

No. 8556

Supreme Court of Illinois

Ryan, Assignee

vs.

Vanlandingham

71641  7

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Ryan Assignee &c

vs.

Vanlandingham's
Heirs -

The Record withdrawn
by leave of the court,

Wm. Thomas

19 Nov 1859

8556

paid by J. M. Thomas - \$5.00 - 4
Receipt given therefor 19 Nov. 1859.

In Supreme Court.

By James Spigurne for November 1859.

vs Applicant James Gallatin.

Washington

The Appellant insists that the appeal should not be dismissed, because this case is different from the cases relied on by respondents.

1. The judgment in this case is in bar of the plaintiffs action in which our \$4000 is claimed - see page 5, 6, 7 of Record.
2. The Agreement copied in the Record at page 8 shows consent to the remedy by appeal.
3. In the case of Barnes vs Barton 1 Gilman 403 the appeal was sustained, where the judgment was for defendants for costs, and also in bar of the action.
4. The case of Bowers vs Green 1 Scam 423 shows the reasons why the appeal in this case should be sustained.
5. This is a proceeding by Attachment laid on Real Estate, - no special Bail, or Bond given, and the judgment would operate directly upon the Real estate, Revised Statutes § 66 Sec 14 & 15. See Section 28 of same Law.

The case of *Wentington County vs Pauline*
4 Gillman 353. Shows, that no judgment in
bar of the action had been rendered,
the judgment was for costs only. - leaving
the parties to litigate again in respect
to the cause of action,

The case in 11 Illin's Shows, that no
judgment in bar was rendered,
the judgment did not determine the
rights of the parties in the case, nor
conclude either party.

The question now presented was decided
by the Court of Appeals of Kentucky
in *Vander v Love* 2 House 152-3.
the appeal sustained. - Also 5 House 596.

The same question in effect was decided
in the case of *Briscoe v Briscoe* 1 Little 363.
So also in the case of *May & wife against*
Hardins East 13 B. House 344.

The decision in the case of the U.S. apt 84
Bones of Surgeon J Peters Reports, ⁴⁵⁹ proceeds
upon the ground, that no judgment in bar
of an action, is in respect to preff
equivalent to a judgment in respect to
suff for a definite amount. -

See also *Gordon v Ogden* 3 Peters 34.

" " *Scott v Lewis Adams* 6 Peters 350.

That the questions presented by the motions have
never been decided by the Supreme Court,
except in the case of *Barnes* and *Barber*, 1 Gilman 403.
may be, because no one ever supposed
since that decision
before, that a judgment in favor of one
action, was not equivalent to, or the
same as, ^{in respect to effect} a judgment for plaintiff, -
^{in respect to defendant.}
The Statute of Illinois, was probably copied
from that of Kentucky, as the language
is the same, and the decisions in
Kentucky ought therefore to be adopted
in Illinois,

W. D. Thomas

No 49.

By me

3 Appends

3 from Galatin

translating from

pepper Brins on

motion to

dismiss

Ebenezer J Ryan
Appigneer v.

} Appeal from
Gallatin.

vs.
Oliver C Vandenberg
et al.

And come the appellees & move
the court to dismiss this appeal.

1st - Because the judgment below
did not relate to a franchise
or freehold & ~~was~~ for \$20
& costs against the appellant
Washington Co. vs. Parlier 4 Gil. R. 353.
Rose et al. vs. Campbell 11 Ill R. 167.

2d - Because the ^{appeal bond} bond was not in
the form required by law nor
was it filed in the time required
by the court below nor was the
security approved as required by law

Freeman & Underwood
Attys for appellees

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Ryan arrived at

17,
Van Cumbergham

McLean to discontinue
appeal.

Ebenezer J Ryan
Appigneer v.

Appeal from
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Freeman & Underwood
Attys for appellees

Ryans

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Motion to dismiss

standingness

repose the question of jurisdiction

1 Kent 298 & notes.

3 Peters R 469.

4 Paige 365.

No 49.

Ryan

Naval and
Additional
Authorities on
Motions to Dismiss