

12031

No. _____

Supreme Court of Illinois

Comelia

vs.

Ellis

71641  7

State of Illinois

Kane County Circuit Court

Be it remembered that on the 25th day of November A.D. 1848 there was filed in the Clerk's Office of Kane County Circuit Court a Transcript from a Magistrate of which the following is a true Copy to wit

Myron Ellis & Patrick Cornelia
State of Illinois Justice Court
Kane County & Suit in Trespass Damages \$41.66.

Oct 17th 1848 Summons issued to W.D. King Constable, Returnable 24th instant at one O'clock P.M. Summons returned served by reading to defendant by W.D. King Constable. October 17th 1848. one Subpoena on the part of the plaintiff to Isaac Houghtalin R. Montany, D. McCarty, H. N. Goodrich, J. Beaver and W.D. King. Subpoena returned personally served on the within named witnesses and their fees paid them October 24th 1848 by plaintiff. October 24th 1848 parties appeared plaintiff claims for taking a horse and harness defendant admits the taking the property and justifies the taking upon an Execution in favor of C.D. Condy and against the pltg. Plaintiff admits the plea, but claims the property as exempt from Execution. H. N. Goodrich, Daniel McCarty, R. Montany, J.D. Beaver and Isaac Houghtalin witnesses sworn on the part of the plaintiff; after hearing the testimony; It is considered that the plaintiff have and recover the Sum of Forty one dollar and Sixty Six Cents, for his damages and the Cost of Suit as taxed in the margin and that he have Execution therefor, November 11th 1848 this Court approved. John King J.P.

State of Illinois }
Kane County ss } I John King a Justice of the
Place in and for said County
do hereby Certify the above to be a full and perfect
copy from the books and files of my Office in the
above entitled Cause Dated November 11th 1848
John King J.P.

And afterward, to wit on the 25th day
of November AD 1848 then issued from the Clerk's
Office of Kane County, Circuit Court an appeal
summons of which the following is a true
cop to wit:

State of Illinois } The People of the State of
Kane County ss } Illinois to the Sheriff of said
County Greeting

We Command You to Summons
Meyron Ellis if to be found in said 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 Geneva on the Fifth Monday after the
third Monday of March next to abide by
and perform the judgment of said Court
on a certain appeal at his suit against
Patrick Emilia and make due return of
this writ.

Witness Mark W. Hetchu Clerk
Clerk of said Court and the Seal
thereof at Geneva this 25th day
of November AD 1848

MW Hetchu Clerk
by Chas. P. Wells Dep.

Endorsed as follows: "Served the within writ
personally by Reading December 5th 1848.

P. C. Yates Sheriff
F. Cornelia Dep.

And on the 25th day of November AD
1848 the defendant filed an appeal Bond
in said Clerk's Office of which the following is
a true Copy to Wit

Know all Men by these Presents
that we Patrick Cornelia and Cornelius R. Bandy
are held and jointly bound unto Myron Ellis
in the Penal Sum of Ninety Two 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, severally and
jointly by these Presents. Witness our hand, and
seals this 11th day of November AD 1848.

The Condition of the above obligation
is such that whereas the said Myron Ellis
did on the 24th day of October AD 1848. before
John King a Justice of the Peace for the County of
Kane, recover a judgment against the above
bounden Patrick Cornelia for the Sum of Forty
Two Dollars, Eighty Two Cents, from which judgment
the said Patrick Cornelia has taken an appeal
to the Circuit Court of the County of Kane of said
and State of Illinois - Now if the said Patrick
Cornelia 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 obligation to be
void otherwise to remain in full force and

effect

Abigail {Seal}
et Bonda {Seal}

Approved by me at my
Office in Aurora this 11th
day of November AD 1848

John King *Junr*
Justice of the Peace

And afterward, to wit on the 11th day
of March AD 1850 it being one of the days of the
March Term AD 1850 the following among other
proceedings was had to wit:

22
18
Negro Ellis

v

Patrick Cornelia

} Appeal

This day comes Plato
for defendant and
moves to dismiss this suit for want of security for
Costs; Ordered by the Court, that the Motion be overruled

And afterward, to wit on the 22^d day of March
AD 1850 it being one of the days of the aforesaid March
Term, the following among other proceedings was
had to wit.

