

No. 12705

Supreme Court of Illinois

Allison

vs.

Miller

71641  7

92

Thomas Allison
as
Alvin E. Meller

927

12705

1859

Book 60 Ct of Com Pleas
92

Alvina E Miller

८५

Thomas Allison Jr.
Et al

Filed June 12 1838
S. Leland Clerk
Transcript

2. April 7. 1888

Fresh 3.50. Paid
 W. H. Knibb
 Cash

United States of America }
State of Illinois } JS
County of Cook }

Pleas before the Honorable John
M Wilson Judge of the Cook County Court
of Common Pleas within & for the County
of Cook and State of Illinois, at a regular
term of said Cook County Court of Common
Pleas begun and holden at the Court House
in the City of Chicago in said County on
the first Monday being the second day of
February in the year of our Lord one
thousand eight hundred & fifty seven
and of the Independence of the United States
the Eighty first

Present the Hon John M Wilson Judge
Daniel M Elmy Prosecuting Attorney
John T Wilson Sheriff
Attest Walter Kimball Clerk

Be it remembered that heretofore to wit on
the nineteenth day of August in the year
of our Lord one thousand eight hundred
and fifty six, Mirna E Miller by George
Scottle her Attorney filed in the office of the
Clerk of the Clerk of the Cook County
Court of Common Pleas within and
for the County of Cook and State of

Illinois her Precipe for summons in the words and figures as follows to wit

Cook Co Ct of Com Pleas Sept 15. 1836
Alvin E Miller

^{vs}
Thomas Allison Jr
& Sylander E Miller
Survivors of Henry Miller
deceased

Debt \$2500
Gas \$1500

Issue sums to Cook &
Lake Counties

Geo. Scoville

Aug 19. 1836

Defts Atty

And afterwards to wit, on the same day and year last aforesaid there issued out of the office of the Clerk of said Court a writ of summons directed to the Coroner and acting Sheriff of Cook County which with the Sheriffs return thereon endorsed as in the words and figures as follow to wit

State of Illinois }
County of Cook } ss To the Coroner and acting
Sheriff of said County
Greeting

We command you that you summon
Thomas Allison Jr & Sylander E Miller

Survivors of Henry Miller deceased, if they shall be found in your County personally to be and appear before the Cook County Court of Common Pleas of said County on the first day of the next term thereof to be holden at the Court House in the City of Chicago in said County on the second Monday of September next to answer unto Maria E. Miller in a plea that they render unto the said Maria E. Miller their debt of Twenty five hundred dollars which they owe to & unjustly detain from her to the damage of the said plaintiff as she says in the sum of Fifty hundred dollars

And have you then and there shown with an endorsement thereon in what manner you shall have executed the same



Witness Walter Kimball Clerk of our said Court and the seal thereof at the City of Chicago in said County this 19th day of August A.D. 1836 Walter Kimball Clerk

"Sheriff's Return endorsed"

Served by reading to the within named Thomas Allison Jr the 27th day of August 1836 Lyander E. Miller not found

James S Beach, Coroner & Acting
Sheriff
By Ira Snow Deputy

And afterwards to wit on the twenty
ninth day of August in the year aforesaid
Alvina E Miller by George Scott her
Attorney filed in the office of the Clerk
of said Court her Declaration & Copy of
Bond sued on, which are in the words and
figures as follows to wit

State of Illinois) County of Cook) ss	In the Cook County Court of Common Pleas September Term AD 1836
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Thomas Allison Junior, & Lyander E
Miller survivors of Henry Miller, deceased were
summoned to answer Alvina E Miller of a plea
that they render to the said Alvina E Miller
the sum of Two Thousand five hundred
dollars which they owe to & unjustly detain
from her, and thereupon the said Alvina
E Miller, by George Scott her Attorney
complains. For that whereas the said de-
pendants together with the said Henry
Miller now deceased, heretofore to wit in
the sixth day of November AD 1834, in the
life time of said Henry Miller, to wit, at the
said County of Cook, by their certain writing

obligatory, sealed with their seals, & now
shown the Court here, the date whereof is a
certain day & year above named, to wit:
the day and year aforesaid, acknowledged
themselves to be held & firmly bound unto
the said Plaintiff in the sum of Two Thous-
and five hundred dollars above demand-
ed, to be paid to the said plaintiff, which
said writing obligatory was & is subject
to a certain condition thereunder written
whereby after reciting to the effect following
to wit, that whereas the ^{said} Florina E Miller
at the September Term AD 1854 of the Cook
County Court of Common Pleas in said
State, in a certain suit then therein de-
pending against the said Henry Miller
wherein she was plaintiff, recover a judg-
ment against the said Henry Miller for
the sum of Twelve hundred dollars besides
costs, from which said judgment the
said Henry Miller prayed an appeal
to the Supreme Court of said State, it
was conditioned & declared, that in-
case the said judgment should be aff-
irmed by the said Supreme Court the
said Henry Miller should pay the said
judgment, costs & interest & damages, if
the said Henry Miller should duly
prosecute his said appeal, then that

obligation should be void, as by the said writing obligatory, & the conditions thereof will more fully & at large appear

