

No. 14764

Supreme Court of Illinois

City of Monmouth

vs.

Allen

STATE OF ILLINOIS,
SUPREME COURT,
THIRD GRAND DIVISION.

x

No. 162

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

Allen
25
Chas Menzies
1865

State of Illinois }
Warren County } 3d.

Be it Remembered that heretofore to wit
on the 2^d day of June A.D. 1863, an appeal was filed in
the office of the Clerk of the Circuit Court of Warren
County Illinois, of which said appeal the Complaint
is in the words and figures following to wit:

State of Illinois, }
Warren County, } 3d. In the name and by the Authority of
City of Mornmouth, } the People of the State of Illinois.

The Complaint and information of Susan
Forghar made before W^m A Robinson Police Magistrate in
and for the City of Mornmouth, County of Warren and
State of Illinois, on the 22^d day of May, A.D. 1863, who,
being first duly sworn, deposes and says, that one Catha-
rine Allen on the 16th day of May A.D. 1863 was guilty
of five breaches of an Ordinance of said City entitled an
Ordinance relating to Spirituous, Vinous, Malt, fermented
and intoxicating, liquors; by selling, bartering and
Exchanging the same; She not being an apothecary or
druggist nor the Clerk or servant of any such
apothecary or druggist, at and within the Corporate
limits of said City of Mornmouth, County of Warren
and State of Illinois, Contrary to the Ordinances of said
City and against the peace and dignity of the same
people of the State of Illinois.

Subscribed and Sworn to before Susan Forghar.
me this 22^d day of May A.D. 1863.

W^m A Robinson (L.S.)
Police Magistrate.

The Warrant is in the words and figures following,
to-wit:

State of Illinois, } The People of the State of Illinois,
Warren County, } ss. To the City Marshal or any
City of Marmouth. } Policeman of said City; or any
Constable of said County-Greeting.

Whereas Susan Farguhar has this day made
Complaint on oath before me, Wm^m A. Robinson Police
Magistrate of the City of Marmouth, that Catharine
Allen on the 16th day of May A.D. 1863, was guilty of a
breach of an ordinance, entitled an ordinance in relation
to Spirituous, Vinous, Malt, fermented, and intoxicating,
liquors by Selling, bartering and exchanging the same,
She not being an Apothecary or Druggist nor the Clerk
or servant of any such apothecary or Druggist: in the
City of Marmouth, and County of Warren and State
of Illinois aforesaid, Contrary to the ordinances of said
City of Marmouth, And against the peace and dignity
of the said people of the State of Illinois. This is
therefore to command you forthwith to arrest the said
Catharine Allen and bring her before me, at my office
in Marmouth, to answer the said City of Marmouth
in said Complaint, And to be dealt with according to law
and the Ordinances of said City of Marmouth.

In Witness Whereof, the said Wm^m A. Robinson
has hereunto set his hand and Seal, this 22^d day
of May A.D. 1863.

Wm^m A. Robinson (L.S.)
Police Magistrate.

On the back of said Warrant is the following endorsement
by the City Marshal to wit:-

Executed by arresting the within named
Defendant and have her body now in Court.

May 28th 1863.

John Linn City Marshal

Filed June 2^d 1863.

W Lafferty Ck.

The bond is in the words and figures following to wit:-

Know all Men by these Presents, That we Catharine
Allen and N Allen George P Sloan are held and
firmly bound unto the City of Monmouth in the special
Sum of Ninety five Dollars, lawful money of the United
States, for the payment of which, well and truly to be made,
we bind ourselves, and heirs and administrators, jointly
severally and firmly by these presents.

Witness our hands and Seals this 28th day of May 1863.

The condition of the above Obligation is such, that whereas
the said City of Monmouth did on the 28th day of May
AD 1863 before William A Robison Police Magistrate City
of Monmouth County of Warren and State of Illinois,
recover a judgment against the above bounden Catharine
Allen for the Sum of Forty Dollars and Costs, from
which judgment the said Catharine Allen has taken an
appeal to the Circuit Court of the County of Warren
aforesaid, and State of Illinois, Now, if the said
Catharine Allen shall prosecute her 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.

Katherine M Allen (LS)

N Allen (LS)

G P^{his} X Shown (L.S.)
Mar 18

Approved before me this 28th day of May A.D. 1863.
William W. Robinson
Police Magistrate.

Filed June 2^d 1863.

