

No. 14556

Supreme Court of Illinois

Atkins

vs.

Ritter

STATE OF ILLINOIS,
SUPREME COURT,
THIRD GRAND DIVISION.

No. 124

J. W. Middleton & Co., Stationers, 126 Lake St.

Attest
75

Rutter

14556

Dearium Atkins
Plaintiff in Error

vs.

Joseph O Rutter and
William J. Endicott
defendant in Error

Error to
~~Circuit Court of~~ COOK COUNTY.

Supreme Court of Illinois
April term 1864

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 Second day
of April A. D. 1864

W. D. Dglehart

Clerk of Supreme Court
Will please issue ^{cert of Error} habeas corpus

To Sheriff Cook County
Arrington & Dent,
Attys. for Plff. in Error.

N^o 124.

Seamus Atkins
Plff. in Error

VS.

Joseph O. Rutter,
et al
Defts. in Error

BOND FOR COSTS. ✓

Receipt —

Filed this 4th day of April
A.D. 1864.

L. Kelan Clerk.

STATE OF ILLINOIS,
SUPREME COURT.

ss. The People of the State of Illinois,

To the Sheriff of

Cook

County, GREETING:

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

~~Learam Atkins~~
Joseph O. Rutter and William F. Endicott
plaintiffs, and

~~Joseph O. Rutter & William F. Endicott~~
Learam Atkins

defendants, it is said that manifest error hath intervened, to the injury of the said

Atkins

as we are informed by his complaint, the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law: Therefore, We Command You, That by good and lawful men of your County, you give notice to the said

Joseph O. Rutter & William F. Endicott

that *they* be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April ~~next~~ ^{inst.}, to hear the record and proceedings aforesaid, and the errors assigned, if *they* shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said

Rutter & Endicott

notice, together with this writ.

Pinckney H. Walker
Witness, The Hon. *John A. Gates*, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this *4th* day of *April* in the year of our Lord One Thousand Eight Hundred and Sixty-four.

L. Seland
Clerk of the Supreme Court.

Leanne Atkins

No. VS.

Joseph O. Butler & William F. Endicott

SCIRE FACIAS.

Filed... March 23. A. D. 1864

Alfred Clerk.

Served by reading this writ to the within named Joseph O Butler, and William F Endicott this 8th day of April 1864

David S Hammond Sheriff
By John A Nelson Deputy

Fees
2 hours 1-00
2 miles 10
1 return 10
\$1-20



Chicago, Apl. 2, 1864.

L. Seland, Esq.,
Clerk Supreme Court,

Dear Sir:

We inclose Bond for costs
& proceipe for Writ of Error sci. fa., together
with \$11.50 to pay Judges fees, Revenue stamps
& an advance of \$5 towards Clerk's fees.

Please send us the ~~writ of error~~ sci. fa.
without delay. The record we shall send
on Monday, retaining it now to prepare
the abstract.

Yours Truly,

Arrington & Dent.

IN THE SUPREME COURT,

THIRD GRAND DIVISION, APRIL TERM, A. D. 1864.

JEARUM ATKINS,
Plaintiff in Error,
 VS.
 JOSEPH O. RUTTER AND
 WILLIAM F. ENDICOTT,
Defendants in Error.

Error to Cook Circuit Court.

ABSTRACT OF RECORD AND POINTS OF PLAINTIFF IN ERROR.

Record, p.

1 The defendants in error, on the 6th of March, 1861, filed in said
court their declaration, with a cognovit, warrant of Attorney and note,
and thereon judgment was entered up in their favor against the plaintiff
7 in error, as by confession, for \$1663.67 damages, together with costs.
The note declared on, and so filed, was dated October 9, 1860, for \$1,650,
payable two months after date, with interest at 10 per cent. after due.

The warrant of Attorney, after reciting that Atkins was indebted
to _____ upon a certain promissory note of
said date, for \$1650.00, with interest, and due two months after date,
purports to "appoint _____, or any Attorney of
any court of record," to appear, &c., "and confess a judgment in favor
of the said _____ or his assigns, upon said note,"
&c., "together with costs, and _____ dollars, Attorney's fees."

3 The cognovit allowed \$25 for reasonable Attorney's fees for entering up the judgment, and this amount was added to the amount of the note as comprising the damages aforesaid.

It is assigned as error that the judgment was entered for an excessive amount.

That said warrant of Attorney did not warrant the confession of any judgment upon said note, because of the blank therein as to the person in whose favor judgment might be confessed; and that said warrant of Attorney did not make or constitute any person an Attorney to confess said judgment; and that the same did not allow Attorney's fees to the plaintiff.