And although the said judgment was affirmed by the said Supreme Court in the hearing of said appeal, to wit at the June Term of said Supreme Court in the year, 1853, yet the said Henry Miller hath not, nor hath his legal representatives nor any person on his behalf, paid the said judgment costs, or interest or damage or any part thereof but so to do hath hitherto wholly neglected & refused & still neglect & refuse so to do, wherefore the said Plaintiff saith that she is injured & hath sustained damage to the amount of fifteen hundred dollars & therefore she brings suit
vc

And also for that whereas, the said defendants, jointly with one Henry Miller now deceased, afterwards, to wit, on the 6th day of November 1834, in the life time of said Henry Miller, to wit at said County of Cook, by their certain other writing obligatory, sealed with their seals, & now shown to the Court here, bearing date on that day acknowledged themselves to be held & firmly bound unto the said plaintiff in the penal sum of two thousand five

hundred dollars, to be paid to the said plaintiff, her heirs executors & administrators which said writing obligatory, last aforesaid, was & is subject to a certain condition thereunder written, whereby, after reciting to the effect following, to wit: that whereas, the said Alvina E. Miller at the September Term AD 1834 of the Cook County Court of Common Pleas in said State in a certain suit then therein depending against the said Henry Miller wherein she was Plaintiff recovered a judgment against the said Henry Miller for the sum of Twelve hundred dollars besides costs from which said judgment the said Henry Miller prayed an appeal to the Supreme Court of said State, it was conditioned & declared that if the said Henry Miller should duly prosecute his said appeal & in case the said judgment should be affirmed by the said Supreme Court the said Henry Miller should pay the said judgment, costs & interest & damages then the said obligation to be void. And the Plaintiff avers that the said judgment was affirmed by the said Supreme Court on the trial of said appeal to wit, at the June Term of said Court AD 1835 Yet the said Henry Miller hath not, nor have his heirs, executors or ad-

ministrators, or any other person on his
behalf, paid the said judgment or any part
thereof, but so to do have hitherto wholly neg-
lected & refused, & still do neglect & refuse
wherefore the said Plaintiff saith that she
is injured, & hath sustained damages to
the amount of fifteen hundred dollars, &
therefore she sues &c

Geo. Scoville

Plffs atty

(Copy of Bond sued upon)

Know all men by these presents that we
Henry Miller of the County of Lake, Thomas
Allison Jr and Lysander C Miller of the
County of Cook in the State of Illinois, are
held and firmly ^{bound} to Alina C Miller of said
County in the penal sum of Two thousand
five hundred Dollars - which sum well
and truly to be paid to the said Alina C
Miller her heirs, executors & administrators
we bind ourselves, our heirs, executors & ad-
ministrators jointly and severally by these
presents. Witness our hands and seals
this Sixth day of November A.D. 1854

The condition of the above obligation
is such that whereas the said Alina C
Miller at the September Term A.D. 1854 of the
Cook County Court of Common Pleas, in said

State in a certain suit then therein depending
against the said Henry Miller wherein
she was Plaintiff, recover a judgment
against the said Henry Miller for the sum
of Twelve Hundred Dollars, besides costs, from
which said judgment the said Henry Miller
prayed an appeal to the Supreme Court of
said State. Now in case the said judgment
shall be affirmed by the said Supreme
Court the said Henry Miller shall pay the
said judgment, costs and interest and dam-
ages, and if the said Henry Miller shall
duly prosecute his said Appeal then the
above obligation to be void

Signed Sealed & delivered } Henry Miller Seal
in presence of } Thomas Allison Jr Seal
} Lyander E. Miller Seal

And afterwards to wit on the twenty first
day of February in the year of our Lord
one thousand eight hundred and fifty
seven, said day being on of the days of
the February Term of said Court, the fol-
lowing among other proceedings were had
in said Court and entered of record, to wit

Mina E. Miller

vs

Deb't

Thomas Allison Jr Lyander E. Miller survivors

of Henry Miller deceased

This day comes the said Plaintiff
by G Scoville her attorney and it appears
in to the Court that due personal service
of process of summons issued in the cause
having been had on the said defendant
Thomas Allison Jr and he being now
three times solemnly called in open Court
comes not nor does any person for him
but herein makes default, which is on
motion of said Plaintiff, ordered to be
taken and is hereby entered of record
Wherefore the said Plaintiff ought to have
and recover of the said defendant Thomas
Allison Jr impleaded with the said
Lysander E Miller his debt and also
his damages sustained by occasion of
the premises, and the Court now here
after hearing the allegations and proofs
submitted by said Plaintiff being now
fully advised in the premises find the
said defendant Thomas Allison Jr im-
pleaded as aforesaid indebted to the
said Plaintiff to the sum of Two Thousand
Five Hundred Dollars, and assesses said
Plaintiffs damages to the sum of one
Thousand one Hundred and six doll-
ars and Four cents

