No. 14325

Supreme Court of Illinois

Klemm

vs.

Dewes

71641 7

STATE OF ILLINOIS

SUPREME COURT,

Third Grand Division.

4325

No. 126.

1862

In the Supreme Court
at Ottawa
April Term 1862

Otho Klemm, ~~impleaded with~~ Daniel L. Alston & Orin L. Rose, survivors of Wm. H. Davis - dec'd. Defts in Error
vs
Robert Dewey Deft. in Error

And now comes the said Otho Klemm, impleaded as aforesaid, by Beckham & Martin his attorneys, and says, that in the Record of the proceedings aforesaid, and in the rendition of the judgments aforesaid, manifest error hath intervened to his prejudice in this Court -

First - The Court erred in entering the Default and interlocutory judgment against all the defendants, (including said Klemm) on the 30th day of June 1858, - as no process had been served upon said Klemm nor had he in any manner appeared in the said action -

Second - The Court erred in neglecting or refusing to certify said error, when the motion was afterwards made & filed, on the first day of July, to set aside the default -

Third - The Court erred in rendering final judgment against said Klemm predicated upon said default & interlocutory judgment, so erroneously entered, as to him,

Fourth - If the entry of Record of July first 1858

of the motion to set aside the default, he deemed a general appearance in the cause, by Klumm - (which he respectfully protests against) yet the Court erred in afterwards assessing the damages and rendering final judgment against him without his being called upon or permitted to plead or defend himself in any way -

Fifth

The Court erred in rendering the final judgment while the motion to set aside the Default was ~~Disposed~~ undisposed of

Sixth

The declaration being entitled of October Term 1858, and the precipe referring also to said October term - It was erroneous to enter any judgment against the Defendants prior to said October term

And the said Klumm in fact &c. is ready to verify, by the Record aforesaid wherefore he prays process &c and that said judgment may be reversed, & set aside and that he may be restored to all things which he hath lost &c &c -

Beckham & Bruton
Attys for Klumm

And now Comes the defendant in error by Williams, Woodbridge & Quarles his attys & says that in the record, proceedings & judgment in the above entitled cause there is no error.

Williams, Woodbridge & Quarles, attys for defendant in error

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Pleas, before the Honorable George Manierre Judge of the Seventh Judicial Circuit of the State of Illinois, and sole presiding Judge of the Circuit Court of Cook County, in the State aforesaid, and at a special term thereof begun and held at the Court House in the City of Chicago, in said County, on the Fourth Monday, (being the Twenty Eighth day) of May in the year of our Lord One Thousand Eight Hundred and Fifty-Eight and of the Independence of the said United States the Eighty second

Present, Honorable George Manierre Judge of the 7th Judicial Circuit of the State of Illinois.

Carlos Mason States Attorney.

John L. Wilson Sheriff of Cook County.

Attest, William L. Church Clerk.

Be it remembered that heretofore to-wit, on the second day of June, in the year of Our Lord One thousand Eight hundred and fifty-Eight, there was filed in the office of the Clerk of said Court, a certain precipe, in words and figures following to-wit

State of Illinois }
County of Cook }

October Term of the Cook Co Cir Ct - 1858

Robert Dennis
Daniel T. Elston
William H. Davis
Orin S. Rose and
Otho Klemm a firm doing business under the firm name and style of Daniel Elston & Co } Assumpsit - for three thousand dollars

The Clerk of the Circuit Court

within and for Cook County Ills. will please issue a summons in assumpsit as the law directs in the above entitled cause in favor of the above named plaintiff and against the above named defendants to the Sheriff of Cook Co to Execute as the law directs and obligi yours &c

W. W. Drummond
Pltffs Atty

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Chicago Ills. June 21 1858

And thereupon, To-wit, on the same day and year last aforesaid, there was issued out of and under the seal of said Court the People's writ of summons, directed to the Sheriff of said County to execute, in words and figures following. To-wit

