No. 14840

Supreme Court of Illinois

Hempstead

vs.

Humphrey.

71641

STATE OF ILLINOIS,

SUPREME COURT,

THIRD GRAND DIVISION.

No. 123-54

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

Hempstead
vs
Humphrey

1865

IN SUPREME COURT OF THE STATE OF ILLINOIS.

THIRD GRAND DIVISION.

April Term, A. D. 1865.

JOHN W. HUMPHREY,
Ads. Appellee.
EDWARD HEMPSTEAD,
Appellant.

Appeal from Stephenson.
Brief of Appellee.

Statement of the Case.

This was a judgment entered in the Stephenson County Circuit Court, January 2d, 1864, in vacation after the December Term, A. D. 1863, of said Court, without an order of a Judge or Court therefor, on a warrant of Attorney, dated July 1, 1858. At the next term of the said Circuit Court thereafter, in April, 1864, this judgment on motion of the defendant therein, after notice to judgment plaintiff and affidavit filed, was vacated and set aside by the Court, "for the reason," as set forth in the order vacating the judgment, "that said judgment was entered up in vacation, no order by a Court or Judge allowing the same to be so entered up, being first obtained." From this order the plaintiff appealed.

Appellee's Points.

The English practice has been adopted as the basis of ours, is recognized by our Courts, and unless altered by legislative enactment, is regarded as binding on our Courts, with such modifications as our different circumstances and usage has rendered necessary.—*Hinds vs. Hopkins*, 28 *Ill.* 350—351. By the well recognized practice in Great Britain, and which practice obtains in New York, after the expiration of a year and a day from the execution of a Power of Attorney to confess judgment, besides an affidavit showing the execution of the Power of Attorney, the debtor living, and the debt or some part of it due, "A rule of Court or an order of a Judge in vacation must be obtained granting leave to enter judgment, *before it can be confessed.*"

Hinds vs. Hopkins, 28 *Ill.*, 350.

The Manufacturers' & Mechanics' Bank of Philadelphia, vs. St. John, 5 *Hill* 499.

Tidd's Practice, 552 553.

Lushington vs. Waller, 1 *Henry, Bl* 94.

Anon. 6 *Mod.* 212.

Oades vs. Woodward 7, *Mod.* 93.

Not only has this practice never been altered by legislative enactment in this State, but the Supreme Court of Illinois, in *Hinds vs. Hopkins*, 28 *Ill.*, 351 expressly stating the rule, and recognizing the practice, say: "The reasons which induced the British Courts to adopt such a rule of practice would seem to apply with equal force in our Courts."

The Court in New York, expressly stating the rule—that an order is necessary in all cases after the lapse of a year and a day—in the case before it, say: "This Warrant of Attorney was more than two years old at the time the judgment was entered, and there was neither any such affidavit as has been mentioned, nor was there any order of the Court or a Judge, giving leave to enter the judgment. The proceeding was irregular, and the judgment must be set aside."

The Manufacturers' & Mechanics' Bank of Philadelphia, vs. St. John; 5 *Hill* 499 500.

So it is respectfully submitted in the case at bar, before any judgment *could* be confessed under the Power of Attorney, more than a year and a day—nearly six years—having elapsed after the date of the Power of Attorney, there must have been an order of a Judge or Court therefor—a judicial act by a judicial officer, passing upon the sufficiency of the papers or the evidence to warrant a judgment, such judicial act to be evinced by an order made; and for the want of such order in this case, there *could* be no judgment, the proceeding was irregular, and the judgment as entered was properly set aside. If error had been brought directly upon the record of the judgment as confessed, would this Court do otherwise than reverse the judgment, or set it aside, under the rule? And appellant's position is no better here than it would be in such case. He could acquire no right under such irregular proceeding in the Court below. *Rising vs. Brainard*, cited by appellant, in this Court, not published, does not touch this case.

BAILEY & BRAWLEY,
Attorneys for Appellee.

No 123 — 58

Humphrey
ads
Hempstead

Brief of Appellee

Filed April 29. 1865
L Leland Clk

SUPREME COURT OF ILLINOIS.

