

No. 12249

Supreme Court of Illinois

Murray

vs.

Murphy

71641  7

Atwood J Munay } Sup Court
vs } June Term 1855
Andrew Murphy } Error to Provia

And the said Plaintiff in error by
E. N. Powell his attorney comes and says
that in the record and proceedings aforesaid
and in the rendition of the judgment
aforesaid there is manifest error in this
to wit because the judgment in the
court below was in favor of the said
defendant in error and against the
said plaintiff in error when by the
law the judgment should have been
in favor of the said plaintiff in error
and against the said defendant in
error And said said plaintiff
alleges the following Special Cause
of error Viz

- 1 Because the Court erred in over-
ruling the motion of the said plaintiff
in error made in the Circuit Court
to dismiss the appeal on account of
the insufficiency of the petition
for a certiorari

Wherefore for the reasons
aforesaid said plaintiff prays that
said judgment may be annulled
set aside reversed and wholly for
nothing esteemed and plaintiff fully
restored to his rights as before said
judgment

E. N. Powell
atty for Plff

And the said defendant says that in the
Records and proceedings and in the rendition
of the Judgment aforesaid, there is ~~no~~
Error & prays that the said Judgment
may be affirmed
Done 27th 1853.

A. H. Purple
sifts atty

Be it remembered, that heretofore, to wit, on the eleventh day of April in the year of our Lord one thousand eight hundred and fifty three, there was filed in the office of the clerk of the Circuit Court in and for the County of Peoria in the State of Illinois a Petition for writ of Certiorari, with the order of the County Judge of Peoria County thereon, which are in the words and figures following, to wit:

Petition - "To the Honorable Thomas Bryant Judge of the County Court of Peoria County.

Your petitioner Andrew Murphy of the said County of Peoria represents that he resides in Peoria, and that one Atwood S. Murray commenced a suit against your petitioner in the town of Chillicothe in said County before John C. Polliott a Justice of the Peace in said town for the sum of thirteen dollars and fifteen cents, and your petitioner ~~father~~ believing that said demand was unjust and that the place of trial was some distance off and could not get his principal witness William S. Moss to attend concluded by the advice of council that he would have ~~the~~ to let the case go by default and take an appeal to the Circuit Court of said County as the witness resided in Peoria. The case was tried ex parte before the said justice on the 24th day of March A.D. 1853. Your petitioner procured an appeal bond and had it signed by a good and responsible security, and his attorney forward the bond to the Justice of the peace in sufficient time and within the twenty days prescribed by law. But the Justice of the Peace sent the bond back when it was too late to file a new one, thus depriving the defendant your petitioner to file another bond. The principal objection by the Justice of the peace to said bond was that the name of the security was on the wrong side of the bond, and that said Bond was not strictly formal. Your petitioner state that he was guilty of no negligence in the matter, that his attorney was satisfied that the bond was good and sufficient and sent in proper time and signed by a good responsible man

but that it was impossible to file a second bond in time to save the appeal.

Your petitioner further state that he would have appeared and defended said case but it was not possible for him to have procured his witness William S. Moss he being away from home at the time, and being advised as he was by his counsel that he could take an appeal upon any judgment rendered.

And your petitioner further says, that said judgment is erroneous in as much as the debt sued for has been paid in a settlement between the plaintiff and William S. Moss, and William Moss charged defendant for the amt. paid plaintiff for the use of defendant and petitioner is able to prove by the said William S. Moss, that said debt has been fully paid. Andrew Murphy. Subscribed & sworn to before me

this 8th day of April 1853

Thomas Bryant J.P.

order -

The Clerk of the Circuit Court is hereby directed to issue a writ of certiorari upon this petition the applicant filing bond according to law. Given under my hand and seal this 9th day of April A. D. 1853 Thomas Bryant J.P. C. Judge

And on the same 11th day of April A.D. 1853 there was filed in said clerk's Office a Bond, which was approved by the clerk of said court and is in the words and figures following, to wit.

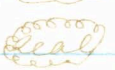
Appeal Bond -

"Know all men by these presents, that we Andrew Murphy and Patrick Gavin are held and firmly unto Atwood J. Murray in the special sum of fifty dollars lawful money of the United States, for the payment of which, well and truly to be made we bind ourselves, our heirs and administrators, jointly and severally, firmly by these presents. Witness our hands and seals this 11th day of April 1853.

