

No. 13986

# Supreme Court of Illinois

Scott

---

vs.

Waymah

---

Sale of Illinois  
St. Clair County 3<sup>rd</sup> Sect

At a Circuit Court of the second judicial Circuit, begun and held at Belleville for and within the said County of St. Clair at the Court house thereof, on the third Monday of August in the year of our Lord one thousand eight hundred and thirty nine, and of the Independence of the United States the sixty fourth, to wit on Thursday the twenty second day of said month of August, it being the first Thursday of said Term, Present: Hon. Sidney Breece, Judge; Wickliffe Kitchell attorney general; Samuel B. Chandler Sheriff; John Hay Clerk, in an appeal from the Probate Justice of the Peace within and for the said County of St. Clair, in which Joseph Scott, administrator of the Estate of Samuel Scott deceased, was appellant, and Wayman Crow and Joshua Lewis were appellees, the following proceedings were had, to wit:

The said Joseph Scott, administrator of the Estate of Samuel Scott deceased, having heretofore to wit on the twenty third day of March in the year of our Lord <sup>1839</sup> filed in the Clerks office of our said Court a bill of exception to an order of the said Probate Justice of the Peace, which said bill of exception is in words and figures following to wit:

Joseph Scott, administrator  
of all and singular the goods &c.  
which were of Samuel Scott deceased  
at the time of his death

vs  
Wayman Crow & Joshua Lewis  
trading & doing business under the

At a Court holden  
by and before John  
Hay Esq. Probate  
Justice of the Peace  
within and for  
the County of  
St. Clair, at his

name, firm and style of } office in Belleville on  
Crow & Tewis. } the 23<sup>d</sup> day of March  
1839.

Be it remembered, that on the said 23<sup>d</sup> day of March  
A. D. 1839. Joseph Scott, administrator & of Sam-  
uel Scott deceased appeared and prayed an appeal from  
an order made by the said Probate Justice of the  
Peace on the 31<sup>st</sup> day of December A. D. 1838. allow-  
ing a certain demand for \$301  $\frac{22}{100}$ . produced against  
the estate of the said Samuel Scott deceased by  
Wayman Crow and Joshua Tewis, trading  
and doing business under the name & of Crow  
& Tewis, it being the balance on a note of \$501  $\frac{22}{100}$   
given by William R. Scott to said Crow & Tewis  
and dated Decr 1<sup>st</sup> 1837 and since the death of said  
Samuel Scott, for the following reasons:

- 1<sup>st</sup> That the estate of Samuel Scott deceased  
cannot be made liable to pay a note given by  
William R. Scott.
- 2<sup>d</sup> That said Estate can not be made liable for  
debts contracted after the death of said Samuel  
Scott.
- 3<sup>d</sup> That said note sheweth no liability against  
the estate of Samuel Scott deceased.

John Hay Seal  
P. J. J.

And the said Joseph Scott, administrator as aforesaid,  
having also heretofore to wit on the said twenty third day  
of March in the year of our Lord one thousand eight  
hundred and thirty nine filed in the Clerk's office  
of our said Court his bond in words and figures  
following to wit:

Know all men by these presents, that we, Joseph  
Scott, administrator of all de. of Samuel Scott deceased

and William C. Davis of the County of St. Clair & State of Illinois are held and firmly bound unto the People of the State of Illinois in the full and just sum of fifty dollars Current money of the United States, to the payment of which well and truly to be made, we and each of us bind ourselves, our heirs, executors and administrators jointly and severally, firmly by these presents. Sealed with our seals and dated this twenty third day of March A. D. eight hundred and thirty nine.

The Condition of this obligation is such, that whereas the above bound Joseph Scott administrator of all the of Samuel Scott deceased, hath appealed from the Judgment of John Hay, Probate Justice of the Peace of the County of St. Clair and State of Illinois, in the passing and allowing a certain note of Wayman Crow and Joshua Lewis merchants trading and doing business under the name firm & style of Crow & Lewis, against the estate aforesaid.