State of Illinois } ss
County of Cook }

The People of the State of Illinois, to the Sheriff of said County, Greeting

We command you that you summon Daniel T. Elston William H. Davis, Orin J. Rose & Otto Klemm if they shall be found in your County, personally to be and appear before the Circuit Court of Cook County, on the first day of the next Apl term thereof, to be holden at the Court House in Chicago in said County on the Fourth Monday of June next, to answer unto Robert Dexter in a plea of Trespass on the Case upon promises to the damage of the said plaintiff as is said in the sum of Three Thousand Dollars, and have you then and there this writ, with an endorsement thereon

in what manner you shall have executed the same
Witness William L. Church Clerk of
Our said Court, and the seal thereof
of Chicago aforesaid this 2d day of
3 June A.D. 1858. Wm L Church Clerk

Seal

And afterwards, to-wit, on the fifth day of June
in the year last aforesaid, said writ was returned
into said Court, by said Sheriff. Endorsed as
follows. To-wit —"
Served by reading to the within
named Daniel T Elston. William H. Davis & Orin J
Rose, Elenm. not found the 5th day of June 1858
Fees $ service 100, 5 mile 25. 1 return 10 = 1,35 paid by
pltffs Atty — John L. Wilson Sheriff
By Wm Dunn Deputy —

And afterwards, to-wit, on the Sixteenth day of
June in the year aforesaid, said Plaintiff by
W. W. Drummond his Attorney, filed in said Court
his certain Declaration, in words and figures following
To-wit —"
Cook Co. Cir Court —
3 State of Illinois } ss. Oct Term for A.D. 1858
County of Cook }
Robert Dennes
v
Daniel T Elston, William H. Davis, Orin J Rose and
Otto Klemm, a firm doing business under the partnership firm

name and style of Daniel Elston & Co —

4 Robert Dorrs. (by W. W. Drummond his attorney) the plaintiff in this suit complains of Daniel T. Elston, William H. Davis Orin S. Rose and Otho Klemm partners doing business under the firm, name and style of Daniel Elston & Co at Chicago, County of Cook and State of Illinois of a plea that they render unto the said Robert Dorrs the sum of Three thousand dollars lawful money of the United States, which they owe to and unjustly detain from him — For that whereas the said defendants, So=nd, on the first day of October in the year of Our Lord One thousand Eight hundred and fifty-seven, at the City of Chicago County of Cook and State of Illinois aforesaid, were indebted to the said plaintiff in the sum of Three thousand dollars lawful money of the United States, for so much money by the said plaintiff before that time paid laid out and expended, to and for the use of the said defendants at their like special instance and request — And whereas also the said defendants afterwards, So=nd, on the day and year last aforesaid, were indebted to the said plaintiff in the further sum of Three Thousand dollars of like lawful money, for money by the said plaintiff before that time lent to the said defendants, and at their special instance & request, and being so indebted they the said defendants

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in consideration thereof, afterwards to-wit, on the day and year last aforesaid, at Chicago Cook County Illinois aforesaid, undertook and then and there faithfully promised the said plaintiff to pay him the said last mentioned sum of money when they the said defendants should be thereunto afterwards requested — And also for that whereas the said defendants, afterwards to-wit, on the day and year last aforesaid were indebted to the said plaintiff for so much money before that time, and then, due and payable from the said defendants to the said plaintiff, for interest upon and for the forbearance of divers large sums of money before that time lent and advanced by the said plaintiff to the said defendants, at their special instance and request, and by him the said plaintiff forborne to the said defendants for divers long spaces of time before then elapsed, at the like special instance and request of the said defendants, and also for other money, before that time and then due and payable from the said defendants to the said plaintiff for interest upon and for the forbearance of divers other large sums of money before then due and owing for the said defendants to the said plaintiff, and by the said plaintiff forborne to the said defendants for divers long spaces of time before then elapsed, at the like special instance and request of the said defendants; and being so indebted