The condition of the above obligation is such, that whereas the said Atwood J. Murray did on the 4th day of March 1853 before John C. Pollett a Justice of the peace for the County

of Peoria, recover a judgment against the above bounden Andrew Murphy for the sum of thirteen $\frac{1}{2}$ dollars, which judgment the said Andrew Murphy by writ of certiorari is about to remove with all the proceedings thereon, to the Circuit Court of the County of Peoria aforesaid and State of Illinois. Now if the said Andrew Murphy shall pay whatever judgment may be rendered by the Court upon dismissal or trial of said cause then the above obligation to be void otherwise to remain in full force and effect.

Andrew Murphy 

Patrick Cain 

Approved before me, at my office, this 11th
day of April 1853

Jacob Gale, Clerk

Whereupon on the same day said clerk issued a writ of certiorari under the seal of said Court directed to said Justice of the Peace in the words and figures following to wit:

Writ of - }
Certiorari } "State of Illinois }
Peoria County } The People of the State of Illinois, To John C. Polliott a Justice of the Peace in and for said county and State send Greeting.

Whereas it has been represented by the petition and affidavit of Andrew Murphy, that in a certain suit lately depending before you wherein Atwood J. Murray was plaintiff and the said Murphy was defendant and wherein judgment was rendered in favor of the said Murray against him the said Murphy for the sum of thirteen dollars and fifty cents, that injustice has been done to the said Murphy by said Judgment, and we for reasons set forth in said petition being willing that said suit shall be removed into our Circuit Court in and for said County for rehearing and trial, do hereby command you that you do forthwith transmit to the said Circuit Court a transcript of said judgment with the proceedings thereon and all the papers in said cause, by whatever names the parties aforesaid or either of them are or is set down, fully

and truly as in your custody they now remain under your proper
hand and seal, together with this writ, that speedy justice may be
done in the premises according to law. Witness Jacob Gale, clerk
of our said Court and the seal thereof at Peoria this
11th day of April A.D. 1853.

Jacob Gale Clerk

To the Sheriff of Peoria County to execute

Delivered to A. C. Folliott, Justice of the Peace April 21st 1853
S. B. Cornwell Sheriff

And afterwards, to wit, on the 27th day of April A.D. 1853, said writ of
certiorari was returned in to said clerk's office together with a transcript of the
proceedings before said Justice of Peace, instrument sued on and summons in said
issued by said Justice of Peace, which are in the words & figures following, to wit:

J. P. Transcript:

"A. J. Murray

vs

Andrew Murphy

{ ss February 15th 1853

Summons issued on order for \$ 11.75

Returnable February 23rd 1853

At 10 o'clock A.M. also subpoena for Charles Kimble Delivered
to H. Cleveland Con^l. summons & subpoena returned indorsed
served by reading fees \$ 2.37. H. Cleveland Con^l. February 23rd 1853.
Defendant not appearing plaintiff appeared & had trial adjourned till
March 4th 1853 for the purpose of obtaining witnesses March 4th
plaintiff appeared & after hearing the testimony of witness Kimble
defendant not appearing judgment is rendered against defendant
for thirteen ¹⁵⁰ Dollars det \$ 13.15

And cost of suit

Execution issued April 4th 1853 Delivered to A. Barton Con^l.
The above is a true copy from my docket April 26th 1853

John C. Folliott

Jus^t of the peace

Instrument }
sued on }

October 21st 1850: Mr. Wm Moss, sir please to pay A. J.
Murray or order the sum of eleven dollars & 75 cts and oblige yourself
Andrew Murphy

Monday November 28th A.D. 1853

Atwood J. Murray

vs

Andrew Murphy

} appeal by certiorari from I.P.

Motion
overruled }

This day came on to be heard the plaintiffs motion to dismiss the certiorari and appeal herein and the court being fully advised in the premises overruled said motion.

Proceedings in the Circuit Court in and for the County of Peoria in the State of Illinois at a term thereof begun and held at the Court house in the City of Peoria in said County on the first Monday in the month of March in the year of our Lord one thousand eight hundred and fifty four, it being the sixth day of said month, Present the Honorable Cuslow Peters, Judge of the sixteenth Judicial Circuit in the State of Illinois to wit:

Atwood J. Murray

vs

Andrew Murphy

} Appeal from I.P.

