

In the ⁴/₅ Supreme Court

Merritt D. Wood & al.

v.
George Goss & al.

Error to Peoria Circuit Court

Brief of Plaintiffs.

Filed April 18. 1859

L. Leland
Clerk.

STATE OF ILLINOIS, SS. . . . IN THE SUPREME COURT AT OTTAWA.

OF THE APRIL TERM, A. D. 1859.

MERRITT D. WOOD & PATRICK W. DUNNE,

vs.

GEORGE GOSS, MOSES M. JACKMAN,
AND RANSOM GARDNER.

ERROR TO
PEORIA CIRCUIT COURT.

BRIEF OF PLAINTIFFS ON DEMURRER TO PLEA OF RELEASE OF ERRORS.

1. The release pleaded, even it be otherwise sufficient, extends only to work, &c., on the Peoria & Bureau Valley Railroad and actions therefor, yet no such work is specified in the declaration or other pleading of the plaintiffs. And if the words of release were not expressly confined to the work aforesaid, the law would so restrict them:

Bac. Abdg Release A, p. 247. I. p. 233 K, pp. 289, 291, and cases cited.
Saunders Plead. and Ev. Vol. 2 Pt. 2, pp. 759, 761.

2. But a release of all actions does not bar a writ of error.

Bac. Abdg. Release I. 2 p. 287, citing.
2 Inst. 49. Yelv 29. Co. Lit. 288

3. But this release is not made as the deed of the firm of Wood & Dunne, but of said Wood only, and being not a negotiable instrument, but a writing under seal, it applies to Wood only, and does not bind the firm.

Story on Partnership. Sec. 132, 102a and authorities cited.

James v. Bostwick, Wright's Ohio R. 142.

Button and al. v. Hampson Ibid. 93.

BRIEF OF PLAINTIFFS ON ERRORS ASSIGNED.

1. The non-residence of "the plaintiff or person for whose use the action was commenced," is not sufficiently shown by the affidavit of Chester Warner, nor otherwise.

Statute of Costs, Sec. 1, 2.

2. The court below erred in dismissing the action. The whole *object of the statute* was satisfied by the residence of the plaintiff Dunne within the jurisdiction of the court, and subject to its process. It is not pretended that he was not "able to pay the costs of suit."

Statute of Costs, Sec. 1, 2.

Thulman and al. v. Barbour and als. 5 Indiana R. (3 Porter,) 178.

Sedgwick Statutory and Constitutional Law, 229.

3. But if sufficient cause for the dismissal of the suit were shown, the judgment upon such dismissal should have been against the attorneys commencing the action, and not against the plaintiffs.

Statute of Costs, Sec. 2.

CHARLES C. BONNEY,
of Counsel for Plaintiff in Error.

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