the second week of the said term, upon an express agreement by them to that effect.

3d. For the above reasons, the plaintiff in error should not be debarred from a trial of this case on its merits.

WOOD & LONG,
Atty's For Plaintiff in Error.

79 8

Franklin Oliver

^{vs}
John P. Hart

Abstracts & Points

Given Nov. 7. 1867

State of Illinois
Third Grand Division }
}

April Term AD 1864
Supreme Court

John P. Hart

at } Error in Jurors
Franklin Union }

There is nothing in the record in this cause to reverse the judgment of the Court below. The affidavit of the plaintiff in the Court below filed for the purpose of procuring the reinstating of said cause does not embody any fact by which it will appear to the Court that the plaintiff had a meritorious cause of action, or anything to show that the plaintiff was by anything done by ~~him~~ said defendant prevented from bringing in Court or prosecuting his cause there. It is true plaintiff states that it was the understanding that certain dispositions should be taken and that said cause was not to be tried until the second week of the term of Court when said cause was dismissed, but no agreement is shown, nor does the affidavit show what his intention is, or what the merits of his cause is or any other thing to entitle him to have his cause reinstated &c. The defendant therefore claims that the decision of the Circuit Court should be affirmed &c.

James Fletcher, A. Harding
Attorneys

79
Franklin Oliver

24

John P Hart

Obsequies for Sept.
in care

Filed Apl. 21. 1864.
Skelton
C.R.

Franklin Oliver
Plaintiff in error
vs
John P. Hart
Defendant in error

} Supreme Court
April Term 1864

Points for Plaintiff in Error -

No question upon the merits arises in either of these cases (79) or (80) - In both there is one and the same question - were these causes rightfully dismissed without a hearing upon the merits?

It is not disputed but that the Court would have a right when causes are reached in their order to dismiss them for want of prosecution - But it is denied that one party has a right to violate his agreement and take advantage of the violation to get a case out of court -

It appears that Attorneys were employed in Livingston County in these cases and were acting as such when the venue was changed to Troyois County - During the first week of the Troyois Circuit Court, these Attorneys were engaged

in taking depositions to be used in these cases at Pontiac in Livingston County, under an agreement that they would try the causes the second week of the term. While these depositions were being taken Hart ships over to the Iroquois Circuit Court and employs other counsel and gets the suit dismissed.

It is not denied that Beattie was the regular Attorney for Plaintiff in Error and Mc Danel for Defendant in Error. The record shows that they constantly appeared in these cases before the change of venue, but Fletcher & Key are the Attorneys employed as soon as the cases get to Iroquois by Defendant in Error.

We submit that a man is not bound to employ a half dozen lawyers in order to meet all the tactics of his opponent.

This Court has decided in *Hankinson vs Lombard* 26th Illino's 572 that ~~where~~ where

a party gives notice that he will take several depositions in different places on the same day the opposite party may select which place he will attend and have the other depositions suppressed - and this upon the obvious ground that a party is not bound to be in more than one place at a time -

If the Court had dismissed these cases of its own motion a different case might be presented.

But they appear to have been dismissed by Hart, and inasmuch as they were pressed for dismissal in violation of his agreement, they were wrongfully dismissed, as thereby he was taking advantage of his own wrong -

If it be insisted that the agreement to try the cases the second week of the November term was entered into by Hart's Attorney Mc Dowell still he was bound by it, as it is the special business of the Attorney to take all the steps in a cause and for that he is expressly

employed -

Rules of practice ought to be designed not only to expedite business but also to promote fairness, and they ought not to be held to apply where a party expressly waives his technical rights under them, and thereby lulls his antagonist into security - Plaintiff in Error insists and swears that he was ready for trial at the time agreed upon, and the court will presume that he would have been there at the first of the term if the defendant had not deceived him - For these reasons briefly stated it is submitted that these cases should be reversed and a trial had upon the merits -

Wood & Long
for Pltffs. in Error

79. 8

Alfred P. Hart
ats.
Franklin Oliver

Argument
for Plaintiff in Error

In the Supreme Court of Illinois.

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22 Order for a supersedeas.

POINTS OF PLAINTIFF IN ERROR.

1st. The stipulation of *Hart's* attorney that this case should not be pressed to trial before the second week of the term of the Iroquois Circuit Court, was binding upon Hart.

2d. The court erred in dismissing this case during the first week of said Iroquois Circuit Court, upon the motion of Hart, through the agency of other counsel employed by him for that purpose, while the principal attorneys of both Hart and Oliver, were engaged in taking depositions in this case, to be used in the trial thereof, at or after the second week of the said term, upon an express agreement by them to that effect.

3d. For the above reasons, the plaintiff in error should not be debarred from a trial of this case on its merits.

WOOD & LONG,

Atty's For Plaintiff in Error.

79 8

Franklin Oliver

vs

John P. Hart

Abstracts & Points

Filed Nov. 7, 1869
J. H. Wood

STATE OF ILLINOIS, ss.