Now if the said Joseph Scott administrator of all the of Samuel Scott deceased, shall well and truly prosecute his appeal with effect, and satisfy and pay all costs in case the Judgment be affirmed in the trial of said appeal, then this obligation to be void else to remain in full force and virtue.

In presence of  
John Hay.

Joseph Scott  
Wm C. Davis

And the said Joseph Scott, administrator as aforesaid, having also heretofore to wit on the fourteenth day of April A. D. 1839. filed in the Clerk's office of our said Court a copy or transcript of the Records and proceedings had before the said John Hay, Probate Justice of the

Peace within and for the said County of St. Clair, in  
relation to the order of the said Probate Justice of the  
Peace so excepted to and appealed from, which said  
transcript is in words and figures following to wit:  
State of Illinois }  
St. Clair County. }<sup>d.</sup>

Probate Justice of the Peace Court.

Monday 31<sup>st</sup> December 1838.

This day appeared Joseph Scott, admr. of the estate of  
Saml. Scott deceased, to have the opinion of the Court on  
the following accounts produced against said estate:  
Crow & Tewis for balance on a note of \$301, 22. Hood  
& Abbott, note \$310, 59. and David Tatum's account \$172, 81.  
The administrator objects to these notes & account for reason  
that they were purchases made after the death of the deceased  
Samuel Scott by his surviving partner. Thereupon W.  
R. Scott the surviving partner of said deceased came and  
acknowledged the goods purchased and the notes given were  
after the death of said Saml. Scott, but that they were pur-  
chased for the use and benefit of the estate, to help the  
sale of the old stock. And it was satisfactorily proven  
that the whole of these goods as above purchased were  
thrown in the whole old stock, and that the same when  
called upon to give up to the said administrator, were  
delivered up, and also the Books and acct<sup>s</sup> which were sold  
by the said administrator for the benefit of said estate.  
Therefore it is considered by the Court, that the said notes  
& account be allowed.

Saturday 23<sup>d</sup> March 1839.

This day came Joseph Scott admr. of Saml. Scott decd,  
and presented a Bill of Exceptions on the order here-  
before made by this Court, concerning the rejection or  
accepting of a certain Ball<sup>ce</sup> of a note for \$301, 22. of  
Wayman Crow & Joshua Tewis trading and doing  
business under the name, firm and style of Crow &

to dismiss the appeal, which is granted. Thereupon it is ordered, that the said Defendants recover of the said appellant their Costs about their defence in that behalf expended &c. as well in this Court as the Court below.

State of Illinois }  
St. Clair County } Sd

I William C. Kinney Clerk of the Circuit Court for and within the County of St. Clair do hereby certify, the foregoing to be a correct and complete transcript of the proceedings and orders of said Court, as the same are on file and of Record in my office.

In testimony whereof I have hereunto set my hand and have affixed the seal of said Court at office in Belleville this ninth day of May A. D. 1842.

Wm C. Kinney

Joseph Scott admr.  
of Samuel Scott decd.  
vs  
Wayman Corn & fork.  
ex Lewis  
\_\_\_\_\_ \_\_\_\_\_  
Corn & A. Edwards

Joseph Scott  
Adm<sup>r</sup> of Salt  
Scott et al.

Suprem Court  
Dec. Term 1844.

Rayman Crow &  
Joshua Ferris

And now comes  
the said Plaintiff in  
error by Trumbull his atty and says  
that in the record & proceedings aforesaid  
& in the rendition of the judgment aforesaid  
there is manifest error in this, to wit:  
That the Circuit Court dismissed said  
appeal when by the law of the land said  
motion to dismiss should have been overruled  
and entered judgment in favor of the said  
Crow & Ferris, when by law said ~~off~~  
motion to dismiss should have been  
overruled & a judgment rendered in  
favor of said Scott et al.

S. Trumbull  
Atty. for Plff. in  
error.

The said Depts in error come & say that the  
said judgment should not be reversed  
because they say in the record & proceedings  
therein there is not any error in  
manner & form as above alleged  
Wherefore &c they pray judgement be

Graciously for Depts.

