

No. 11951

Supreme Court of Illinois

Kelley

vs.

Hemmingway

71641  7

Supreme Court of the State of Illinois
June Term AD 1852

David Kelly
vs Appellant

Moses Hummingway
appellee

Appeal from the People

And the said David Kelly Appellant,
by Gammeworth & Ferguson his attorneys comes
and appears for error in the Circuit Court of said
County,

First. The Circuit Court erred in allowing the
Contract a instrument to be read in evidence
on the trial of this cause between these
parties

Second. The said Court erred in allowing Moses
Hummingway, as assignee of said instrument
to maintain a scit thereon in his own
name -

Third. The finding of said Court was erroneous
and should have been for the Defendant
Kelly -

Gammeworth & Ferguson
Attorneys

And now comes the said Hummingway & says
that in the return & proceedings aforesaid
& in the rendition of the Judgment aforesaid
there is no error & he prays that said Court
be in all things affirmed

B. C. Cook
attys

Supreme Court

June Term 1852

David Kelly, appellant

vs

Moses Hutchinson
Appellee

Argument of

Filed June 7th 1852.

J. A. Leland Clerk,

By J. H. Leland Depy.

United States of America
State of Illinois
Du Page County } Ct.

Sheweth before the Honorable
H. Hugh Henderson Presiding Judge of the Eleventh Judicial
Circuit in the State of Illinois, at a Special Term of the Du
Page County Circuit Court in said Judicial Circuit being
and held at Naperville in said County (in terms of the
Statute in such case made and provided) on Monday the
Ninth day of June in the year of Our Lord One thousand
and eight hundred and fifty one and of the Independence
of the United States the Twenty fifth.

Present The Honorable Hugh Henderson Judge
Sherman W. Bowen Atty. Attorney
Charles R. Foxmole Sheriff of said County
Alfred John C. Addler Clerk.

Be it Remembered that heretofore to wit on the
thirteenth day of November A. D. 1850 there was filed in the
Office of the Clerk of the Circuit Court of the said County
of Du Page a Transcript from the Docket of Sidney Mc
Nell a Justice of the Peace of said County - together with
Appeal Bond and other papers of suit - Which said Trans
cript is in the words and figures following to wit,

"Moses Heringway 1850 - Action of Warrant
vs David Kelley Demand \$73.50

David Kelley } Oct. 11th Summons issued made re-
spondable the 19 day of Oct. inst. at 10 o'clock A.M. de-
livered to D. C. Nash Const. Oct. 15th Subpoena is-
sued on part of Plaintiff delivered to D. C. Nash Const.
Oct. 19th 10 o'clock A.M. Summons and Subpoena returned
duly served by D. C. Nash Const. Suit called parties

present. Defendant makes oath that he believes he cannot have an impartial trial before me, whereupon a Transcript and the papers are herewith transmitted to Sidney Mr. Nitt the next nearest Justice. - C. L. Gould Justice of the Peace

Oct. 19. 1850 the above Transcript read. Not called parties present when after hearing their proofs and allegations it was thought by me that Judgment should be and is hereby rendered against the defendant for the amount of Seventy three Dollars and fifty Cents debt and two Dollars and forty cents cost, and that Execution issue therefor.

Sidney Mr. Nitt Justice of the Peace.
November 6. 1850 the Plaintiff files his Motion and ordered a Transcript to be sent to the Circuit Court.

Sidney Mr. Nitt Justice of the Peace.
I do hereby Certify that the above is a true copy of the proceedings had before me.

Sidney Mr. Nitt Justice of the Peace.
Which said Appeal Bond is in the words and figures following to wit. "Know all men by these presents that we David Kelley and Abel Walker of the County of De Sage and State of Illinois are held and firmly bound unto Moses Hemmingsway in the special sum of One hundred Dollars lawful money of the United States for the payment of which well and truly to be made we bind ourselves our heirs executors and administrators jointly severally and jointly by these presents. Witness our hands and seals this 6th day of November A.D. 1850. The Condition of the above Allegation is such, that whereas the said Moses Hemmingsway did on the 19th day of November A.D. 1850 before Sidney Mr. Nitt a Justice of the Peace for the said County of De Sage recover a Judgment against the above bounden David Kelley of De Sage County for the sum of Seventy five Dollars 90 ct., from which Judgment the said

David Kelley of County and State aforesaid has taken Appeal to the Circuit Court of the County of Du Page aforesaid and State of Illinois. Now if the said David Kelley aforesaid shall prosecute his Appeal with effect and shall pay whatever Judgment may be rendered by the Court upon dismissal or trial of said Appeal then the above Allegation to be void, otherwise to remain in full force and effect.