THIRD GRAND DIVISION,

APRIL TERM, A. D. 1865.

EDWARD HEMPSTEAD,
Appellant.
vs.
JOHN W. HUMPHREY,
Appellee.

Appeal from Stephenson.

Appellant's Brief.

In this case, judgment was entered in vacation by confession under a Power of Attorney on a note, more than a year and a day after the warrant of Attorney was executed, and the note fell due, without an order of a Judge granting leave to enter judgment.

At the next term of the Court below, defendant, on the sole ground of this irregularity—in not obtaining the order of a Judge—moved the Court to vacate the judgment; and the Court sustained the motion, and vacated the judgment for that reason; whereupon Plaintiff below appealed.

The Affidavit, on which the Motion is based, is set forth at large in the 2d page of the Abstract; the Motion is based on "Reasons set forth in said Affidavit."

The Court will observe, that an irregularity only, is complained of. No "Equitable reason" for the interposition of the Court below is alledged, either in the Affidavit or Motion.

This Court, at last term, in case of *Rising vs. Brainard*, not yet published, held, that—

"Before a judgment will be set aside, because an Affidavit was not filed showing that the defendant was alive, and that the debt was due and unpaid the party making the application is required to show some *equitable reason* therefor. A mere non-compliance with the rule of the Court, in this regard, is not a ground for equitable relief.

"This Court will not reverse a judgment entered by confession, on the sole ground that no affidavit was filed, showing that the defendant was alive, and that the debt was due."

In the case at bar, the defendant below, on the sole ground of this irregularity in not obtaining an order of a Judge—has asked of, and obtained from, the Court below, an order vacating the judgment against him. He alleges no meritous defense—he has not even said that he had any defense whatever, and failing to allege any just ground of defense, raises an irresistable presumption that he has none. He has put his case on the sole ground of an *irregularity*, without urging any "Equitable reason" for the interference of the Court below, thus bringing this case within the rule announced in the case of *Rising vs. Brainard*, above referred to.

For the above reasons, it is most respectfully submitted, that the Court below erred in vacating the judgment, and the judgment of that Court should therefore be reversed.

J. A. CRAIN,
Appellant's Attorney.

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Hempstead

vs

Humphrey

Appellants Points

Filed A/c 11. 1865

L Lecompte Clk

Supreme Court of the State of Illinois.

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1865.

EDWARD HEMPSTEAD,
vs.
JOHN W. HUMPHREY,

Appeal from Stephenson.

PAGE OF RECORD.

Abstract of Record.

1 Placita Stepenson Circuit Court,
In vacation after December Term, A. D., 1863.

Copy of note:

" "$202.\frac{76}{100}. CHICAGO, July 1, 1858.
"Ninety days after date, for value received, I promise to pay to Ed. Hempstead, or order, the sum of two hundred two $\frac{76}{100}$ dollars, with interest 10 p. ct. from date. J. W. HUMPHREY."

2 Warrant of Attorney, same date as note, authorizing confession of judgment on said note.

3 Affidavits proving the making of above note, and warrant of attorney, and that the maker thereof was alive, and said note unpaid.

4 Declaration and cognovit.

5 Judgment entered January 2, A. D., 1864, in said vacation before the Clerk of said Circuit Court for $324.20, and costs.

6 7 Precipe for execution filed, and execution and fee bill issued on said last named day to the Sheriff of Stephenson County.

9 Execution still in hands of Sheriff.

April Term, A. D., 1864. Stephenson Circuit Court, at which the Court entered an order vacating said judgment

Appeal prayed and allowed.

10 Notice to Plaintiff that Defendant, at the April Term, A. D., 1864, of Stephenson Circuit Court, will move in Court to vacate the judgment in said cause for irregularity—

11 "In this, that said judgment was entered up in vacation, on an instrument executed more than a year and a day before such judgment was so entered up, and without the order of a Judge therefor."

