

No. 12864

Supreme Court of Illinois

Morgan

vs.

Palmer, et al

71641  7

going out on

49

William S Morgan

vs

William F Palmer

49

2850

12864

~~By J. J. Morgan~~

vs

~~William S Morgan~~

~~2850~~

William S. Morgan	{ Supreme Court
Plaintiff in Error	
William F. Palmer	{ April Term 1858
William Maxwell	
Defendants in Error	{ Error to Marshall

And the said Plaintiff in Error comes and says that in the above proceedings and in the execution of judgment in this case manifest injury hath intervened to the injury of the Plaintiff and for assignment of error shows the following

1. The Court erred in dismissing the Petition
2. The Court Erred in dismissing the appeal
2. The Court erred in not overruling the Defendants motion to dismiss the Petition
3. The Court erred in sustaining the Defendants motion
4. Other Errors

The Plaintiff says that ~~Court has~~ said judgment was & procured in reverse set aside & wholly for naught & submit

Thos. P. Ramsay
for App to Error

{ Consider in error on the back of this assignment }

And the said Defendants in
error say in the record and proceedings
aforesaid there is no error
and this they are ready to verify
wherefore they pray that the
Judgment of the Court below
be in all respects affirmed

May 21st 1888—

Peters & Farwell
attys for Defts
in error

Pleas before the Honorable Circuit Court within
and for the County of Marshall, in the State of Illi-
nois, at a Term thereof begun and holden at the
Court-house in Lacon, in said County, on Monday,
the fourth day of May, in the year of our Lord one
thousand eight hundred and fifty-seven. Present
the Honorable Martin Ballou, Judge of the 23rd Judicial
Circuit; George W. Stipp, Esq., State Attorney; James
Hescott, Clerk; and Henry L. Crane, Sheriff.

William F. Palmer and William Maxwell,
partners trading under the name and style
of Palmer and Maxwell,

vs.

William S. Morgan.

} Appeal by
Certiorari.

Be it remembered, that heretofore, to wit, on the
4th day of April, A.D. 1857, the said defendant
by his attorney, filed in the Clerk's Office of the
Court aforesaid a certain Petition for Certiorari, in
the words and figures following, to wit:

To the Judge of the Circuit Court of Marshall
County, Illinois.

Petition for
Certiorari.
5128(4-2)

Your petitioner, William S. Morgan, of the town of Washington, in the County of Lapeer, in said State, would represent unto your honour, that on the sixth day of March, in the year A.D. 1857, William T. Palmer and William Maxwell, partners by the name and style of Palmer and Maxwell, recovered a judgment before James W. Maxwell, a justice of the Peace in and for said County of Marshall and State of Illinois, against your petitioner, for the sum of sixty four dollars and seventy-nine cents, debt, and the costs of suit. Your petitioner further shows, that he resided, and has for some time past resided, in the town of Washington, in the County of Lapeer and State of Illinois, which is distant from the said justice's office some 25 to 30 miles; that no summons or other process was served upon your affiant, and that he had no notice whatever of the pendency of said suit until the 26th (inst.); and that immediately upon the receipt of said notice, which was a letter from a friend, informing him of the fact, and which dated only a day or two before the receipt of the same, and came to him by due course of mail, he, your affiant, immediately started for Lacon, and arrived on this day; and that the said judgment was not obtained against your affiant on account of any negligence on his part, and that the said judgment is, in the opinion of your affiant, unjust and erroneous; that to obtain said judgment against said affiant, the said Wm. T. Palmer, one of the

plaintiffs above named, made oath before said justice that your affiant "had departed from this State for the purpose of having his effects removed from this State;" and that said statement was absolutely untrue; that your affiant had not been absent from the State of Illinois for a year last past, and had been all that time engaged in the business of his profession, which was that of an engineer and surveyor; that he has been for the last 7 or 8 weeks in Washington, Tazewell County; and that before that time, and since he removed from Lecon, his home has been in the City of Peoria and the said town of Washington; that it was not in the power of your affiant to take an appeal in the ordinary way from the judgment of said justice of the Peace, from the fact of his having no knowledge of the pendency of said suit until the receipt of the letter before spoken of; and that your affiant has at all times within the last year been in this State, so that the ordinary process of law could have been served upon him; that he has never even talked of removing from the State of Illinois. He therefore prays that a writ of certiorari may issue to said justice, commanding him to send up to said Court the record and proceedings in the said case:

Sworn to and subscribed before me,
this 27th day of March, A.D. 1857.

Silas Ramsey,
Master in Chancery.

W. S. Morgan.

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State of Illinois, } ss. J. Silas Ramsey, Master in Chancery,
Marshall County, } cony in and for said County, do
hereby certify, that the Judge of the Circuit Court of
said County being absent from said County, I have
examined the foregoing petition, and do hereby authorize
and require the Clerk of the Circuit Court of said
County to issue a certiorari to said Justice, upon
the said Wm. S. Morgan giving security as required
by law. Given under my hand and seal, this 27th
day of March, 1857.