James M. Scott

~~James M. Scott~~  
~~of the~~ ~~Scott~~

deu. 100

Wayman

Crown & Ferris.

---

Assignment  
of currs.

---

Filed 18<sup>th</sup> July 1845

E. P. Cook

13986  
else

to arrange the appeal, which is granted. Objection it is

Scott, admr. of Scott. }  
4 } Error to St. Clair.  
Craw & Tevis }

On the 31<sup>st</sup> of December 1838, the probate justice of the peace of St. Clair County allowed certain claims against the estate of Samuel Scott deceased, in favor of Craw & Tevis. Joseph Scott, the administrator, tendered a bill of exceptions to the decision of the probate justice, and moved an appeal to the circuit court, which he perfected, by the entering into bond on the 23<sup>rd</sup> of March 1839.

The circuit court on the motion of Craw & Tevis dismissed the appeal, because it was not taken within twenty days after the decision complained of was made.

That decision of the circuit court is now assigned for error by the administrator.

This cause has already been before this court, and a decision made on another question presented in it. The opinion is reported in 4<sup>th</sup> December 183. The court there gave a general construction of the statute regulating appeal, from the orders and judgments of probate justices. Upon reflection we are satisfied of the propriety of the construction there given. According to the opinion there expressed, the proper mode of appealing from a decision of the probate justice in a case like the present, is by tendering a bill of exceptions and entering into bond within ninety days. That course was adopted by the administrator, and the circuit court erred in dismissing the appeal.

The judgment of the circuit court is

would with costs, and the cause is  
remanded for further proceedings.

John A. Smith, Jr.

vs

Levy & Lewis

---

Plaintiffs by  
Thos. A. Galt

Filed 9<sup>th</sup> Aug 1846  
W. P. Cook  
648

Copied & Compared

Supreme Court December Term 1845  
James M. Scott )  
vs ) Error to St. Clair

Wayman Crow &  
Joshua Ferris )

Joseph Scott administrator  
of Samuel Scott deceased

appealed to the Circuit Court from an allowance  
of a claim by the Probate Justice filed against  
said estate by Crow and Ferris for \$301.22. This  
claim was the balance due upon a note given  
by one William R. Scott to said Crow & Ferris the  
date of which note and the consideration thereof  
were subsequent to the death of the said Samuel  
Scott. The Circuit Court on motion of said  
Crow and Ferris at its term AD 1839  
dismissed said appeal because it was not  
taken as from ordinary Justices of the Peace in  
twenty days. This writ of error is now prosecuted  
in the name of James M. Scott who is one of  
the heirs of said Samuel deceased and interested  
in said judgment he being at the time the same  
was rendered a minor and being permitted  
by leave of Court to prosecute this writ of error.

The decision of the Circuit Court dismissing  
the appeal is assigned for error. The appeal was  
taken by rendering a bill of exceptions and filing  
bond in ninety days which was the proper  
mode in this case - Rev. Laws 1833 - p 153 -

Scott vs Crow et al - 4 Term 183 -

for plff in error

Gillespie - Contra-

He, the admn. is still a party.

He alone can see out a  
wit of evn.

James M. Scott

vs

Geo & H. W.

Abstract

Filed 5<sup>th</sup> Aug 1866

In the Supreme Court Dec. Term 1844.

State of Illinois - ss.

Syman Trumbull  
being duly sworn upon his oath states, that  
he has been retained as counsel to prosecute  
a writ of error in this Court on behalf of  
James M. Scott on the Children's heirs of  
Samuel Scott late of St. Clair County deceased,  
that the case sought to be brought to this Court  
for review is now pending in the Circuit  
Court of St. Clair County, on appeal from the  
probate Justice of said County in a case wherein  
Gougeon Scott administrator of said Samuel Scott deceased was  
appellant and Wagoner Brown & Joshua Teris were  
appellees, & which appeal at the August Term  
1839 of said St. Clair Circuit Court was  
dismissed by said Circuit Court and erroneously  
as this affiant verily believes.

