

No. 12256

Supreme Court of Illinois

Addix, et al.

vs.

Merryman, et al.
(as Garnishee.)

Lacon Nov. 29th 1854

L Leland Esq
cl^k Supreme Court

Dear Sir,

Yours of the

28th is before me. The case is docketed
thus in this court

John C. Addix
Samuel B. Vandusen
Thomas B. Smith.

vs

Samuel Lohmestock
William F. Moeller

& William Merryman (as Garnashen)

} Attachment

Any fees

for transcript are \$25.10

The Plffs are non residents. Ira J. Fern-
is security for cost in this court. And W^m
Fern is on the appeal bond to your court. &
he is good.

Respectfully yours

G. L. Fort.

Supreme Court. June Term 1854 -
Addix et al vs Wm Cherryman -
appeal from Marshall -

And now comes said Cherryman by Dickey
his attorney - and moves the court
to dismiss the appeal herein

Reasons -

1st The judgment appealed from does
not amount to \$20 nor relate to a
franchise or freehold -

The plaintiffs claimed a judgment
against the defendant for \$428.28
he obtained judgment for \$300 vs Cherryman
- They do not appeal from the judgment of
the Court that they recover - but from
the judgment in substance that they
are barred from recovering more than
\$300 -

2nd Because the order allowing the appeal
is void for uncertainty - in this - It
does not appear from what judgment the
appellants appealed - On pages 83 & 84
of the record is a judgment against Fahnestock
& Moeller in favor of appellants for \$428.28
and on page 86 - is a judgment in their
favor vs Cherryman for \$300.00 - And
on page 87 - at another time appeal
prayed & allowed - without showing which
judgment is appealed from -

3rd

The judgment is not against the parties appealing
and the statute contemplates appeals in such cases
only - While a writ of error will lie to reverse

the judgment in favor of a plaintiff in error
an appeal will not - R. S. page 420 -
Sec. 47 - Appeals & writs of error stand on
different grounds - 4 Cyclopaedia 353. 370
4th The record does not show that any appeal
bond was ever executed by the appellants
nor that any such bond was ever filed

5th The bond copied into the record - does
not comply with the statute in its con-
ditions - See page 71 - record and R. S.
page 420 - Sec 47 - in this - the obligors
do not undertake to pay the judgment of the circuit
Court - if affirmed - The statute sanctions the
judgment appealed from - the bond does
not - & in this the penalty of the bond
is ~~not~~ not sufficient to cover the amt
of the judgment appealed from & all
costs - the penalty of the bond being
\$100. and the judgment \$300. - 1st

Scammon 55x

6th Appeal was not prayed for at the time
of rendering judgment - J. L. Dickey for
appellee -

Adley et al
vs
Cherryman
Mo. to dismiss
Appeal - &
reasons -
Dickey

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John E. Addison
vs
Wm. Almyman

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1854