they the said defendants in consideration thereof afterwards. So=wit, on the day and year last aforesaid, at Cook County Illinois aforesaid undertook and then and there faithfully promised the said plaintiff to pay him the said last mentioned sum of money, when they the said defendants should be thereunto afterwards requested — Nevertheless the said defendants not regarding their said several promises and undertakings but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said plaintiff in this behalf, hath not as yet paid the said several sums of money (in the several counts of this declaration mentioned) or any or either of them, or any part thereof to the said plaintiff, although often requested so to do, but the said defendants to pay him the same hath hitherto wholly neglected and refused and still do neglect and refuse to the damage of the ~~of the~~ said plaintiff of the sum of three thousand dollars and therefore he brings his suit &c by W. W. Drummond his Attorney

Account referred to in the several Counts of the foregoing Declaration —

Daniel Elston & Co
To

Dr
Robert Dems

A.D. 1857

July To cash lent to you $3000,
Aug To cash paid to you by Hugh Mohr 4000
Sept for me at your request $3000,
7 Oct To Cash paid out for you at your request $3000,
Oct To Cash paid Hugh Mohr for you $3000,
Nov To cash paid to R K Smith & co for you $3000,
Dec Interest due on the above demands $3000,

W. W. Drummond
Pltffs Atty

And afterwards, to-wit, at the June Special Term of said Court, to-wit, on the Thirtieth day of June in the year of Our Lord Eighteen hundred and fifty Eight, the following proceedings, among others, were had and entered of record, to-wit

13674 " Robert Dorrer v Daniel T. Elston, William D. Davis, Orin D. Rose & Otho Klemm } Assumpsit

This day come the said plaintiff, by W. W. Drummond his attorney, and due personal service of process of summons issued in this cause, having been had on the said defendants, and they being three times severally solemnly called in open Court come not, nor does any person for them, but herein they make default; which on motion is ordered to be taken and entered of record. Wherefore said plaintiff ought to have and recover of the said defendants, his damages herein sustained

by occasion of the premises — and thereupon a reference is had to the Court to assess said plaintiffs damages herein, hereafter —

5

And afterwards. Do=wit, at the same term of said Court aforesaid, Do=wit, on the First day of July in the year last aforesaid, the following proceedings, among others, were had and entered of record Do=wit;

" Robert Dance
13674 } Assumpsit
Daniel T. Elston, William H. Davis, Orin S. Rose & Otto Klemm

This day come the said Defendants by their Attorneys, and they now move the Court to set aside the default, heretofore taken, and Entered of record against them in this Cause —

And afterwards, Do=wit, at the same term of said Court. Do=wit, on the Seventeenth day of July in the year last aforesaid, the following proceedings, among others, were had and entered of record Do=wit —

" Robert Dance
13674 } Assumpsit
Daniel T. Elston, William H. Davis, Orin S. Rose & Otto Klemm

This day again come the

5

paid plaintiff by W. W. Drummond his attorney, and the default of the paid defendants having been heretofore taken and entered of record. Do=wit, on the

9 30th day of June last past, and a reference then being had to the Court to assess paid plaintiffs damages herein, and the Court having heard the allegations and proofs submitted by paid plaintiffs, and being fully advised in the premises, now assesses paid plaintiffs damages herein to the sum of Two Thousand and seven hundred dollars

Therefore it is considered that paid plaintiff do have and recover of the paid defendants, his damages of Two Thousand and seven

$ 2700.00 hundred dollars, in form as aforesaid by the Court assessed, together with his costs and charges by him about his suit in this behalf expended and have execution therefor —

And afterwards Do=wit, at the same term of paid Court. Do=wit, on the 20th day of July in the year last aforesaid, the following proceedings, among others, were had and entered of record. Do=wit —