" Affidavit on which motion is made states that—

"John W. Humphrey being first duly sworn, on his oath deposes and says, that he is the Defendant against whom the judgment in the above entitled cause was entered up, January 2, 1864, and that the warrant of attorney and promissory note upon which said judgment

" was entered up was executed on or about the first day of July, A. D., 1858, the day of the date thereof, and more than four years before said judgment was entered up thereon as aforesaid.

"Subscribed, sworn to, &c. JOHN W. HUMPHREY."

12 Motion to vacate said judgment is—

"For reasons set forth in said Affidavit."

The Defendant, on the second day of said April Term, filed said "Notice,

" Affidavit, and Motion," and moved the Court to vacate said judgment, which motion, after argument of Counsel, was granted—

"For the reason that said judgment

" was entered up in vacation, no order of a Court or Judge allowing the same to be so entered up being first obtained."

" Plaintiff excepts to order of Court granting said motion.

Appeal bond filed June 7, 1864.

13 Clerk's Certificate.

15 Errors assigned.

The Court erred in vacating said judgment.

The Court erred in vacating said judgment on the grounds set forth in said motion.

J. A. CRAIN,
Attorney for Appellant.

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Hempstead

Vs

Humphrey

Abstract

Filed Apr 12th 1865
L. Leland, Clk

United States of America
State of Illinois. Stephenson County } ss

In vacation after the December Term A.D. 1863 of the Stephenson County Circuit Court in the State of Illinois which Term was begun and held before the Hon. Benjamin R. Sheldon, Judge of the 14th Judicial Circuit in said State and sole presiding Judge of said court. and was holden at the Court House in the City of Freeport in the County aforesaid on the first monday (being the fifth day) of December A.D 1863. and of the independence of the United States the eighty seventh. Present at said Term

Hon. Benjamin R. Sheldon, Judge of the 14th Judicial Circuit. Illinois

Frederic C. Ingalls. States Attorney (pro tem.)

William H. Roby Sheriff Stephenson County

Attest Edward P. Hodges
Clerk.

Be it remembered that heretofore to wit in vacation after the December Term aforesaid of said Circuit Court. to wit on the second day of January A.D. 1864 there was filed with the Clerk thereof and in his office a certain note and warrant of attorney to confess judgement on said note together with affidavits thereto attached, a copy of which is in the words and figures following to wit.

$202.76. Chicago July 1. 1858 Ninety days after date, for value received I promise to pay to Col. Hempstead or order, the sum of Two Hundred and Two 76/100 Dollars, with interest 10 p.ct from date,

S. M. Humphrey.

1

Know all men by these Presents - That whereas the subscriber John W. Humphrey is justly indebted to Edward Hempstead upon a certain promissory note bearing even date herewith for the sum of Two Hundred Two Dollars and Seventy six cents made payable to the said Ed. Hempstead or order and due ninety days from date with 10 per ct. interest - Now, therefore in consideration of the premises, and of the sum of one dollar to me in hand paid by the said E. Hempstead, the receipt whereof is hereby acknowledged, do hereby make constitute and appoint Ira Scott or any attorney in any Court of record to be my true and lawful attorney, irrevocably for me and in my name place and stead to appear before any Justice of the Peace or in any Court of Record in term time or vacation in any of the States or Territories of the United States, at any time after the date hereof, to waive service of process, and confess a judgment in favor of the said Ed. Hempstead or his assignee 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 with interest thereon, together with costs - Also for Ten Dollars usual attorney's fees to be added to the amount due on entering up judgment, 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 such judgment, and to release all errors that may intervene in the entering up of such judgment, or issuing the execution thereon, and also to consent to immediate execution upon such judgment. Hereby ratifying and confirming all that my said attorney may do by virtue hereof -

Witness my hand and seal this first day of July A.D. 1858

In Presence of
W. D. French.

J. W. Humphrey. (Seal)

[illegible] 50 cts -

State of Minnesota }
Dakota County } ss

Wm D. French being duly sworn says he knows John W. Humphrey the maker of the annexed note and that said John W. Humphrey executed the power of attorney hereto attached and connected with said note in the presence of this affiant, and that said note has not been paid, and that said John W. Humphrey is now living, as this affiant is informed and believes -

Sworn to and subscribed this 27th day of November 1863 before me

W. D. French.

Eli Robinson
Notary Public for Minn.

