

No. 13588

Supreme Court of Illinois

Boyd

vs.

Mooers

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 41

1862

Boyd
vs

Mears
1862

13588

STATE OF ILLINOIS—SUPREME COURT,
THIRD DIVISION—APRIL TERM, 1861.

JESSE C. BOYD, Plaintiff in Error,
vs.
JAMES MOOERS, Defendant in Error.

ABSTRACT OF THE RECORD.

This case was originally brought before a Justice of the Peace, in the county of Lee by appellee, against appellant, and by appellant appealed to the Circuit Court of Lee County.

- 1 Shows that a summons was issued by Justice of the Peace, and duly served by the Constable.
- 2 Transcript of the docket of the Justice of the Peace.
- 3 Transcript filed, and suit docketed on the 14th day of May, A. D. 1860, on the 8th day of the May Term of the Lee County Circuit Court of said year.
- 4 Defendant in error by his Attorney, on the 14th day of May, 1860 moved the Court to dismiss the appeal for want of prosecution.— The Court sustained the motion, dismissed the appeal, and awarded a writ of procedendo to Justice of the Peace.

BRIEF OF POINTS AND AUTHORITIES.

- 1 The appeal was docketed on the 14th day of May, A. D. 1860, and on the same day, being the 8th day of the May Term of the Lee County Circuit Court, The Court on motion of defendant in error, dismissed the appeal for want of prosecution; this we deem to be an error.

See 19th of Ill., 53.

The appellee was not served with process, nor was the appeal filed ten days before the first day of the May Term, A. D. 1860.
See 19, Ill., 53.

STATE OF ILLINOIS—SUPREME COURT,
THIRD DIVISION—APRIL TERM, 1851.

JESSE C. BOYD, Plaintiff in Error,
vs.
JAMES MOOERS, Defendant in Error.

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See 19, Ill., 53.

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Jesse C. Boyd
vs

James Mowers

Brief & Abstract

Filed April 22, 1821

Le Leland
Clerk

ASSIGNMENT OF ERRORS.

M. E. VALENZ

ASSIGNMENT OF ERRORS

The Court erred in dismissing the appeal for the reason that the appeal was not filed and served upon the Circuit Court ten days before the first day of the May Term.

STATE OF ILLINOIS—SUPREME COURT,

THIRD DIVISION—APRIL TERM, 1861.

JESSE C. BOYD, Plaintiff in Error,
vs.
JAMES MOOERS, Defendant in Error.;

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See 19, Ill., 53.

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2d. The appellee had not been served with process, and was not in Court to receive its judgment.

3d. The Court erred in dismissing the appeal, for the reason that the appeal was filed and docketed on the 8th day of the Term, at which said suit was dismissed.

4th. The Court erred in dismissing said appeal, when the same had not been called in its order upon the docket.

5th. No summons had been issued against appellee in the Court below.

6th. The Court erred in dismissing the appeal without the defendant in error being in a position to be forced to trial.

W. E. IVES.

GRAY, AVERY & BUSHNELL, for Plaintiff in error.

41 Jesse C. Bayard

vs

James Mowbray

Brief & Abstract

Filed April 22, 1881
L. Leland
Clerk

ASSIGNMENT OF ERRORS.

H. P. 1788

STATE OF ILLINOIS—SUPREME COURT,

THIRD DIVISION—APRIL TERM, 1861.

JESSE C. BOYD, Plaintiff in Error,
vs.
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W. E. IVES.

GRAY, AVERY & BUSHNELL, for Plaintiff in error.

41 Jesse E. Baycl ¹⁰⁵

vs

James Movers

Brief & Answer

Filed April 22, 1881
L. Leland
Clerk

ASSIGNMENT OF ERRORS

W. E. LEE

STATE OF ILLINOIS—SUPREME COURT,

THIRD DIVISION—APRIL TERM, 1861.

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vs.
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James C. Boyd

v s

~~James C. Boyd~~

James Mearns

Prob & Abstracts

Filed April 22, 1871

L. Leland
Clerk

STATEMENT OF ERRORS

H. R. 1173

STATE OF ILLINOIS—SUPREME COURT,

THIRD DIVISION—APRIL TERM, 1861.

