

8808

No. _____

Supreme Court of Illinois

Trustees of Schools, Twp. #6

vs.

Charles N. Starbird

At a Supreme Court, began and held at Mount Vernon, on Monday the second day of November, in the year of our Lord one thousand eight hundred and fifty *One* to wit: On *Saturday* the *15th* day of *November* in the year of our Lord one thousand eight hundred and *fifty one*

Present, the Honorable SAMUEL H. TREAT, Chief Justice.

" " JOHN D. CATON, Associate "

" " LYMAN TRUMBULL, " "

Trustees of Schools of
D. C. S. R. C. West

Charles N. Starbird

Error to Randolph

On this day came again the said parties, and the Court having diligently examined and inspected, as well the record and proceedings aforesaid, as the matters and things therein assigned for error, and being now sufficiently advised of and concerning the premises, are of opinion, that in the record and proceedings aforesaid, and in the rendition of the *judgment* aforesaid, there is manifest error: Therefore it is considered by the Court, that for that error and others in the record and proceeding aforesaid, the *judgment* of the Circuit Court in this behalf rendered, be reversed, annulled, set aside, and wholly for nothing esteemed, and that this cause be remanded to the Circuit Court for such other and further proceedings as to law and justice shall appertain. The whole with the costs against the said *defendant* Opinion of the Court by Justice *Chief*

Treat

Stalard recovered a judgment before a Justice of the Peace against the Trustees of Schools of a township in Randolph County. An appeal bond was entered into by one of the Trustees and approved by the clerk of the Circuit Court. The Court overruled an application by the Trustees to amend the bond and sustained a motion of the plaintiff to dismiss the appeal.

This case is not distinguishable from those of Bragg vs. Henderson 11th Illinois 544. and Bournan vs. Freeman 12th Illinois 165. The principle is settled in those cases, that where a party, by him self, or his agent undertakes to appeal from the decision of a Justice of the Peace, and makes such an attempt at the execution of an appeal bond that the proper officer accepts it, he shall not be prejudiced by reason of any deficiency in the obligation if he will when objection is made supply the defect. Then the bond was defective because not executed by the corporation against which the judgment was rendered. It was however binding on the obligees personally, and the appellee was consequently not without a remedy. The trustees intended to take an appeal, that would enable the corporation to have the case ^{re-heard} ~~re-heard~~ and for that purpose executed a bond which was approved and accepted by the clerk. The court should have permitted the trustees to perfect their appeal by the execution of a bond obligatory on the corporation. The judgment is reversed and the case remanded.

State of Illinois }
Supreme Court, } ss.

I, Quincy D. Preston, Clerk of the
Supreme Court within & for the 1st Grand Judicial
Division of Illinois do hereby Certify that the
foregoing is a true Copy of the final order
& opinion in the before styled Cause

In testimony whereof I have here-
unto set my hand and affixed the
Seal of said Court at Mt. Vernon
the 19th day of February 1852
Quincy D. Preston, Clerk
Sup. Ct.

Supreme Court

Trustees of Schools
v. C. Smith of range
6 - West -

v.

Charles A. Hardin

Final order & opinion

8808

State of Illinois, }
SUPREME COURT. } ss.

The People of the State of Illinois,

To the Sheriff of the County of *Randolph* GREETING:

We command you that of the goods and chattels, lands and tenements of *Charles*
N. Starbird

you cause to be made the sum of _____

_____ Dollars and _____ Cents damages, and
the sum of *Eight* Dollars and *sixty* Cents

costs in the said Supreme Court, which *Justices of Schools*
Down, 6. South of Range 6 West

lately recovered against *him* before the Justices of our said Supreme Court, as appears
to us of record, and make return hereof in ninety days.

Witness, the Hon. *Samuel H. Treat* Chief

Justice of the Supreme Court, and the seal thereof, at Spring-*Mt*
Vernonfield, this *19th* day of *February*

in the year of our Lord, one thousand eight hundred and
fifty two —

Pinney D. Preston
Clerk of the Supreme Court.

Supreme Court.

Trustees of Colorado

J. C. Smith 186

West 181

Charles N. Hardin

Execution.

Damages

Costs \$ 8.60

185-2

8808

Filed

This execution came to hand on the 29th day of February 1852 at 11 o'clock P.M.
of Attorney
Shuff R.C. III

I hereby return this writ in conformity with the
of Attorney Shuff
Huntville County Ark
April 7th 1852

Starbird recovered a judgment, before a justice of the peace, against the trustees of schools of a township in Randolph county. An appeal bond was entered into by one of the trustees, and approved by the clerk of the circuit court. The court overruled an application by the trustees to amend the bond, and sustained a motion of the plaintiff to dismiss the appeal.

This case is not distinguishable from those of *Bragg v. Fenderson*, 11 Illinois, 544, and *Borman v. Freeman*, 12 Illinois, 165. The principle is settled in those cases, that where a party, by himself, or his agent, undertakes to appeal from the decision of a justice of the peace, and makes such an attempt at the execution of an appeal bond, that the proper officer accepts it, he shall not be prejudiced by reason of any deficiency in the obligation, if he will, when objection is made, supply the defect. Here, the bond was defective, because not executed by the corporation against which the judgment was rendered. It was, however, binding on the obligors personally, and the appellee was consequently not without a remedy. The trustee intended to take an appeal that would enable the corporation to have the case re-heard, and, for that purpose, executed a bond which was approved and accepted by the clerk. The court should have permitted the trustees to perfect their appeal, by the execution of a bond obligatory on the corporation.

The judgment is reversed, and the cause remanded.