Judgment -

This day came the plaintiff by E. H. Powell his attorney and the defendant by John T. Lindsay his attorney and by agreement waived a trial by jury and submitted all matters both of law and evidence arising in this cause to the Court for trial and the Court having heard the evidence do find for the defendant and to consider and adjudge that the defendant go hence without day and have and recover of the plaintiff his costs and charges by him about his defense in this behalf expended and that he have execution therefor

On the twenty eighth day of November A.D. 1853 there was filed in said clerk's office a Bill of Exceptions in said cause which is in the words and figures following, to wit:

Bill of
exceptions

Atwill J. Murray

vs

Andrew Murphy

Be it remembered that the plaintiff in this cause entered this motion to quash the writ of certiorari and dismiss the appeal in this cause, because the petition for said writ of certiorari is wholly insufficient and does not show sufficient diligence in defending the suit before the justice and does not show sufficient diligence in taking the appeal. The Court having heard said motion and arguments of counsel overrule the same to which opinion of the Court in overruling said motion the plaintiff by his counsel accepted and prayed that this his bill of exceptions may be allowed, which is accordingly done.

Orslov Peters 
Judge &c.

State of Illinois
Peoria County

I, Jacob Gale clerk of the Circuit Court in and for the County of Peoria in the State of Illinois do hereby certify that the foregoing is a full and correct transcript from the records and files in my office of all the proceedings in a certain cause in said Court wherein Atwill J. Murray is plaintiff and Andrew Murphy is defendant, as the same remain in my office.

In witness whereof I hereto set my hand and affix the seal of said Circuit Court at my office in Peoria this 24th day of May
A.D. 1855-
Jacob Gale. Clerk.

Clerk's fees: for Transcript. certificate seal. May 24th A.D. 1855-\$3.00.
Received payment of plaintiff
Jacob Gale. Clerk.

Atwood J. Murray
vs

Andrew Murphy

Recd

55

Fils May 26. 1855
L. Island
C. W.

1855

12249

L Leland Esq

Prova May 25th 1855

Dear Sir

Enclosed you will find
record in Case of Munn vs Murphy which
you will please file in Supreme Court
and issue a writ of Error directed to the
Sheriff of Prova County to execute. Please have
this done so that the case will be for trial
at the same term

Send writ to me

Yours

Respectfully

P. Munn. Takes the case.

E A Powell

STATE OF ILLINOIS,

Supreme Court,

ss.

The People of the State of Illinois,

To the Sheriff of the County of *Peria* ~~~~~ 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 *Peria* ~~~~~ county, before the Judge thereof, between

Atwood J. Munay plaintiff
& *Andrew Murphy* ~~~~~

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

Atwood J. Munay

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

Andrew Murphy

that *he* 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 *26th* Monday in *June* next, to hear the records and proceedings aforesaid, and the errors assigned, if *he* 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 *Murphy* ~~~~~

notice, together with this writ.

John S. Caten

WITNESS, the Hon. ~~Samuel H. Treat~~ Chief Justice of our said Court, and the Seal thereof, at Ottawa, this *26th* day of *May* in the Year of Our Lord One Thousand Eight Hundred and Fifty-*five*.

L. Seland

Clerk of the Supreme Court. *Do*

55.

67221

Served on Andrew
 Mississippi by reading
 to him this writ
 June 7th 1855
 David L. Brown Sheriff P. Co.
 By A. R. Kinnell Deputy

Service	30
2 Miles	10
Ret	70

Filed June 26. 55.

STATE OF ILLINOIS

County of Cook

James A. Quinn

Deputy Sheriff

Witness

James A. Quinn, Deputy Sheriff of Cook County, Illinois, do hereby certify that the within and foregoing is a true and correct copy of the original of the same as the same appears from the records of the Court of the said County.

James A. Quinn

Deputy Sheriff

Witness

James A. Quinn, Deputy Sheriff of Cook County, Illinois, do hereby certify that the within and foregoing is a true and correct copy of the original of the same as the same appears from the records of the Court of the said County.

James A. Quinn, Deputy Sheriff of Cook County, Illinois, do hereby certify that the within and foregoing is a true and correct copy of the original of the same as the same appears from the records of the Court of the said County.

James A. Quinn, Deputy Sheriff of Cook County, Illinois, do hereby certify that the within and foregoing is a true and correct copy of the original of the same as the same appears from the records of the Court of the said County.

James A. Quinn, Deputy Sheriff of Cook County, Illinois, do hereby certify that the within and foregoing is a true and correct copy of the original of the same as the same appears from the records of the Court of the said County.

James A. Quinn, Deputy Sheriff of Cook County, Illinois, do hereby certify that the within and foregoing is a true and correct copy of the original of the same as the same appears from the records of the Court of the said County.

James A. Quinn, Deputy Sheriff of Cook County, Illinois, do hereby certify that the within and foregoing is a true and correct copy of the original of the same as the same appears from the records of the Court of the said County.