Wm Lafferty Ck.

The Transcript is in the words and figures following,
to-wit:

State of Illinois }
Marion County } ss.
City of Monmouth }

City of Monmouth }
ss. } Charge Selling liquors.
Catharine Allen }

May the 22^d 1863. This day comes Susan Ferguson and
makes complaint on oath that on the 16th day of May
1863 One Catharine Allen was guilty of five breaches of
an ordinance of said City entitled an ordinance relating
to Spirituous, Vinous, malt, fermented, and intoxicating
liquors, by selling, bartering and exchanging the same
as per complaint;

Whereupon a warrant is issued for the arrest of said
Catharine Allen and delivered to John Lorimer City
Marshal to serve;

May the 28th 1863;

Warrant returned by Marshal Lorimer, Executed
by arresting the within named Defendant and
has her body now in Court; John Lorimer City Marshal

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Motion by Defendant to dismiss the suit for want of sufficient Complaint and warrant; Motion heard and overruled; Nelson Farguhar, A J Alfred Leath and Quin and Mary Higgins was sworn and testified on the part of the plaintiffs;

License from the United States Government to retail liquors was offered in Evidence by defendant; upon hearing the Evidence it is considered by the Court that the Defendant is guilty of two breaches of said ordinance, and that the City of Monmouth have and recover of the said Defendant the sum of Forty Dollars fine and costs of suit herein taxed at \$6.40.

Wm A Robison

Police Magistrate.

May the 28th 1863; This day comes John Lorimer City Marshal and on oath says that there is danger of the judgment in the above Case being lost unless Execution issue forthwith; Whereupon an Execution is issued and delivered to Marshal Lorimer to serve.

May the 28th 1863; Execution returned; by Marshal Lorimer no Property found, fees 50¢.

May the 28th 1863 Writ issued and Defendant Committed to the Common Jail of Warren County;

May the 28th 1863; This day the above named Defendant files her bond with A Allen and J. P. Brown as her Securities for an appeal to the Circuit Court of Warren County; whereupon she is discharged from imprisonment.

W A Robison P. M.

State of Illinois 3
Warren County 3
City of Marmouth 3

I Wm A. Robinson Police Magistrate
in and for said City, 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 Cases;

In Witness whereof I have hereunto set my
hand and seal this 1st day of June A.D. 1863.

Wm A. Robinson

Police Magistrate.

On the back of which transcript is the following
filing by the clerk of the said Circuit Court,
to wit:

Filed June 2^d 1863.

Wm Laferity CK.

And afterwards to wit on the 24th day of October
A.D. 1864 an order was entered upon the Records
of the said Circuit Court of Warren County Illinois
which is in the words and figures following to wit:

State of Illinois 3
Warren County 3

Pleas before the Honorable John
P. Thompson Judge of the Tenth Judicial Circuit
of the State of Illinois, At a Circuit Court begun
and held at the Court House in the City of Marmouth
in Warren County Illinois On the fourth Monday
in the Month of October in the Year of Our Lord

One Thousand Eight Hundred and Sixty four
It being the 24th day of said Month.

Present Hon John P. Thompson Judge
James H. Stewart States attorney
David C. Riggs Sheriff
Wm. Laferty clerks.

Afterwards to wit on the 27th day of October
AD 1864 among other things the following Order
was entered upon the Records of the said Circuit
Court, to wit:

City of Monmouth }
vs } Appeal
Catharine Allen }

This day came the Plaintiffs
by attorney and the defendant being three times
Solemnly called came not nor any one appearing to
prosecute the appeal taken herein. It is therefore ordered
by the Court that the appeal taken herein be dismissed
And it is further ordered by the Court that a writ
of Proceudo Issus herein directed to the justice
of the Peace from before whom the appeal was
taken. And it is further ordered by the Court that
the Plaintiffs recover of the Defendant their costs
by them in this Court made and may have execution
therefor.

And afterwards to wit on the 1st day of November
AD 1864, Among other things, the following order
was entered upon the Records of the said
Circuit Court of Warren County Illinois
to wit:

City of Monmouth
 vs
 Catharine Allen } Appeal

This day came the Defendant by attorney and enters his motion to set aside the default taken herein.

And afterwards to wit on the 2^d day of November AD 1864, Among other things, an order was entered upon the Records of the said Circuit Court which is in the words and figures following to wit in

City of Monmouth
 vs
 Catharine Allen } Appeal.