Approved by me at my Office
this 6th day of November 1850

Silvery Mc Pitt

Justice of the Peace

David Kelley
Abial Walker

Seal
Seal

Be it also Remembered that on the fourteenth day of November A. D. 1850 a Summons on Appeal was issued to the Sheriff of said County of Du Page, by the Clerk of the Circuit Court of said County, which said Summons is in the words and figures following to wit,

State of Illinois

Du Page County

s.s.

The People of the State of Illinois to the Sheriff of said County Greeting: We command you to summon Moses Hemminger to be found in your County personally to be and appear before the Circuit Court of said County on the first day of the next term thereof to be holden at the Court House in Naperville on the fourth Monday in April next to prosecute a suit which was instituted by him against David Kelley and recovered Judgment before J. Mc Pitt a Justice of the Peace in and for said County on the 19th day of October A. D. 1850 for the sum of Seventy three and 50/100 Dollars besides costs, from which Judgment the said David Kelley has taken an Appeal to the Circuit Court of said County, and further to do and perform whatever the said Court may then and there consider in the premises,

And have you then and there this writ.

Witness John I. Riddler Clerk of said Court and the Seal of said Court at Newberry this 11th day of November A. D. 1850.

John I. Riddler Clerk."

And on the back of said Summons is the following Return of said Sheriff to wit, "Moses Hemingway not found in my County - Nov. 22^d 1850 - Geo. Nash Sheriff."

Be it also Remembered that on the tenth day of June A. D. 1851 being one of the days of said June Special Term of said Court, the following among other proceedings in said cause were had to wit,

"Moses Hemingway

N. 29 1851

David Kelley, Appellant

} Appeal

This day comes the Plaintiff by Jones his Attorney and moves the Court to dismiss this Suit on account of the insufficiency of the Bail Bond, and thereupon comes Dodge Attorney for the defendant and moves the Court for leave to amend the Bond on file herein, and the Court having heard the parties on said motions leave is granted to the defendant to amend said Bond by to morrow at One O'Clock P. M."

And on the Eleventh day of June A. D. 1851 being as yet of said June Special Term of said Court the following further proceedings in said cause were had to wit,

"Moses Hemingway

N. 29 1851

David Kelley, Appellant

} Appeal

This day comes the defendant by Farnsworth his Attorney and files his Amended Bond in

conformity with the order formerly entered herein -"
Which said Amended Writ is in the words and figures following
to wit, &c.

Know all men by these presents that We David Kelley
and John D. Ackerman are held and firmly bound unto Moses
Ammenquay in the penal sum of One hundred and sixty
Dollars lawful money of the United States, to which payment
well and truly to make and to be made we bind ourselves our
heirs executors and administrators firmly by these presents, Witness
our hands and seals this 11th day of June A.D. 1851 -
The Condition of the above Obligation is such that whereas the
said Moses Ammenquay did on the 19th day of October A.D.
1850 before Sidney Mc Mill a Justice of the Peace of the
County of Du Page and State of Illinois recover a Judgment
against the above bounden David Kelley for the sum of
Seventy five Dollars and ninety cents, from which Judgment
the said Kelley has taken an Appeal to the Circuit Court of
the said County of Du Page State of Illinois. Now if the said
Kelley shall well and truly prosecute his said suit with effect and
shall pay whatever Judgment may be rendered by the Court on
trial or dismissal of said Appeal then the above obligation to be
void and of none effect, but otherwise to remain in full force
and effect.

Approved by me this 11th
day of June A.D. 1851
John J. Riddler Clk.

David Kelley *Seal*
J. D. Ackerman *Seal*

And on the thirteenth day of June A.D. 1851 being as yet of
said June Special Term of said Court the following further
proceedings in said cause were had to wit,

Moses Ammenquay
vs
David Kelley, Appellant } Appeal

"By agreement this cause is set for trial on Wednesday next."