Office of the Clerk of the Supreme Court.

I Do Hereby Certify, That a Writ of Error has issued from this Court for the reversal of a judgment obtained by John P. Hart

against Franklin Oliver

Circuit in the Court of Illinois
County at the February term
thereof, A. D. 1862, in a certain action of assumpsit

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 Ottawa, this 7th day
of November A. D. 1863...

L. Leland

Clerk of the Supreme Court.

J. P. Rice Deputy



79-8
Franklin Oliver

as
John P. Hart

Superseas

I have served this

Writ by recd my Writ
Dated 18 Feb 1863

Sheriff of Hampshire Co

This 1st day of Dec

1863

His Grace the Lord

of
Dunstable Co

Writ - Dated 30

Nov 1863

Return 10

65-

Know all men by these presents
that we Franklin Oliver and
Jacob ~~Stromer~~ of the County
of Livingston in the State of Illinois
are held and firmly bound unto John
P. Hart in the penal sum of two hundred
— Dollars lawful money of the United
States for the payment of which well
and truly to be made, we hereby bind our-
selves, our heirs, executors, administrators and
assigns firmly by these presents -

Witness our hands and seals this 15th
day of August A.D. 1862 -

The condition of the above obligation is
such that whereas a judgment was rendered
against the above bounden Franklin Oliver
in the Illinois Circuit Court on the 19th
day of June A.D. 1862 in a suit wherein
the said John P. Hart was Plaintiff and
himself defendant for the costs therein
incurred - And whereas the said Franklin
Oliver has sued out a writ of error which
has been made a supersedeas, to reverse
said judgment; Now therefore in
case the above bounden Franklin
Oliver shall prosecute his said writ
of error with effect and shall
pay whatever judgment, cost, interest
and damages shall be awarded

against him, in case the judgment of
of the said Oregon Circuit Court shall
be affirmed, then the above obliga-
tion to be void, otherwise to remain
in full force and effect -

Franklin Oliver ^{Seal}

Jacob Strum ^{Seal}

Seal

STATE OF ILLINOIS, ss.

Office of the Clerk of the Supreme Court.

I Do Hereby Certify, That a Writ of Error has issued from this Court for the reversal of a judgment obtained by John P Hart

against Franklin Oliver

in the
Circuit Court of Troquois
County at the February term
thereof, A. D. 1862, in a certain action of Appeal from
a justice of the Peace
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 Ottawa, this 7th day
of November A. D. 1863.

A. Leland

Clerk of the Supreme Court.
G. J. B. Rice Deputy



79⁸
Franklin Oliver

John P. Hart

Superior

I have secured this
within West by heading
the series to Job E. By
Sheppard of New York
West 1844 day of Dec

AD 1863

This series is now
Champion County

Feet

Sewing	30
Woolen	5
Relief	10
	45

State of Illinois }
Livingston County } ss I James W Remick Clerk of
the Circuit Court in and for
the County and State of aforesaid do hereby certify
That I am well acquainted with Jacob Streamer
and believe him to be worth at least Four
Thousand Dollars over and above all debts
and Homestead Exemption.

Given under my hand and Seal
of said Court at Pontiac this
20th day of August 1863
James W Remick
Clerk

Franklin Oliver being duly
sworn saith that he is well ac-
quainted with the pecuniary
circumstances of Jacob Streamer
and that he is worth more than
one thousand dollars above the debts
he owes and besides all property
Exempt from execution

Sworn to & subscribed
this 7th day of November
A.D. 1863, Franklin Oliver,
J. C. Eaton Ch. Just. Ill

79

8

Know all Men by these presents
that we Franklin Oliver and
Jacob Streamer of the county of
Livingston and State of Illinois
are held and firmly bound unto
John P. Hart in the penal sum
of two hundred — Dollars lawful
money of the United States for the
payment of which well and truly
to be made we hereby bind ourselves
our heirs executors administrators
and assigns firmly by these presents.
Witness our hands and seals

This 15th day of August A.D. 1862 -

The condition of the above obligation
is such that whereas a judgment was
rendered against the above bounden
Franklin Oliver in the Illinois Circuit
Court on the 19th day of June A.D. 1862
in a suit wherein the said Franklin
Oliver was plaintiff and John P.
Hart defendant, for the costs of suit
therein incurred - And whereas the said
Franklin Oliver has sued out a writ
of error which has been made a super-
seas from the supreme Court of the
State of Illinois to reverse said
judgment; Now therefore in case
the said Franklin Oliver shall

prosecute his writ of error with
effect and shall pay whatever judg-
ment, cost, interest and damages
shall be awarded against him, in
case the judgment of the said Oregon
Circuit Court shall be affirmed
then the above obligation to be void,
otherwise to remain in full force
and effect -

Franklin Oliver

Sacot Strummer

Seal

Seal

Seal