24
18
Negro Ellis

v

Patrick Cornelia

} Appeal

This day comes the
Parties to this suit by their
Attorneys. And submit this cause to the Court for
trial, and the Court being fully advised in the
premises, find, the issues found in favor of the
Plaintiff, and assess this damages at the sum
of Forty dollars; therefore comes Plato

Attorney for the defendant and move for a new trial, which is overruled by the Court: it is therefore considered by the Court, that the plaintiff have and recover of the defendant the sum of Forty dollars, and his costs in this suit expended and have Execution therefor, and appeal allowed to Supreme Court by defendant entering into Bond of one hundred dollars with Jasen Chapel. Monroe H Lord, C.B. Conde or Orsamus Wilson security.

State of Maine } Copy of Bill of Exceptions filed April 5th 1850.
Hann County and Circuit Court
thereof - March Term AD 1850
Mozum Ellis }
Patrick Cornelia } Appellate from Justice of Peace

Be it remembered that on the trial of this Cause plaintiff claimed damages for the taking and carrying away by defendant a horse and harness the property of plaintiff. Defendant admitted the taking &c - but alleged that at the time of taking &c defendant was a Constable of Hann County, duly authorized to act as such, that he had in his hands an execution issued by Jasen Chapel a Justice of the Peace, upon a judgment on his docket in favor of C.B. Conde and against the p'ty for the sum of Fifty dollars, and that such taking was the ~~seizing~~ ^{seizing} by virtue of said Execution, all this was admitted by the plaintiff; but he claimed that said property was exempt from Execution, and this defendant denied.

To sustain his allegations plaintiff called Daniel M. Cady - who testified that

he was well acquainted with Plaintiff at the time of the levy - that he was at that time the head of a family and lived with them - that Plaintiff was by occupation a Miller, and at the time and for some time before and after the levy, Plaintiff worked for Mitups in his M. G. Mill at Thirty dollars per month - that Plaintiff was poor - that he knew of his having about that time, the horse in question worth Forty or Forty Five dollars - did not know of his owning any other property - on ^{an} examination, witness stated that he thought Plaintiff had a harness at that time worth Eight dollars, and a Watch worth about Ten dollars - That prior to the levy he had seen in Plaintiff's possession a Wagon worth Twenty Five dollars or Thirty dollars - a Clock worth Three or Four dollars - and a Saddle worth Five dollars - but he could not tell whether he owned them at that time of levy or not; he had no personal knowledge of Plaintiff having sold them prior to that time.

Plaintiff then called Richard G. Montony who testified that at the time of the levy aforesaid and when Plaintiff was about executing a delivery bond, Plaintiff claimed the horse as exempt from the execution - and said that he had not Sixty dollars worth of personal property - he then stated over to defendant the articles of personal property which he said he owned putting a value on each - mentioning the horse and perhaps some other articles, and lastly his Watch placing a value on each: and the whole as then stated was left then

Sixty dollars - the Plaintiff then said to the
Officer, that if he thought the whole worth more
then Sixty dollars, he might take the Watch, and
took the Watch out of his pocket - defendant said
that he did not know as it was worth more than
Sixty dollars - but he was indemnified and he
was going to take the horse - Witness further
stated that he could not know what value plff
put upon each article - nor can he recollect
any particular piece of property mentioned by
plaintiff at the time except the horse which was
first - and the watch which was named last - but
thinks he named over one or more other articles,
but did not offer to turn out any thing except
the Watch - Witness further stated that he knew
of plaintiff having in his possession a short time
before the levy - several Law Books worth about
Twenty Two dollars - which Plaintiff said were his.
Some of the above was called out on cross exam-
ination.