This day again this Cause coming on to be heard on the defendants motion to set aside the default taken herein, and after hearing the same it is ordered by the Court that the motion be overruled. Thereupon came the defendant and pray an appeal to the Supreme Court which is allowed by the Court upon the said defendant entering into bond Conditioned according to law in the Penal sum of Two Hundred Dollars. And by Consent and agreement bond to be approved by the clerk of this Court. And by Consent and agreement bond and Bill of Exceptions to be filed in thirty days from this date.

Ordered that Court adjourn till Court in Course

The Bill of Exceptions is in the words and figures following to-wit:

The City of Monmouth } Warren Circuit Court
vs } October Term AD 1864
Catharine Allen }

It is remembered that at & during said term of said Court the said Defendant made her motion to set aside the default & the order dismissing the appeal in said Cause & read in support thereof the following affidavits to-wit:

The City of Monmouth }
vs } Warren Circuit Court
Catharine Allen } Oct. T 1864

A. G. Kirkpatrick being first duly sworn deposes & says that in the Court below he was employed by defendant's husband who acted for her to defend said Cause, that he did so; that an appeal was taken by defendant & affiant employed to defend & attend to the Cause in this Court, that in consequence of Judge Lawrence's decision that the payment of the docket fee in this Court by appellee was not sufficient evidence of want of prosecution on appeal cases to dismiss appeals taken, affiant told said Allen that it was not necessary for him to pay the same & he did not pay the same. And said Allen then employed affiant to attend to & defend said Cause in this Court whenever the Plaintiff paid docket fee & put the same on Docket.

That affiant so promised & agreed & has been so

attended as punctually he believes attending to business ever since that time in this Court as any member of this bar & has been at all Terms & times ready to try said Cause since the appeal was taken & is now ready to try the same.

That the first he knew that said appeal case was put on the Docket & Appeal dismissed was yesterday within 2 hours before he made the Motion to let aside order dismissing Appeal and that at the first opportunity thereafter he made Motion to let same aside.

That he has been in attendance during the whole of the present Term & did not hear said Defendants name called, although at no time & all times during the Term has he been out of the Court Room more than 2 hours & then only when he supposed that there was other business occupying the attention of the Court & when he left the Court was actually employed in such business in which affiant was not engaged. That he is now willing to waive a jury or do any thing else to accommodate Plffs so as to get a trial at this Term of Court. & that affiant expects to defeat plaintiffs in the cause after a fair trial.

That said Cause was not put on the bar docket & is not now on the bar docket, which was the cause that affiant did not know till yesterday of the docketing of said cause for he affiant has repeatedly looked over the bar

Docket for said docketing & would have seen
the same had it been on the bar docket.

A. G. Kirkpatrick
Subscribed & sworn to before me this 2^d day of
November AD 1864

Wm Lafferty Clerk.

Filed Nov. 2, 1864

W Lafferty CK.

City of Monmouth

vs
C. Allen

A. G. Kirkpatrick after being
first duly sworn deposes & says that J. M.
Kirkpatrick was not in partnership with affiant
when said employment took place set forth in
affidavit already filed, that so far as affiant
knows he J. M. Kirkpatrick knew nothing about
said case & was not employed by said deft.
That affiant was defts only attorney & that
affiant told deft it would not be required of
her to be present & she has not been in attendance

A. G. Kirkpatrick
Subscribed and sworn to before me this 2^d day
of November AD 1864

Wm Lafferty Clerk.

Filed Nov. 2^d, 1864

W Lafferty CK.

and the Plaintiff then read the following
affidavit.

State of Illinois } In Circuit Court
Warren County } October Term AD 1864

Docket for said docketing & would have seen
the same had it been on the bar docket.

A. G. Kirkpatrick
Subscribed & sworn to before me this 2^d day of
November AD 1864

Wm Lafferty Clerk.

Filed Nov. 2, 1864

W Lafferty CK.

City of Monmouth

vs
C Allen

A. G. Kirkpatrick after being
first duly sworn deposes & says that J. M.
Kirkpatrick was not in partnership with affiant
when said employment took place set forth in
affidavit already filed, that so far as affiant
knows he J. M. Kirkpatrick knew nothing about
said case & was not employed by said deft.
That affiant was defts only attorney & that
affiant told deft it would not be required of
her to be present & she has not been in attendance

A. G. Kirkpatrick
Subscribed and sworn to before me this 3^d day
of November AD 1864

Wm Lafferty Clerk.