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GRAY, AVERY & BUSHNELL, for Plaintiff in error.

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Jesse C. Bayol
vs
James Mowers

Brief & Abstract

Filed April 22, 1881
L. Leland
Clerk

ASSIGNMENT OF ERRORS

W. E. 1718

STATE OF ILLINOIS—SUPREME COURT,
THIRD DIVISION—APRIL TERM, 1861.

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vs.
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W. E. IVES.

GRAY, AVERY & BUSHNELL, for Plaintiff in error.

41 ¹⁰⁵ Jesse C. Bayd
vs
James Mowers

Brief & Abstract

Filed April 22, 1821
L. Leland
clerk

STATEMENT OF ERRORS

M. P. VALE

STATE OF ILLINOIS—SUPREME COURT,

THIRD DIVISION—APRIL TERM, 1861.

¶ JESSE C. BOYD, Plaintiff in Error,
vs.
JAMES MOOERS, Defendant in Error.¶

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GRAY, AVERY & BUSHNELL, for Plaintiff in error.

41 ¹⁰⁵ Jesse C. Bayard
vs
James Mavers

Brief & Abstract

Filed April 22, 1871
L. Leland
clerk

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671 =

13588

J. R. LIVES

Know all men by these presents that we
Jesse C. Boyd and Josiah Evans

are held and firmly bound unto
James M. Moors - in the sum of Two Hundred
and Fifty Dollars lawfull money of the
United States to be paid to the said
James M. Moors. His executors administrators
or assigns for which payment well and
truly to be made we bind ourselves our
heirs Executors and administrators jointly
and severally firmly by these presents
sealed with our Seals and dated this
31st day of May A.D. 1860.

Whereas the above bonded
Jesse C. Boyd and ~~Josiah Evans~~ has filed
his bill of Exceptions from the decisions
of John D. Eustace Circuit Judge of the
2^d Judicial Circuit made and settled
in a case pending in the Supreme
Court of the State of Illinois
in the Third grand division wherein
the said Jesse C. Boyd is plaintiff
in error and the said James M. Moors
is Defendant in error now the condition
of this obligation is such that if the said
Jesse C. Boyd shall pay all such
costs and Damages as shall accrue and
be adjudged against him upon such
appeal then this obligation to be void
otherwise to remain in full force and
virtue.

Sealed and Delivered in
presence of

Jesse C. Boyd 
Josiah Evans 

41 ~~424-705~~

J. L. Boyd Pitts in sum
no
J. M. Moors dept in sum

Bond

Filed June 4, 1860
L. Island
C. M.

Done & done
attest for Pitts in sum

STATE OF ILLINOIS, }
SUPREME COURT, } ss.

The People of the State of Illinois,

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

Because, In the record and proceedings, as also in the rendition of the judgments of a plea which was in the Circuit Courts of Lee County, before the Judge thereof, between James Moores

plaintiff, and Jejee L. Boyd

defendant....., it is said manifest error hath intervened, to the injury of the aforesaid Jejee L. Boyd

as we are informed by his complainant and we being willing that error should be corrected, if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgments thereof be given, you distinctly and openly, without delay, send to our Justices of the 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 Ottawa, in the County of La Salle, on the first Tuesday after the third Monday in April next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of rights ought to be done according to law.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this Fourth day of June in the Year of Our Lord One Thousand Eight Hundred and Sixty

A. Selous
Clerk of the Supreme Court.

Wm. J. Selous
Deputy

Geese C. Boyer
No. 374. us.

James M. Moores

WRIT OF ERROR.

*This Writ of Error is made a
Supersedeas, and as such is to be
obeyed by all concerned.*

L. Keland
Clerk.

FILED *June 4* A. D. 1860

L. Keland
Clerk.

Jesse C Boyd
Plaintiff in error
vs
James M Moore
Defendant in error

Abstract of Record

Page 1st. Summons issued by J.P. return of
Officer of Service

Page 2^d Transcript of J.P.