Plaintiff then introduced Doctor M^c
Intyre, who testifies that he was plaintiff
family physician at the time and for some
time before the levy - that his family then
consisted of a Wife sick with Consumption,
and four Children, the older two boys
some Eight or Ten Years old - and that he
had advised plaintiff that it would be well
for his Wife's health to have her ride out in the
open air in good weather - on cross examination
Witness said that he never knew that she did
ride out in pursuance of said advice. That
a horse might have been hired or borrowed.

for that purpose in Aurora where Plaintiff
then lived: Another Verdict states that the
harnes was applied on the execution by agreement
of parties thereto. This was all the Evidence.
The Court found the issues for Plaintiff (Plaintiff
did not claim the penalty of 3 times the Value)
assessd his damages at Forty dollars defendant
excepted to the finding - Defendant moved
for a new trial which was overuled, and defendant
excepted and Prays that this Bill may be signed
sealed & enrolled which is done

J. L. Dickey Seal

And afterwards to wit on the 26th day
of April AD 1850 the defendant filed an Appeal
Bond to the Supreme Court of which the following
is a true copy to wit:

Know all men by these presents that
we Patrick Connelia, Jason Chapel & Connelia,
J. B. Connelia of the County of Kane in the State of
Illinois are held and firmly bound unto Myron
Ellis of the said County and State in the pecuni-
al 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, severally,
and firmly by these presents. Witness our hands
and seals this 24th day of March AD 1850

The Condition of the above obligation is
such that whereas the said Myron Ellis did on the
22^d day of March AD 1850 in the Circuit Court
of the said County of Kane recover a judgment

against the above Comden Patrick Comedia
for the sum of Forty Dollars, from which judgment
the said Patrick Comedia has taken an appeal
to the Supreme Court of Illinois. Now if the said
Patrick Comedia ^{with effect} and shall pay whatever judgment may be rendered by the
^{court upon dismissal or trial of said appeal then} ~~the~~ appeal
the above obligation to be void otherwise to remain
in full force and effect

Patrick Comedia {
Jason Chapel {
Cornelius Blande {
by Jason Chapel att

Approved by me at my
Office this 26th day of
April A.D. 1850

Charles B. Wells, Clerk
of Kans. C. Cir. Ct. by John Black
Deputy Clerk

State of Illinois }
Kans. County St }

I Charles B. Wells, Clerk of Kans.
County Circuit Court do hereby
Certify that the foregoing is a true Copy of the original
Magistrate's Transcript, Appeal Summons, Appeal
Bond to Circuit Court, Bill of Exceptions, Appeal
Bond to the Supreme Court on file in my Office; also
the final order of judgment as appears of Record
Witness Charles B. Wells, Clerk of
said Court and the Seal thereof at
Geneva in said County this 26th day
of June A.D. 1850

Charles B. Wells
Clerk

Supreme court Ottawa
June Term 1850

and now comes the appellant Patrick
Cornelia and says that in the record and
proceedings aforesaid there is error in
this to wit

1st the Court erred in overruling
the appellants motion to dismiss the suit

2^d the judgment of the court is contrary to law

3^d the finding of the Court is erroneous and contrary
to the evidence in the case

4th the judgment of the court should have been for
the Def^t - wherefore for the reasons aforesaid he asks
that said judgment be reversed to
W. B. Plato atty
of appellant

And now comes the said Myron Ellis -
by Harisworth his atty; and drives that
there is error as above assigned and set
forth by the said Cornelia - do
A. H. Harisworth

[1200-12]

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Patrick Cornelius
vs
Myron Ellis
Receiv

Filed June 11. 1880.
St. Veland Ck.

\$5. pd. Ck.

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Patrick Connelley

vs

Wm. Ellis

12031

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Piper

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