State of Illinois }
Stephenson County } ss

J. Addison Crain of said County of Lawfull age being first duly sworn says that he is personally well acquainted with John W. Humphrey maker of the annexed note and power of attorney. That said note is wholly unpaid and that said John W. Humphrey is now living - and further saith not

Subscribed & sworn to before me this 2d day January A. D. 1864

J. A. Crain

E. P. Hodges.
Clerk

And time was also at the same time and attached to said instruments aforesaid with said Clerk and in his office files a certain Declaration on said note and a cognovit confessing judgment on the cause of action specified in said declaration a copy of which instruments is in the words and figures following, to wit

Circuit Court of Stephenson County
Vacation after December Term A.D. 1863

State of Illinois }
Stephenson County } ss.

Edward Hempstead by J. A. Crain his attorney comes and complains of John W. Hemphrey Defendant in this suit of a plea of trespass on the case upon promises. For that whereas the said Defendant on the first day of July A.D. 1858 at Chicago to wit. at the said County of Stephenson made his certain promissory note in writing bearing date the day and year last aforesaid, and delivered the same to the Plaintiff, whereby the Defendant then and there promised to pay the Plaintiff (by the style of Ed. Hempstead) or order ninety days after the date thereof which period has now elapsed, Two hundred Two dollars and seventy six cents for value received with interest at Ten per cent per annum from date.
Yet the Defendant, although often requested, etc hath not yet paid the sum of money or any part thereof to the Plaintiff, but so to do hath hitherto wholly refused and still does refuse to the damage of the Plaintiff of Three hundred twenty four & 20/100 Dollars, and therefore he brings suit, etc.

J. A. Crain Plaintiffs Attorney

State of Illinois }
Stephenson County } ss. Circuit Court of said County
Vacation after December Term A.D. 1863

John W. Hemphrey }
Adst } Cognovit
Edward Hempstead }

And the said John W. Hemphrey Defendant in the above entitled suit, by C. C. Shuler his attorney comes and defends the wrong and injury when etc, and waives service of process and says that he cannot deny the action of the said Plaintiff nor but that he the Defendant did undertake and

promise in manner and form as the said Plaintiff hath thereof above complained against him, nor but that the said Plaintiff has sustained damages on the occasion of the non performance of the several promises and undertakings in the said declaration mentioned, including the sum of Ten Dollars for his reasonable attorneys fees for entering up this judgment (over and above his other costs and charges by him about his suit in this behalf, expended) to the amount of Three hundred twenty four dollars and twenty cents — And the said Defendants 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 releases all errors that may intervene in entering up the same, or issuing the execution thereon, and consent to immediate execution upon such judgment

C. C. Shuler: Defendant's Attorney —

Upon which promissory note power of attorney, affidavits declaration and cognovit there is the following endorsement to wit, "Filed this 2nd day of January 1864 — E. P. Hodges Clerk per J. P. Hodges Dep."

Upon the filing of all of which said instruments as aforesaid there was entered up by the Clerk of said Court, and before him the said Clerk, and duly entered upon the records of said court a judgment in the said Court in the words and figures following to wit —

In the Stephenson County Circuit Court in Vacation after December Term thereof A.D. 1863 to wit saturday January 2nd A.D. 1864

John W. Hemphrey
ads
Edward Hempstead } On cognovit

And now on

5 — this day came the said Plaintiff by J. Addison

Crain Esq. his Attorney and files his declaration in an action of trespass in the case on promises against the said Defendant and files also a warrant of Attorney signed and sealed by said Defendant John W. Hemphrey the execution of which is duly proven by affidavit on file authorizing any attorney of any Court of record to appear in this Court, waive service of process and confess judgment in favor of the said plaintiff and against the said Defendant for the amount due upon a certain promissory note annexed to said warrant of attorney, also for the sum of ten dollars Attorney's fees, besides the cost of this suit.