Be it also Remembered that on the twentieth day of June A. D. 1851 being also as a part of the June Special Term of said Court the following further proceedings in said cause were had to wit:

Moses Hemingway -
vs
David Kelley Appellant } Appeal

This day came the parties by their respective Attorneys and by agreement a day is waived and this cause submitted to the Court for trial and the Court having heard the parties it is Ordered and Considered that the said Plaintiff have and recover of the said Defendant the sum of Seventy five Dollars and Seventy three cents his damages herein and thereupon comes Farnsworth Attorney for the Defendant and prays an Appeal and the Court having heard the parties on said motion grants the same on condition that the Defendant enter into Bond with John D. McHorman or Daniel Kelley, Junior as Security in the sum of Two hundred Dollars before the Clerk of this Court within forty days from the rising of this Court."

And on the same date last above mentioned there was taken and filed a Bill of Exceptions in the words and figures following to wit:

"State of Illinois

"De Page Circuit Court
Of the June Special Term 1851."

"Moses Hemingway
vs
David Kelley

} Be it Remembered that on the trial

of the above entitled cause before Am: Hugh Anderson without
a jury the Plaintiff produced a paper in the following words to
wit:

"Castleton April 27th 1844

Due Henry D. Kelley fifty three Dollars when he is
twenty one years old with interest

David Kelley."

On the back of which paper was the following endorsement:
"Castleton May the 21 1849 Signed the within paillet to Moses
Henningsway - Henry Kelley."

The Plaintiff then called a Witness by whom he proved the
endorsement on said paper to be the handwriting of Henry
Kelley the payee, and by whom he also proved that the said
Henry Kelley was twenty one years of age in August of the
year 1849. The Plaintiff then offered the said paper in evi-
dence - to the reception of which paper in evidence the defend-
ant made objections - because, first - the said paper is endorsed
to Moses Henningsway and not to the Plaintiff in this cause -
Secondly, because the said paper is not a negotiable instrument
so as to entitle the assignee thereof to maintain suit thereon
in his own name. The Court overruled said objections and
admitted said paper to be read in evidence. This being all the
evidence offered in said case the Court gave Judgment for the
said Plaintiff for the sum of Twenty five Dollars and Seventy
three cents and costs of suit. To the overruling said objections
and to the giving of Judgment for the Plaintiff by the Court
the defendant excepted and prays that this his Bill of Excep-
tions may be signed and sealed - which is done in Open Court.
June 21st 1851.

Hugh Anderson
Judge of the 11th Judicial
Circuit in State of Illinois."

Be it also Remembered that on the 31st day of July 1851
there was taken and filed in the Office of the Clerk of said
Court a Bond in the words and figures following to wit:

"Know all men by these presents that we David Kel-
ley and John D. Ackerman of the County of Du Page and
State of Illinois are held and firmly bound unto Moses Hen-
ningway of the County of _____ and State aforesaid in the
sum of Two hundred Dollars lawful money of the United
States, for the payment of which well and truly to be made we
bind ourselves our heirs executors and administrators jointly sev-
erally and firmly by these presents. Witness our hands and seals
this 31st day of July A.D. 1851.

The Condition of the above obligation is such that
whereas the said Moses Henningway did on the 20th day of
June A.D. 1851 being one of the days of the June Special
Term A.D. 1851 of the Circuit Court in and for the said County
of Du Page and State of Illinois recover a Judgment before
said Circuit Court against the above bounden David Kelley for
the sum of Seventy five Dollars and Seventy three cents, from
which said Judgment of the said Circuit Court the said David
Kelley has taken an Appeal to the Supreme Court of the said
State of Illinois. Now if the said David Kelley shall prosecute
his said Appeal with effect and shall pay the said Judgment,
Costs interest and damages in case the said Judgment shall be
affirmed on the trial of the said Appeal in the said Supreme
Court then the above obligation to be void, otherwise to remain in
full force and virtue.

Taken and entered into before me at
my Office this 31st day of July A.D.
1851.

David Kelley *attest*
J. D. Ackerman *attest*

John J. Riddle Clerk

Clerk Co. Du Page Co. Ill.

By Alex. Menzies Deputy Clerk

State of Illinois }
Du Page County } John I. Ridgely Clerk of the Cir-
cuit Court of the said County of Du Page in the State afore-
said hereby certify the foregoing to be a true and correct copy
of all the proceedings had in the before mentioned cause in said
Court, and that the papers copied in the foregoing are truly
and correctly copied from the originals on file in said cause.
Witness my hand and the Seal of said Circuit
Court at Naperville in said County this fourth
day of June A.D. 1852.

John I. Ridgely
Clerk

De Page -

David Kelley

vs
Moses Hemmingway

Record

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Filed June 7th 1852.
V. Ireland Clerk
By J. Ireland Esq.

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1852

Replaced