Page 3^d Transcript filed and docketed
on the 14th day of May 1860 on the
8th day of the May Term of the Lee
County Circuit Court

Page 4th Defendant in error by his Atty
on the 14th day of May 1860. Moved the
Court to dismiss the appeal for
want of prosecution. The Court
sustained the motion and dismissed
the ~~case~~ ^{Appeal}. And awarded pendente
to J.P.

122 Brief of the points & Authorities
The appeal was docketed on the

424 705 41

Summons
in re

Jose C Boyd
Plaintiff in error

vs
James McMeary
Defendant in error

Filed June 4, 1860
Stetson Clk.

Prof 2.70

Refused

"Assignment of Errors"

Bill of Exceptions

The appeal bond in this cause was filed before the Justice on the Twenty Eighth day of March 1850 by the Plaintiff in error and on the fourteenth day of May 1850 the appeal was filed in the Clerk's office of the Circuit Court of Edge County, and was placed upon the docket of the Court, the Eighth day of the May term of said Court, and on the same day the Defendant in error by his attorney entered his appearance and moved the Court to dismiss the appeal for want of prosecution - the cause not being ^{called} in its order for trial. The Court sustained the motion and overruled the appeal & ordered a proceudo to the Justice.

The Plaintiff in error assigns the following for error

First The Court erred in dismissing the appeal, for the reason that the appeal was not filed and placed upon the docket of said Court ten days before the first day of the said term.

Second The appellee had not been served with process and could not be considered in court to receive its judgment.

Thirdly The Court erred in dismissing the appeal for the reason that the appeal was filed & docketed on the Eighth day of the May term of said Court - and the Court

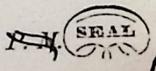
State of Illinois }
 Lee County }
 Pleas in the Lee County Circuit Court
 in the 2nd judicial Circuit of the State
 of Illinois in the matter of James M
 Mores against Jesse L Boyd on an appeal brought into
 said Circuit Court from before Harry Morgan Esq a Justice
 of the Peace in and for said Lee County

Now know ye that the following is a correct
 copy of the summons issued by the Justice of the Peace in
 said Court that is to say

SUMMONS.—Sold by Hawley & Gilbert, Booksellers, Dixon, Ill.

STATE OF ILLINOIS, }
 Lee County. } ss. The People of the State of Illinois, to any Constable of said County, GREETING :

You are hereby commanded to SUMMON Jesse L Boyd
 to appear before me, at my office in Dixon
 on the 10th day of March A. D., 1860 at 10 o'clock, A M., to
 answer the complaint of James M Mores
 for a failure to pay him a certain demand, not exceeding one hundred dollars, and thereof make due return as the law
 directs.

Given under my hand and seal, this 1st day of March A. D. 1860
Harry Morgan J.P. 

" Which said summons was endorsed as follows which
 bonds by reading to the within named Defendant
 in his presence and hearing this 2nd day of March A.D. 1860

Service 25¢
 M'Leary 30¢
 55¢
 Now Steven Marsh

And the Transcript filed in said cause is in the words and figures as follows that is to say

Jamess Mowen }
vs }
John C Boyd } Suit brought on Promissory Note for \$65 = with.
10 per cent interest from 24th June 1859

judgt \$ 68.00
Dw book 131
Dw book Paid
March 1st 1860 Summons issued and placed in the hands of William Stearns Esq. returnable in the 10th day of March 1860 at 10 o'clock A.M. which summons was returned in due time served by reading to Dept of

March 10th 1860 the suit was called the defendant not appearing and no good cause shown why judgment was rendered against the Defendant by default for Sixty eight dollar debt and interest. and costs of this suit taxed at \$ 1.50

March 28th 1860 the Defendant appealed the above cause to the Circuit Court of Lee County

State of Virginia }
Lee County } I Henry Morgan a Justice of the Peace in and for said County do hereby certify that the foregoing Transcript and the papers herewith contain a full and perfect statement of all the proceedings before me in said cause

In Witness Whereof I have hereunto set my hand and seal this 28th day of March A.D. 1860

Henry Morgan J.P. 

Which Transcript brought into the office of the Clerk of the Circuit Court on the Thirtieth day of March A.D. 1860

Bank was not filed or docketed until the 14th day May thereafter, and is Endorsed "Filed May 14th A.D. 1860"
J S Boardman Clerk "

And the appeal Bond filed in said case is in the words and figures as follows that is to say

APPEAL BOND.—Chicago Democrat Print.