Silas Ramsey, *Clk.*
Master in Chancery.

And afterwards, to wit, on the 29th day of April,
A. D. 1857, certain papers in the words and figures fol-
lowing were filed in the Clerk's office aforesaid, to wit:

Transcript. William F. Palmer } Attachment for \$64 3/4
& William Maxwell, } 1857. Feb. 19. On affidavit of William
partners trading in } Palmer, attachment writ issued, and
the name and style } given to Const. Taylor, returnable on the
of Palmer & Maxwell, } 24th day of February, A. D. 1857, at 10
vs. } o'clock, A.M.

William S. Morgan. } 1857. Feb. 19. Attachment writ returned
J. P. fees: } with the following endorsement: I have attached
Docketing, 12 1/2 three dry goods boxes and contents, three trunks and
Affidavit, 25 contents, one roll of oil cloth, one bread bowl and
Bond & Attach, 75 one bedstead, as the property of William S. Morgan.
Ent. cont, 12 Defendant not found. J. Mc. Taylor, Const.

Drawing notices, 1.00 1857. Feb. 24. Plffs. appear, and the defendant,
 Ent. judgment, 25 William S. Morgan, being three times solemnly
 Order for sale, 25 called, doth not come. Therefore it ordered that
 \$2.75 this cause be continued until the 6th day of
 March next, at 10 o'clock, A. M., for notice to be
 Comt. Taylor's fees: given to deft.

On attach. writ, 50 1857. Feb. 25th. Attachment notices issued, and
 Post. notices, 25 given to Comt. Taylor.

Service of order, 50 1857. Feb. 27. Attachment notice returned, executed
 Advertising, 25 on the 25 inst. by posting up copies copies of
 Moving prop., 12½ the same at the following places: one at the
 Com. on sales, 352 Post Office, one on H. S. Grant's coal-shed, and
 \$5.14½ one at Palmer's blacksmith shop, all in the
 City of Lacon, Ills.

1857. March 6th. Plffs. appear. Deft. makes default.
 After hearing the proofs, it is considered that the plffs.
 have and recover of the said defendant the sum
 of sixty-four dollars and seventy-nine cents, and their
 costs herein expended, which costs are taxed at three
 dollars, and that the property attached be sold to
 satisfy the same.

Ent. appeal, 25 1857. Mar. 11. Order of sale issued, and given
 Transcript, 25 to Comt. Taylor.
 30

1857. Mar. 23. Order of sale returned, money
 made in part, to wit, \$52.76, and paid to J. P., except Comt.
 fees.

1857. Mar. 23. Received of J. W. Maxwell, J. P., forty-four
 dollars and sixty-seven cents on the above judgment.
 Palmer & Maxwell.

6.

State of Illinois, } ss. J. James W. Maxwell, a Justice of
Marshall County, the Peace in and for said County, do
certify, that the foregoing Transcript, and the papers
herewith, contain a full statement of the proceedings
in the above-entitled cause.

Given under my hand and seal, this 15th day
of April, A. D. 1857.

J. W. Maxwell, J. P. Seal.

Affidavit for
Attachment.

State of Illinois, } William F. Palmer, of the firm of
Marshall County, Palmer and Maxwell, being first duly
sworn, deposes and says: That William S. Morgan is
justly indebted to Wm. F. Palmer & Maxwell, partners trading
in the name and style of Palmer & Maxwell, in a
sum not exceeding one hundred dollars, to wit, sixty
four dollars and seventy-nine cents, and that he, the
said William S. Morgan, has departed from this for
the purpose of having his effects removed from this
State, as he verily believes. He therefore prays that an
attachment writ may issue against the personal
estate of the said William S. Morgan.
Sworn to & subscribed & before } Wm. F. Palmer.
me, this 19th day of February, A. D. 1857. }

And afterwards, to wit, on the 4th day of May,
A. D. 1857, being the first day of the said May Term
of the Court aforesaid, the following record was made
in said cause, to wit:

Motion to
dismiss
Certiorari.

William F. Palmer &

William Maxwell,

vs.

William S. Morgan.

Be it remembered, that on this day come the plaintiffs, and move the Court to dismiss the certiorari for want of a sufficient petition.

And afterwards, to wit, on the 6th day of May, A.D. 1857, being one of the days of the May Term aforesaid, the following order was made and entered in said cause, to wit:

Cause
continued.

William F. Palmer &

William Maxwell,

vs.

William S. Morgan.

Be it remembered, that on this day come the parties, by their attorneys, and by agreement this cause is continued.