Therefore it is considered that the

said Plaintiff do have and recover of the said defendant Thomas Allison Jr impleaded as aforesaid her debt of Two Thousand Five Hundred Dollars in her said declaration mentioned, and also her damage of one Thousand one Hundred and six dollars and four cents in form aforesaid by the Court here assayed and also her costs and charges by her about her suit in this behalf expended and have execution therefor, said execution to be endorsed to be satisfied on payment of damages interest and costs

And on motion of Plaintiff by her said Attorney, it is ordered that a scire facias issue in the cause against the said defendant Lysander E Miller, returnable to the next Term of this Court, requiring him to appear thereat and show cause if any he have why he should not be made a party to the judgment entered in this cause, and further that this cause be continued until the next term of this Court

And afterwards to wit on the eleventh day of March in the year last aforesaid, said day being one of the days

of the February Term of said Court the following among other proceedings were had in said Court and entered of record to wit

Alvina E Miller

vs

Debt.

Thomas Allison & al

And now on this day comes the said Defendant Thomas Allison Jr by C Parks his attorney and enters ~~herein~~ his motion herein to set aside the default and judgment heretofore at this term entered in this cause.

And afterwards to wit on the eleventh day of November in the year aforesaid said day being one of the days of the November Special Term of said Court the following among other proceedings were had in said Court and entered of record to wit

Alvina E Miller

vs

Debt Motion

Thomas Allison Jr

Gysander E Miller

Survivors of Henry Miller decd

This day comes the said Plaintiff.

by Geo Scoville her Attorney and the said
Defendants by Parks their Attorney also come
and on their Submitting their motion to set
aside default & judgment taken & entered
herein at the February term last of this —
Court against the said defendants, the
Court being ~~now~~ fully advised now over-
rules said motion, and it is ordered that
said defendants pay the costs of this motion,
and order overruling the same

State of Illinois }
Cook County } ss.

I Walter Kimball Clerk of the Cook
County Court of Common Pleas, within
and for said County and State do here-
by certify that the above and foregoing
is a full and true transcript of all the
papers on file in my office and of the pro-
ceedings had in said Court and entered
of record in the case wherein Maria E
Miller is Plaintiff and Thomas Allison
& Lyzander E Miller survivors of Henry Miller
deceased are defendants.

In testimony whereof I hereunto
set my hand and affix the
seal of said Court at Chicago
in said County this 22nd day
of May A.D. 1838

Walter Kimball Clerk

Supreme Court 3^d Grand Division

Thomas Allison Jr. Plaintiff
with Lynders & Miller
vs.
Alma & Miller }
Defendants

April Term for 1859

And the said Thomas Allison Jr.
Plaintiff in error by his Attorney
Comes and Says That in the Record
and proceedings aforesaid and in the
Entry of the Judgment aforesaid there
is manifest error in this to wit

1st In not issuing Summons to Sheriff
of Cook and Lake County as Required
by Precept

2^d In directing the writ of Summons
to the Coroner & Acting Sheriff of the
County of Cook

3^d In that it does not sufficiently appear
that the writ was Issued under the
Seal of the Court

4th It is not averred in the Declaration
that a Judgment was Rendered in the
in the case in which the appeal bond was filed
Supreme Court. It being only stated

by way of Recital.

5th It is not avowed in the Declaration that the Bond was to become absolute upon the nonpayment of the Judgment Recited and also upon a failure to prosecute the appeal mentioned and set forth in the Bond

6th There is not such recital of the condition of the Bond assigned as the Court could render judgment upon

7th In entering judgment against appellant below by default without the Rule to Place

8th In entering judgment below against Thomas Allison Jr alone the Declaration being upon a joint Bond

9th In rendering judgment for Debt and Damages The Judgment should have been for the Debt & discharged upon payment of the Damages

See

10th In assessing Debt and Damages without the intervention of a jury

10th In rendering judgment in favor
of Alma & Miller and against Thomas
allusion from upon the record

And the said Thomas allusion to
Plaintiff prays that the judgment
aforesaid for the errors aforesaid
may be reversed & an order & that
said Plaintiff may be restored in
C. C. Smith
Suff. atty

The Plaintiff in law prays a writ of Error
and Supersedeas

C. C. Smith
Suff. atty

I find no error in this record
& refuse a supersedeas J. D. Eaton chf

STATE OF ILLINOIS,
SUPREME COURT,

} ss. The People of the State of Illinois,
To the Clerk of the ~~Common Pleas~~ ^{Pleas} 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 Cook County Court of
Common Pleas Court of Cook County, before the Judge thereof, between
Alvina D. Miller

plaintiff, and Thomas Allison Jr. & Lyssander B. Miller survivors
of Henry Miller deceased

defendant s., it is said manifest error hath intervened, to the injury of the aforesaid Thomas Allison

as we are informed
by his complaint 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 Su-
preme 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 nineteenth day of
June in the Year of Our Lord
our thousand eight hundred and fifty-eight.

J. Leland
Clerk of the Supreme Court.
by J. B. Rice Deputy

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Thomas Allison imp'd
with Lyander v. Miller

vs
Alvina v. Miller

Writ of Error

Filed June 17th 1858
L. Leland
clerk