Thereupon also came C. C. Shuler Esq. an Attorney of this Court in behalf of said Defendant and files his cognovit by which he waives service of process and confesses and consents that judgment may be entered in favor of said Plaintiff and against the said Defendant for the sum of Three hundred twenty four dollars. and twenty cents, it being the amount due upon said note including attorney's fees. And the said Attorney releases all ~~errors~~ in entering up this judgment either in Law or equity or in issuing execution thereon. And consents to the issuing of immediate execution on the same. It is therefore considered and ordered by the Court that the said Plaintiff have and recover of the said Defendant his damages for the said sum of three hundred twenty four dollars and twenty cents as aforesaid confessed together with his costs and charges by him about his suit in this behalf expended and that he have execution for the same.

Attest E. P. Hodges Clerk
Per J. P. Hodges. Dep.

Which judgment stands in regular number upon the records of said Court numbered 7018

And afterwards to wit on the said second day of January A.D. 1864 there was filed in the Office of said Clerk a Precipe for execution a copy of which is in the words and figures following to wit

State of Illinois }
Stephenson County } Circuit Court of said County
Vacation after December Term
A.D. 1863

Edward Hempstead }
vs. }
John W. Humphrey }

The Clerk of said Court will issue an execution on the judgment entered in the above entitled cause directed to the Sheriff of said County

S.A. Crain Pltf's Atty.

And afterwards to wit on the said second day of January A.D. 1864 there was issued out of said court under the seal thereof and the hand of the Clerk thereof a writ of fieri facias and fee bill accompanying the same a copy of which is in the words and figures following to wit-

State of Illinois }
Stephenson County } Sct

The people of the State of Illinois to the Sheriff of Stephenson County, Greeting - We command you that of the goods, chattels, Lands, and tenaments of John W. Humphrey in your county, you cause to be made the sum of Three hundred and twenty four dollars and twenty cents damages and four and 95/100 dollars costs which Edward Hempstead lately recovered against him in the Stephenson County Circuit Court, as appears of record. And this you are not to omit under the penalty of what the Law prescribes - And have you these monies at the Clerks Office of said Court at the next within ninety days from the date hereof - and also this writ.

Witness Edward P. Hodges Clerk of said Court

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and the seal thereof, at Freeport this 2nd day of January A.D. 1864. Attest E.P. Hodges Clerk

Seal

per E.P. Hodges Dep.

The Sheriff will collect interest on the above from the 2nd day of January A.D. 1864.

E.P. Hodges Clerk. per J.P. Hodges Dep.

Fee Bill on Judgment Confessed

Edward Hempstead
Vs
John W. Humphrey

In Vacation after Dec. Term A.D. 1863. Jany. 2d 1864

Plaintiffs Costs

App and Atty 15c, Docket-suit-10c, Entg and filg Narr and N 35	.60
Filing 1, Aff 5, filing 1, papers 5, entg ord judg't 20c	.30
Entg judg't 25c, entg satis, 15c, ord. Execution 20c,	.60
Execution and filing 45c. Docket Ex. 10c. entg Sheriff's return 10c	.65
Entering and makg Bill. Costs 30c, cty and seal 35c	.65
	2.80
Doc fee & Stamps (pd by Plff. Atty)	1.35
	4.35

Defendants Costs

Entering app. & Atty 15c. entg & filing cognovit-25c.	.40
Making and entering B.C. 30c. Fee Bill Ex 45c.	.75
	1.15

State of Illinois
Stephenson County ss

I Edward P. Hodges Clerk of the Circuit Court within and for said County do certify that the foregoing is a true and correct copy from my fee books

Seal

Witness my hand and seal of said Court at Freeport in said County this 2d day of January A.D. 1864

E.P. Hodges Clerk
per J.P. Hodges Dep.

Which execution and fee bill still remains in the hands of the Sheriff of said County of Stephenson.