ARRINGTON & DENT,

Attorneys for Plaintiff in Error.

124.

Atkins

vs

Rutter Mal.

Abstract & points of plff in error.

Filed April 23. 1864

J. S. Canfield

Arrington & Dent,
Attys. for plff. in Error.

IN THE SUPREME COURT,

JEARUM ATKINS,
Plaintiff in Error,
 VS.
 JOSEPH O. RUTTER AND
 WILLIAM F. ENDICOTT,
Defendants in Error.

Error to Cook Circuit Court.

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3 The cognovit allowed \$25 for reasonable Attorney's fees for enter-
ing up the judgment, and this amount was added to the amount of the
' note as comprising the damages aforesaid.

It is assigned as error that the judgment was entered for an excessive amount.

That said warrant of Attorney did not warrant the confession of any judgment upon said note, because of the blank therein as to the person in whose favor judgment might be confessed ; and that said warrant of Attorney did not make or constitute any person an Attorney to confess said judgment; and that the same did not allow Attorney's fees to the plaintiff.

ARRINGTON & DENT,

Attorneys for Plaintiff in Error.

124.

Atkins

or

Rutter.

Abstract of the *Plat. in error*

Filed April 23. 1864
J. L. Linnell

Arrington & Dent,
Attys. for *Plat. in error*

IN THE SUPREME COURT.

JEARUM ATKINS,

vs.

JOSEPH O. RUTTER AND

WILLIAM F. ENDICOTT,

Defendants in Error.

Error to Cook Circuit Court.

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note as comprising the damages aforesaid.

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ARRINGTON & DENT,

Attorneys for Plaintiff in Error.

124.

Athens

¹²
Rutter, et al.

Abstracts of points
of P.H. in error.

Filed April 23. 1864

Leland McK

Arrington & Dent,
Attys. for P.H. in Error.

Jameson & Morse, Printers, Chicago.

IN THE SUPREME COURT,

THIRD GRAND DIVISION, APRIL TERM, A. D. 1864.

JEARUM ATKINS.

Plaintiff in Error,

VS.

JOSEPH O. RUTTER AND

WILLIAM F. ENDICOTT,

Defendants in Error.

Error to Cook Circuit Court.

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The warrant of Attorney, after reciting that Atkins was indebted
to _____ upon a certain promissory note of
said date, for \$1650.00, with interest, and due two months after date,
purports to "appoint _____, or any Attorney of
any court of record," to appear, &c., "and confess a judgment in favor
of the said _____ or his assigns, upon said note,"
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ARRINGTON & DENT,

Attorneys for Plaintiff in Error.

124.

Athens

¹⁰⁷
Rutter, et al.

Abstract & prints of self in error.

Given April 23. 1864

L. S. C. M. C. M.

Arrington & Dent,
Atty. for

VS.

Defendants in Error.

Record, p.

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ARRINGTON & DENT,

Attorneys for Plaintiff in Error.

124.

Atkins

vs.

Rutter, et al.

Abstract & points of plff. in error.

Filed April 23. 1864

L. Secord CMR

Arrington & Dent,
Attys for Plff. in Error.

IN THE SUPREME COURT,

YS.

Defendants in Error.

Record, p.

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ARRINGTON & DENT,

Attorneys for Plaintiff in Error.

124.

Atkins

Rutter, et al.

Abstract of reports of pliff. in error

Filed April 23. 1864
L Secord Clerk

Arrington & Dent,
Attys. for Pliff. in error.

IN THE SUPREME COURT,

THIRD GRAND DIVISION, APRIL TERM, A. D. 1864.

JEARUM ATKINS,

Plaintiff in Error,

vs.

JOSEPH O. RUTTER AND

WILLIAM F. ENDICOTT,

Defendants in Error.

Error to Cook Circuit Court.

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ARRINGTON & DENT,

Attorneys for Plaintiff in Error.

124.

Athens

as

Rutter, et al.

Abstract & prints of plff.
in error.

Filed April 23, 1864
J. L. C. W. M.

Wright & Dent
Attys. for Plff. in Error

IN THE SUPREME COURT,

THIRD GRAND DIVISION, APRIL TERM, A. D. 1864.

JEARUM ATKINS.

Plaintiff in Error,

VS.

JOSEPH O. RUTTER AND

WILLIAM F. ENDICOTT,

Defendants in Error.

Error to Cook Circuit Court.