This affiant further states that the estate of the  
said Samuel Scott deceased is believed to be entirely  
solvent, that the said James M. Scott at the  
time said judgment of the St. Clair Circuit Court  
dismissing said appeal was rendered  
was a minor and did not as he is informed &  
verily believes arrive at the age of twenty one years  
till the 1<sup>st</sup> of Aug. 1844, and that he is in affiant's  
opinion <sup>by the judgment of the Circuit Court in the premises</sup> greatly injured ~~thereby~~ the judgment of  
the said Probate Justice of said St. Clair County ~~being~~  
as well as that of the Circuit Court being  
as he believes unjust & erroneous as will ap-  
pear by reference to ~~to~~ a certified copy of the  
proceedings in said cause herewith submitted.  
The said James M. Scott whose interests are affected  
by the judgment aforesaid therefore prays that he  
may be permitted to sue out a writ of error  
either in his own name to reverse the judgment

of the Circuit Court aforesaid or that he  
may be permitted to make use of the name  
of the said Joseph Scott accorded for that  
purpose without having his rights pre-  
judiced by the length of time which has elapsed  
since the rendition of said judgment.

Subscribed & sworn to } Lyman Trumbull  
July 18-1845. before me

Saml D Hubbard  
Judge of the

James M. Scott

vs  
Crown & Lewis

Jos. Scott, admr. of R. Scott deced.

Crow & Tevis.

*By* motion to sue out a writ of error in the name of James Scott, and his of R. H. Scott.

The undersigned having been of Counsel for sd Crow & Tevis in a certain case, now pending in the Sh. Clair Circuit Court entitled as above, which was there dismissed, leaving the Judgment of the Court of Probate in favor of said Crow & Tevis in full force, and understanding that it is understood to have said case reviewed here on writ of error, in the name of James Scott, a person thinking himself aggrieved by the Judgment of the Court below, begs leave to present some reasons, why said motion should be disallowed, appearing as amicus curiae, there being now no party in this Court which he could properly represent, although he is engaged by said Crow & Tevis to attend to their interest in this suit, in any shape, which it can be made to assume.

1. A person, that brings a writ of error, must be a party or privy to the suit. our statute (Gales. P. 528. S. 28), says that a person thinking himself aggrieved &c, being an infant &c. This means nothing more, than a party. If any one aggrieved, being an infant, was meant, the Statute would have used the word any person. This section does not purport to define the character of those, who might sue out the writ, but simply speaks of limitation, and saves the rights of infants, as in other cases. The passage near from 22 Bac. 457. Error, Letter B. contains the same language precisely as the passage in 2 Didd 1135. Side paying. The doctrine is evidently taken from the same source. The construction I place upon this passage is this. No person can bring a writ of error, who was

not a party, or privy to the judgement, nor even in such a case, if the party is not injured by the judgement.

To say that any person injured by the judgement could bring a writ of error, would certainly be absurd.

~~This is~~ That my construction is correct is evident from what Tidd says. 2. T. 1134.

A writ of error is an original writ & lies where a party is aggrieved by any error & in a court of record.

2. If the heir could in this case bring a writ of error, it would have to be shown,

I. that the Statute of limitation had been pleaded against the Administrator. The party is not bound to plead it, and the Court can not presume that it will be pleaded.

II. that said James Scott, who applies to bring the writ, were the only heir. This the affidavit does not show, and in fact he is but one of numerous heirs. The Court will never permit one of several defendants, or if the applicants construction be correct, one of several who are necessarily aggrieved, to sue out a writ, without all join.

Bacon. 461. & many authorities there cited.

1. Lord Raymond R. 71.

Guthrie Kanner

Jos. Scott, adm of  
M. Scott, decess.

vs

Crow & Tiers.

Motion to allow  
J. Scott to sue  
out writ of error.

Objections to said  
motion  
by G. Bourne.