And afterwards to wit- on the sixth day of April A.D. 1864 it being one of the days of the April Term A.D. 1864 of said Stephenson County Circuit Court the following among other proceedings were had and entered of record to wit-

Edward Hempsteas
Vs
John W. Humphrey
} Motion to set aside judgment

Now on this day came the said Plaintiff by J. A. Crain Esq. his Attorney and also comes the said Defendant by Bailey & Beardsley his attornies and enters his motion to vacate the judgment heretofore entered in this cause, and the motion now coming on to heard after argument of counsel the court being sufficiently advised in the premises, it is considered and ordered by the court that the motion be sustained and the judgment heretofore entered in this cause be vacated.

And afterwards, to wit- on the twenty second day of April A.D. 1864. said day being at yet of the April Term A.D. 1864 of said Stephenson County Circuit Court the following among other proceedings were had and entered of record to wit-

Edward Hempsteas
Vs
John W. Humphrey
} Motion to set aside judgment

And now on this day come the said parties by their attorneys, and the Plaintiff prays an appeal. Whereupon it is ordered by the Court that an appeal be allowed upon condition that said Plaintiff file with the Clerk of this Court his appeal bond properly conditioned to Defendants with Myron H. Norton as surety, in the penal sum

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of Two Hundred Dollars within sixty days after the rising of Court

Now afterwards to wit- on the thirteenth day of April A.D. 1864 said day being as yet of the April Term A.D. 1864 of said Stephenson County Circuit Court, the following among other proceedings were had and entered of record to wit-

Edward Hempstead
vs
John W. Humphrey
} Motion to vacate judgment-

Now on this day comes the said Plaintiff by Crain his attorney and files his bill of exceptions herein in the words and figures following to wit-

State of Illinois
Stephenson County
} ss In Circuit Court of said County April Term A.D. 1864

Edward Hempstead
vs
John W. Humphrey
} Bill of Exceptions

Be it remembered that at the April Term A.D. 1864 of said Circuit Court on the first day thereof ~~the~~ said Defendant filed in the said cause in said court the following notice, affidavit and motion to wit-

No 7018
Edward Hempstead
vs
John W. Humphrey
} In the Circuit Court of Stephenson County in the State of Illinois
In vacation after December Term of said Court A.D. 1863
Judgment on cognovit filed Jan. 2nd 1864 for $324.20

State of Illinois
Stephenson County
} ss. In the Circuit Court of Stephenson County in the State of Illinois

of the April Term A.D. 1864

To Edward Hempstead plaintiff in the above entitled cause or to J. A. Crain Esq. his Atty.

Please take notice that on Monday the 4th day of April A.D. 1864 or as soon thereafter as counsel can be heard the Defendant in said cause will move in court to vacate the judgement in said case for irregularity in this that said Judgment was entered up in vacation on an instrument executed more than a year and a day before such judgment was so entered up and without an order of a Judge therefor

March 1st 1864

Bailey & Brawley Atty's for
John W. Humphrey.

State of Illinois } In the Circuit Court of Stephenson
Stephenson County } ss. County in the State of Illinois
In vacation after December Term
A.D. 1863 of said Court.

No 7018

Edward Hempstead
vs
John W. Humphrey } In the Circuit Court of Stephenson
County in the State of Illinois of
the April Term A.D. 1864.

State of Illinois }
Stephenson County } ss.

John W. Humphrey being first duly sworn on his oath deposes and says that he is the Defendant against whom the judgement in the above entitled cause was entered up July 2nd 1864. and that the warrant of Attorney and promissory note upon which said judgment was entered up was executed on or about the first day of July A.D. 1863 & the day of the date thereof and more than four years before said judgment was entered up thereon as aforesaid.

Subscribed & Sworn to before me the 4th day of April A.D. 1864
Edw P. Hodges Clk.
By Chas M. Mayer Depy.

J. W. Humphrey.

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John W. Humphrey
Ads
Edward Hempstead

In the Circuit Court of
Stephenson County in the State
of Illinois of the April Term A.D. 1864

And now comes John W. Humphrey by Bailey & Brawley his Attornies and moves the Court to vacate the judgment mentioned in the above and foregoing affidavit for reasons set forth in said affidavit

Bailey & Brawley Atty's for
J. W. Humphrey.