Filed Nov. 2^d 1864

W Lafferty CK.

and the Plaintiff then read the following
affidavit.

State of Illinois In Circuit Court
Warren County October Term AD 1864

City of Monmouth }
 vs } Appeal.
 Catharine Allen }

Almon Kidder atty for said Plaintiff being duly sworn says that at the time said cause was put on the Docket and the appeal dismissed the said Defendant was called in open Court in an audible voice, that it is the recollection of affiant that J. M. Kirkpatrick the partner of A. G. Kirkpatrick was present in Court and heard said Calling of said Defendant - that affiant had no knowledge whatever that said A. G. Kirkpatrick was the atty of said Defendant to prosecute said appeal, was watching the same or had any thing to do with the case now - that said suit was commenced before the Police Magistrate of said City of Monmouth against said Defendant, and said fine imposed for selling intoxicating drinks to some small boys which they drank and became drunk and intoxicated from the effects thereof - that affiant believes that there is no doubt of the truth of this charge - that affiant is informed and believes that said appeal was taken by said Defendant for delay and to evade the justice of Law -

Subscribed and sworn to }
 before me this 2 day } Almon Kidder
 of November AD 1864 }

Wm Lafferty Ck.

Filed Nov. 2^d 1864

Wm Lafferty CK.

This was all the evidence on the Motion & the Court overruled the Motion setting aside said default & dismissed said appeal to which decision & judgment of the Court said defendant then & there in open Court excepted & which exceptions are now reduced to writing & allowed & signed & sealed by the Court.

John S Thompson Seal

Filed Nov 2^d 1864

Wm Lafferty CK.

Afterwards to wit on the 2^d day of December AD 1864 a bond was filed in the office of the Clerk of the said Circuit Court which is in the words and figures following to wit: I know all men by these Presents, that we Catharine Allen & N Allen & G. P. Shraw are held and firmly bound unto the City of Monmouth in the penal sum of Two Hundred Dollars 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 day of November Anno Domini, One thousand eight hundred and sixty four.

The Condition of the above obligation is such; That whereas, the City of Monmouth did on the 27th day of October, 1864, in the Circuit Court within and for the County of Warren, and State

of Illinois, recover a Judgment against the above bounden Catharine Allen for the Costs of Suit, from which judgment of said Circuit Court, the said Catharine Allen has prayed for and obtained an appeal to the Supreme Court of said State.

Now if the said Catharine Allen shall duly prosecute her said appeal with effect, and shall moreover pay the amount of the judgment, costs, interest and damages, rendered and to be rendered against her in case the said judgment shall be affirmed in the said Supreme Court, then the above obligation to be null and void, otherwise to remain in full force and virtue,

Katharine M Allen (L.S.)

N Allen (L.S.)

G. P. Sloan (L.S.)

Filed and approved by me this 2^d day of
December 1864

Wm Lafferty Ck.

State of Illinois }
Warrick County } ss.

I D. M. Luster Clerk of the Circuit Court in and for said County and State do hereby certify that the annexed and foregoing is a true, perfect and complete transcript of the Record in the above entitled Cause as appears from the Records and papers now in my office

In Witness whereof I have hereunto
Set my hand and affixed the Seal
of my office at Monmouth this
2^d day of March AD 1865
Wm Luster Clerk

He looks fees for 4th

appellant	Catherine M. Allen	}	Supreme Court of Illinois
	"		April Term 1865
appellant	The City of Monmouth	}	appeal from same

and now comes said appellant Catherine M. Allen and says that in the proceedings of said Circuit Court of same County of Illinois from said record there is manifest error upon which appellant assigns the following:

- 1 The court erred in dismissing her said appeal
 - 2 The court erred in refusing to set aside said ~~affidavit~~ order dismissing said appeal upon the affidavits of the reasons stated
 - 3 The proceedings of said Circuit Court were otherwise informal & erroneous
- she therefore prays that said judgment of said Circuit Court shall be reversed & for nought held &c

A. H. Michalski Atty for

State of Illinois
Miner Grant Division 3rd

For Supreme Court
4th April Term AD 1865

162
Catherine M. Allen

r
The City of Monmouth

appeal from

Waver

Filed Apr. 5. 1868.
S. Leland
Clerk.