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The warrant of Attorney, after reciting that Atkins was indebted to _____ upon a certain promissory note of said date, for \$1650.00, with interest, and due two months after date, purports to "appoint _____, or any Attorney of any court of record," to appear, &c., "and confess a judgment in favor of the said _____ or his assigns, upon said note," &c., "together with costs, and _____ dollars, Attorney's fees."

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ARRINGTON & DENT,

Attorneys for Plaintiff in Error.

124.

Atkins

^{12.}
Rutter, et al.

Abstract of *Spinoza* of *Pliff.* in error.

Filed April 23, 1864
J. L. L. L. L. L.

Arrington & Latt,
Atty. for *Pliff.* in error.

9/
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 term thereof begun and held at the Court House
in the City of Chicago, in said County, on the Third Monday, (being the
Eighteenth day) of March in the year
of our Lord One Thousand Eight Hundred and Eighty One and of the
Independence of the said United States the Eighty fifth

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

Carlos Warren States Attorney.

Anthony B. Weising Sheriff of Cook County.

Attest, Wm L Church Clerk.

It is remembered that heretofore
to-wit: on the Sixth day of March
A. D. 1861. to-wit: at the February Term
of said Court for the year aforesaid,
there were filed in said Court a
certain Declaration Cognovit, sworn
of Attorney and Note in the words and
figures following viz:

Declaration

State of Illinois }
Cook County, SS. }

Circuit Court of Cook County
In February Term A.D. 1861.

Joseph O. Butler and William
B. Endicott plaintiffs in this Suit by
J. H. Winston their Attorney Complain of

(2)

Warren Atkins defendant in a plea of trespass on the case on promises: For that whereas the said defendant heretofore to wit on the ninth day of October in the year of our Lord One thousand eight hundred and sixty at Chicago to wit. at said County of Cook. made his certain promissory Note in writing. bearing date the day and year aforesaid. and then and there delivered the same to said Plaintiffs in and by which said Note said defendant by the name, style and description of Warren Atkins promised to pay to the Order of ~~the~~ himself Twenty months after date thereof Sixteen hundred and Fifty Dollars with interest at ~~the~~ ten per cent after due for value received. And the said Warren Atkins to whom or to whose order said Note was payable afterwards. to wit: on the day and year aforesaid at Chicago to wit. in the County of Cook aforesaid Endorsed said Note in writing by which said defendant made the said Warren Atkins then and there ordered and appointed the said sum of money in said Note mentioned to be paid to said Plaintiffs and then and there delivered said Note so endorsed to the said plaintiffs, by means whereof and by force of the Statute in such case made and provided. the said defendant became liable to pay said plaintiffs said

(5)

Sum of Money mentioned in said Note and being so liable in Consideration thereof then and there undertook and promised to pay the same to the said plaintiffs according to the tenor and effect true intent and meaning of the said Note, and of the indorsement aforesaid. to wit. at the place aforesaid.

Yet the defendant although often requested &c. hath not yet paid the said Sum of Money or any part thereof to the plaintiffs, but so to do hath hitherto wholly refused, and still do refuse to the damage of the plaintiffs of Two thousand Dollars, and therefore they bring Suit &c.

J. H. Winston, Plaintiffs Attorney
Loganville

Circuit Court of Cook County
In February Term A.D. 1861.

Sparrow Atkins
vs.
Joseph C. Rutter
et al

} Loganville.

And the said Sparrow Atkins Defendant in the above entitled Suit, by H. H. Haaff his Attorney come and defend the wrong and injury, when &c. and waive Service of process and say that he cannot deny the action of the said plaintiffs nor, but that the said Plaintiffs have sustained damages

(4)

on occasion of the non-performance of the
several promises and undertakings in the
said declaration mentioned. including the
sum of Twentyfive Dollars for their reasonable
Attorneys fees for entering up this judgment
over and above their other costs and charges
by them about their suit in this behalf ex-
pended to Sixteen Hundred and Sixty Three
Dollars and Sixty Seven Cents; and the said
defendant further agrees that no writ of error
or appeal shall be prosecuted on the judgment
entered by virtue hereof. nor any bill in
Equity filed to interfere in any manner with
the operation of said judgment. and that he
hereby release all errors that may intervene
in entering up the same. or issuing the ex-
ecution thereon. and Consent to immediate
Execution upon such judgment

H. H. Haaff. Defendants }
Attorney }

Power of Attorney and Note.

Know all men by these presents. That I
the subscriber am justly indebted to
... upon a certain Promissory Note. bearing
even date herewith. for the sum of Sixteen hundred
and fifty dollars. with interest
... and due Two months after date.