Said defendant on the second day of said term on said notice affidavit and motion, moved the court to vacate said judgment, which motion after argument of counsel for both defendant and plaintiff, the court then and there sustained and vacated the same for the reason that said judgment being entered up in vacation no order of a court or judge allowing the same to be so entered up was first obtained, to which ruling and order the plaintiff then and there excepted, and inasmuch as the matters aforesaid do not appear of record the Counsel for the plaintiff presents this bill of exceptions and prays that the same may be signed and sealed by the court and made a part of the record in said case and it is done accordingly

Benj. R. Sheldon (Seal)

And afterwards to wit on the seventh day of June A.D. 1864 and within the time above limited for filing the appeal bond in this cause there was filed with the Clerk of said Court and in his office an Appeal Bond in the words and figures following to wit

Know all men by these presents, that we Edward Hempstead and Myron H. Norton of the County of Cook in the State of Illinois are held and firmly bound unto John W. Humphrey of the

County of Stephenson in said State in the sum of Two Hundred dollars, for the payment of which well and truly to be made, we bind ourselves, our heirs administrators and assigns jointly, severally firmly by these presents: Signed with our hands and sealed with our seals this the 15th day of June A.D. 1864.

The condition of the above obligation is such, that whereas in a certain suit heretofore pending in the Circuit Court of said Stephenson County wherein the said Hempstead was Plaintiff, and the said Humphrey defendant, judgment was rendered against the said Plaintiff, and he has prayed an appeal to the Supreme Court of said State.

Now if the said Plaintiff shall duly prosecute his said appeal and pay or cause to be paid all costs which have accrued or may accrue in said cause and all interest and damages in case the judgment of said Circuit Court shall be affirmed then this obligation to be null and void.

E. Hempstead (Seal)
Myron H. Norton (Seal)

Upon which Bond there is the following endorsement, to wit:
"Filed June 27th. 1864
E. P. Hodges Clk."

State of Illinois }
Stephenson County } ss. I, Edward P. Hodges Clerk of the Circuit Court in and for said County in the State aforesaid, do hereby certify the and foregoing, to be a true, perfect and complete copy of the Promissory note Warrant of Attorney - Affidavit, Declaration - Cognovit - Entry of Judgment - Precipe for Execution, Execution and Fee Bill, Order of Court vacating Judgment - Order allowing Appeal

14 Bill of Exceptions and Appeal Bond and of all and the whole of the record and Bill of Costs in a certain cause lately pending on the Common Law side of the Stephenson Circuit Court wherein Edward Dempstead was Plaintiff and John H. Humphrey was Defendant.

In witness whereof, I have hereunto set my hand and the seal of our said Court at the City of Freeport this 27th day of March A. D. 1865.

J. P. Hodges Clerk
By H. M. Mayer Dep

Clerk's fees for Transcript of Record to Supreme Court $7.00

Received Payment of Appalant's Attorney

J. P. Hodges Clk
By H. M. Mayer Dep

In Supreme Court of the State of Illinois
Third Grand Division April Term A. D. 1865

Edward Hempstead
Appellant

vs

John H. Humphrey
Appellee

Assignment of Errors

And now the said appellant comes and says that in the record and proceedings aforesaid there is manifest error in this, to wit:

1st The Court erred in vacating said judgment

2nd The Court erred in vacating said judgment in the grounds set forth in said motion

By reason whereof the appellant pray's that said judgment may be reversed &c

T. Lyon
Appellants Attorney

And now comes the said Appellee and says that in the above Record and proceedings aforesaid there is no error and prays that said judgment may be affirmed

Bailey & Brown
Attorneys for Appelle

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Supreme Court of Illinois.

Edward Hempstead,

Vs.

John W. Humphrey.

Record.

Filed April 1st 1875

L. Leland

Clerk

J. A. Crain

Appellant's Atty.