Pleas before the Honorable Circuit Court within and for the County of Marshall, in the State of Illinois, at a Term thereof begun and holden at the Court-house in Lacon, in said County, on Monday, the fifth day of October, in the year of our Lord one thousand eight hundred and fifty-seven. Present, the Honorable Martin Ballou, Judge; George W. Stipp, Esq., State's Attorney; James Mercott, Clerk; and Henry L. Crane, Sheriff.

Be it remembered, that on the 7th day of October, A.D. 1857, being one of the days of the said October

Term of the Court aforesaid, the following order was made and entered in said cause, to wit:

Certiorari
dismissed.

William J. Palmer &	}	Certiorari.
William Maxwell,		This day this cause came on
vs.		to be heard upon the motion
William S. Morgan.	}	of the plaintiffs entered at the
		last term of this Court to dis-

miss this certiorari for want of a sufficient petition; and after argument of counsel, the Court being fully advised in the premises, is of the opinion that said motion be sustained, and that this certiorari be dis-

Appeal prayed
and allowed.

missed. Whereupon came the defendant, by his counsel, and prays an appeal to the Supreme Court of this State; which appeal is allowed by the Court, upon condition that the said defendant file a bond in the sum of two hundred dollars, with E. A. Whipple and Silas Ramsey as security, in thirty days.

And afterwards, to wit, on the 9th day of October, A.D. 1857, being one of the days of the October Term aforesaid, the said defendant filed in the Clerk's office aforesaid the following Bill of Exceptions, to wit:

Bill of
Exceptions.

Wm. J. Palmer,	}	Appeal by Certiorari.
Wm. Maxwell,		Marshall County Circuit Court,
parties by the name of		October Term, A. D. 1857.
Palmer & Maxwell,	}	
vs.	}	Be it remembered, that the said
William Morgan.	}	plaintiffs moved the Court to

dismiss the appeal herein for want of a sufficient petition for certiorari herein, which said motion the Court allowed, and gave judgment for the plaintiffs, and dismissed appeal; to which ruling of the Court the defendant then and there objected and excepted, and prays that this Bill of Exceptions may be signed, which is done.

W. Ballou, *Seal*
Judge 2^d Judicial Circuit, Ill.

And afterwards, to wit, on the 16th day of October, A.D. 1857, the said defendant filed in the Clerk's office aforesaid the following Appeal Bond, to wit:

Know all men by these presents, that we, William S. Morgan, E. A. Whipple and Silas Ramsey, are held and firmly bound unto William S. Palmer and William Maxwell, in the penal sum of two hundred dollars, current money, for the payment of which, well and truly to be made, we and each of us bind ourselves, our heirs, executors and administrators, firmly by these presents, signed, sealed and dated at Lacon, this 15th day of October, A.D. 1857.

The condition of the above obligation is such, that in a certain case in which the above-named Palmer and Maxwell were plaintiffs, and the above-named William S. Morgan was defendant, which appeal was adjudicated upon in the Circuit Court of Marshall County, Illinois, at the October Term, A.D. 1857, and

Appeal
Bond.

10.

the appeal dismissed; and the said Morgan having
prayed an appeal to the Supreme Court of the State
of Illinois, which appeal has been allowed;

Now if the said Morgan shall well and truly
and without delay prosecute his said appeal to effect,
and shall pay whatever judgment and costs that
may be awarded against him by said Supreme
Court upon the trial or dismissal of said appeal,
then this bond to be null and void; otherwise, to
be and remain in full force and effect.

signed, sealed and acknowledged
before me, this 15th day of October,
1857. James Wescott.

Wm. J. Morgan.

E. A. Whipple.

Silas Ramsey.

Seal

Seal

Seal

State of Illinois, }
Marshall County, } sol. J. James Wescott, Clerk of the Circuit
Court in and for said County, do
hereby certify, that the foregoing Record,
from page 1 to page 10 inclusive, is correctly copied from
the proceedings and papers in the above-entitled cause.
In Witness Whereof, I hereunto set my
hand and the Seal of said Court, at
Lacon, in said County, this 15th day
of March, A. D. 1858.

James Wescott, clerk

Clerk's fees:

Record, \$2.40
Cert. & seal, .35
2.75

William S Morgan

as ~~227~~ 230

Wm J Palmer et al

Records & auct.
of ruins

Filed April 22, 1858

W. Leland
Clk

Grove

William S. Morgan } appeal from
vs appeal } Circuit Court
Wm F. Palmer et al } of Marshall Co Ills
in Supreme Court to
the 4th J. 1858.

And the said appellees move the
Supreme Court to dismiss this case
for the reason that the appeal bond
herein filed is insufficient & 2^d because
the record was not filed in } Peters & Farrell
this Court in time } attys for appellees
& 3^d Because no appeal laid
in this case

Wm S. Morgan
vs

Jno F. Palmer et al

Motion to dismiss
appeal

Filed May 19. 1868
L. Belmont
Clerk.