KNOW, ALL MEN BY THESE PRESENTS, That we, *Jesse C Boyd & Josiah Evans* of the county of *See* in the State of Illinois, are held and firmly bound unto *James M Movers* in the penal sum of *one hundred and fifty Dollars* lawful money of the United States, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly, severally and firmly by these presents. Witness our hands and seals, this *Twenty eighth* day of *March* A. D. 18*60*

The condition of the above obligation is such, That whereas the said *James M Movers* did on the *Tenth* day of *March* A. D. 18*60* before *Harry Morgan* a Justice of the Peace for the said county of *See* recover a judgment against the above bounden *Jesse C Boyd*

for the sum of *Sixty nine ⁸⁶/₁₀₀ dollars debt & costs* from which judgment the said *Jesse C Boyd* has taken appeal to the *Circuit* Court of the county of *See* and State of Illinois. Now, if the said *Jesse C Boyd* aforesaid,

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 by me at my office, this *28th* day of *March* 18*60*
Harry Morgan

Justice of the Peace.

Jesse C Boyd
Josiah Evans



and which Bond brought into the office of the clerk of the Circuit Court on the thirtieth day of March A.D. 1860 was not filed until the 14th day of May thereafter and is Endorsed "Filed May 14th A.D. 1860"
J S Boardman Clerk "

And at a regular Term of the Lee County Circuit Court Begun and holden at the Court House in the City of Dixon in said Lee County on the first Monday of May To wit on the seventh day of May in the year of our Lord One thousand Eight hundred and sixty

Present
Honor John N. Estace Judge of said 2nd Judicial Circuit

Robert C. Burchall State Attorney of said 2nd Judicial Circuit

James S. Boardman Clerk of said Lee County Circuit Court

Leslie Harding Sheriff of said Lee County

Be it remembered that on one of the regular days of said Term To wit on the 14th day of May aforesaid the following Record^{entry} appears to us in this behalf that is to say

James H. Brown }
vs } appeal
John C. Boyd }
appellant }

on this day comes the Plaintiff by the citation & produces his attorney and on his motion this appeal is dismissed for want of prosecution It is considered and adjudged by the Court that the Plaintiff have and recover of the Defendant his costs and charges by him in this Court expended and that he have execution therefor and that Proceeds be awarded to the

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Justice of the Peace from before whom this appeal was brought

And on the 15th day of May A.D. 1860 the Proceedendo was issued in the words following that is to say

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PROCEDENDO. Printed at the Republican & Telegraph office, Dixon.

STATE OF ILLINOIS. } SS.
Lee County.

To *Harry Morgan* Esquire, a Justice of the Peace in and for the County aforesaid, GREETING:

Although lately in a certain suit then lately instituted and depending before you, between

James M. Mowers plaintiff and *Jepe C. Boyd* defendant

wherein you had rendered judgment in favor of the said *James M. Mowers* against the said *Jepe C. Boyd* therein, for the sum of *Eighty Nine* Dollars, and *86* Cents

beside costs, from which said judgment the said *Jepe C. Boyd* took an Appeal to our Circuit Court for the County aforesaid, whereupon you entirely stayed all proceedings in relation thereto, yet, inasmuch as such proceedings have been had upon said appeal in our said Circuit Court that the said judgment, by you so rendered as aforesaid, remains in full force and effect in all respects as before the taking of said Appeal, and execution of said judgment remains to be done according to law as appears to us of record:

Now therefore, we Command You, That without further delay you proceed on said judgment in such manner as the law directs, in all respects as if the said appeal had never been taken.

WITNESS *David Boardman* Clerk of said Court, and the seal thereof, at *Dixon* in said County this *14th* day of *May* A. D. 1860.

David Boardman Clerk.

Jepe C. Boyd

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424 705 41

Manuscript
in re

Jose C Boyd
Plaintiff in error

James Mc Meary
Defendant in error

Filed June 4, 1860
St. Louis Mo.

Prof 2. 70

Refused