"Robert Dewes

1367 4 Daniel T. Elston. William Le Davis. Orin J Rose & Otho Klemm } Assumpsit

This day comes the paid plaintiff by W. W. Drummond his attorney, and

moves the Court for leave to place in the files of this cause, the declaration therein, which has heretofore been misplaced among the files of another suit, between the same parties, and due notice having been given of this ~~notice~~ motion to Clements and Hosmer Attorneys of the said defendants, and it appearing to the Court from the proofs submitted, that the said declaration was duly filed by the Clerk of this Court, as appears on the back thereof, but placed by him, by mistake among the papers of another suit now on the docket for the present term between the same parties —
It is therefore ordered that the Clerk be directed to place the said declaration among the files in this suit, where the same belong, which is accordingly done —

I, WILLIAM L. CHURCH, Clerk of the Circuit Court of Cook County, in the State aforesaid, do hereby certify the above and foregoing, to be a true, perfect and complete copy of All papers on file (Excepting Executions) & all proceedings Entered of record in a certain cause lately pending in said Court, on the Common Law side thereof, wherein Robert Denes was plaintiff and Daniel T. Edelen Etal Defendants

In Witness Whereof, I have hereunto set my hand, and affixed the Seal of said Court at Chicago, this Twenty first day of February A. D. 1862

Wm L Church Clerk.

31 126

Otto Klumm
et als.
v
Robert Dewes

Recd & Encs -

Filed March 15. 1862.
L. Leland
Clk.

3.00

Security for Costs.—Jones, Perdue & Small, Stationers, Chicago.

Otho Nelson, Daniel Elston & others
Deft in Error

VS.

Robert Dawes
Deft in Error

In the Supreme Court, at Ottawa
April term 1862.
Error to the

SUPERIOR COURT OF CHICAGO.

I do hereby enter myself security for costs in this cause, and acknowledge myself bound to pay or cause to be paid, all costs which may accrue in this action, either to the opposite party or to any of the officers of this Court, in pursuance of the laws of this State.

Dated this fifteenth day of March A.D. 1862

R. R. Clark

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No. 126

~~SUPERIOR~~ Superior COURT OF ~~CHICAGO.~~ Illinois

Otho Klemm
and Others

VS.

Robert Dewey

BOND FOR COSTS.

Filed this 16th day of April
A.D. 1862

L. Leland
Clerk.

Bronson & Martin
Pl'ff's Att'y.

Otho Klemm
Daniel J. Elstner &
Orin fe Rose, Survivors
of Wm H. Adams, dec'd.
Plffs in Error
vs.
Robert Devers
Deft. in Error

In the Supreme Court
at Ottawa
April Term 1862
Error to Cook

On filing enclosed transcript of Record (& a sight-error assigned) please make out the writ of Error — and issue & send to us a Scire facias to be served directed to Sheriff of Cook & returnable 1st day next term in above case — We don't ask a supersedeas — We shall remit to you on filing abstracts of the Record —

Yours truly
Burnham & Martin
Attys for Plffs in Error

To
Clerk of Supreme Court
3rd Grand Division
at Ottawa

Chicago
Dated March 10th 1862

We send herewith the abstracts to file — & ff. advance fees to cover
Sec'y
B. & M.

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126

Otto Klemm et al

v

Robert Davies

Filed Mch. 15, 1862

A. Leland

Clk.

STATE OF ILLINOIS, } ss. The People of the State of Illinois,
SUPREME COURT,

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

Because, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of Cook County, before the Judge thereof, between

Robert Dewes

plaintiff, and Daniel T. Elston, William H. Davis, Orin J. Rose & Otto Klemm

defendants, it is said manifest error hath intervened, to the injury of the aforesaid Otto Klemm, Daniel T. Elston & Orin J. Rose

as we are informed by their 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 judgment 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 right 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 15th day of March in the Year of Our Lord One Thousand Eight Hundred and Sixty two.

L. Leland

Clerk of the Supreme Court.

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Otto Klemm et al

No. 126 vs.

Robert Dewes

WRIT OF ERROR.

FILED March 18th A. D. 1862

L. Leland

Clerk.