3
(5)

Now therefore, in Consideration of the Premises
I do hereby make constitute and appoint...
... or any Attorney of any Court
of Record to be my true and lawful Attorney
irrevocably for me and in my name place
and stead to appear in any Court of Record
in term time, or in vacation, in any of the States
or Territories of the United States, at any time
after said Note becomes due, to waive the service
of process and Confess a judgment in favor
of the said ... or his
assigns, or assignees, upon the said Note for the
above sum, or for as much as appears to be
due according to the tenor and effect of said
Note, and interest thereon, to the day of the Entry
of said judgment, together with costs and
..... dollars Attorney's fees; and also to file
a cognovit for the amount that may be so due,
with an agreement therein, that no writ of error
or appeal shall be prosecuted upon the judgment
Entered by Virtue hereof nor any bill in Equity
filed to interfere in any manner with the
operation of said judgment, and to release all
errors that may intervene in the entering up
said judgment, or issuing the execution thereon
and also to waive all benefit of, or advantage
to which my may be Entitled by Virtue of any
Homestead, Stay, or other Exemption law, now

(6)

or hereafter in force, in this or any State or Territory where judgment may be entered by virtue hereof. Hereby ratifying and Confirming all that my said Attorney may do by virtue hereof.

Witness my hand and seal this Ninth day of Oct. A.D. 1860

In Presence of Jearum Atkins, Seal

\$1650 - Chicago Oct. 9. 1860.

Twomonths after date I the Subscriber of Evanston County of Cook State of Illinois promise to pay to myself or order Sixteen Hundred & Fifty Dollars for value received with interest at 10 p. cent aft. due. -

At Jearum Atkins

Endorsed,

Jearum Atkins
Fifty Dollars paid on within Oct 9 1860

without recourse, J. H. Winston

State of Illinois

Cook County } p.

I Lewis Lee being duly sworn deposes and says that the within Note and Power of Attorney were signed

(71)

and Perceuted by the within named Fearum
Atkins in presence of this deponent -
Subscribed Sworn to } Lewis Lee
before me this 6th day
of March A.D. 1861.
Wm. Lechman. Ck.

And thereupon afterwards, to-wit: on the
6th day of March A.D. 1861. to-wit: at the
term of Said Court aforesaid, the following
proceedings among others were had and
Entered of Record therein. Viz.

Joseph Rutter and
William F. Endicott }
vs. } Confession
Fearum Atkins }

This day comes the Said
Plaintiffs by J. H. Winston their Attorney and
file herein their certain declaration of a plea
of trespass on the case upon promises, and there-
upon comes also the said Defendant by H. H.
Maaff his Attorney in fact, who files herein
his warrant of Attorney the execution of
which being duly proved, and also his Cognovit
confessing the action of said Plaintiffs against
him, and that they have sustained damage
herein to the sum of One Thousand Six hundred

(8)

and Sixty Three Dollars and Sixty Seven Cents -

Therefore it is Considered that said plaintiffs do have and recover of the said Defendant their damages of One Thousand Five hundred and Sixty Three Dollars and Sixty Seven Cents in form as aforesaid Confessed, together with their Costs and Charges by them about their Suit in this behalf Expended and have execution therefor.

(91)

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 a declaration, cognovit, affidavit, power of Attorney & Note and the Record of judgment in a certain cause late pending in said Court, on the Common Law side thereof, wherein Joseph O Rutter and William H Endicott versus searum Atkins and Defendant

In Witness Whereof, I have hereunto set my hand, and affixed the Seal of said Court, at Chicago, this First day of April A. D. 1864.

Wm L Church Clerk.



(18)

And now comes the said Fearum Atkins, by Arrington & Dent his attorneys, and says that in the record and proceedings aforesaid there is manifest error, in this, to wit:

That said judgment was excessive - that is for more than was authorized by the warrant of attorney.

That the same was entered under a warrant of attorney which did not authorize the confession or entry of a judgment in favor of any person.

That the same was entered as by confession under said warrant of attorney when said warrant did not constitute or appoint any attorney to confess judgment.

That the said judgment was entered as upon confession by virtue of a warrant of attorney containing blanks rendering said warrant null and void.

That said judgment was entered for a sum as damages, including twenty five dollars attorneys fees, without any authority to so include the same.

Wherefore, and for other errors, said Fearum Atkins prays that said judgment be reversed, and that he be restored to what he has lost thereby &c.

Arrington & Dent,
attys. for p[er]f. in error.

124.
Fearum Atkins
vs.
Jos. O. Rutter,
et al.

Record.

Filed Apr. 21. 1864.
Lilcan
Clerk.