

No. 12926

Supreme Court of Illinois

Kelley

vs.

Swift

In the Supreme Court

Richard R Swift et al.
Appellants
vs
James Kelly
Appellee
} Appeal from
Cook Circuit
Court.

The appellee comes & moves to dismiss this appeal because

1 The Condition of the bond is not in compliance with the statute - in this there are now two judgments in force one upon the justice of the Peace one in the circuit court & one may be here - yet the condition is for the payment of the judgment in the singular number without saying which -

2 The judgment of the circuit court is for ten dollars which is less than the amount prescribed by statute -

3 That the condition of appeal by the order of the circuit court is that the defendants give

bond. Then are three of them
only two have signed the
bond—

W. J. Burgep
for apper

318

R. W. Swift & Son

vs

James Kelly

—
Motion to dis
miss appeal
—

Filed May 4, 1858
L. L. Leland
Clerk.

W. J. Burgep
for apper

United States of America }

STATE OF ILLINOIS, COUNTY OF COOK, S. S. }

Pleas, before the Honorable George Manierre

Judge of the Seventh Judicial Circuit of the State of Illinois, and Sole Presiding
Judge of the Circuit Court of Cook County, in the State aforesaid, and at a term thereof
begun and held at the Court House in the City of Chicago, in said County, on the
First Monday, (being the First day) of

March in the year of our Lord one thousand eight hundred and
Fifty Eight and of the Independence of the said United States the
Eighth Second

Present, Honorable George Manierre Judge of the 7th Judicial
Circuit of the State of Illinois. }

Charles Warren States Attorney.

John L. Wilson Sheriff of Cook County.

Attest Spencer Church Clerk.

Be it Remembered to wit That on the 24th
day of March A.D. 1855 it being one of
the days of the March Term of the
said Court for said year the
following Among other proceedings was
read and entered of record in said
Court to wit:

James Kelley

12760

vs

Appeal

Richard A. Swift
Leyman, Swift &
James S. Chubb

This day came the said
plaintiffs and enter their appearance
herein and waive service of process and
the said defendants being three times
solemnly called in open Court come not
nor does any person for them but herein
they fail to prosecute their appeal in
this behalf therefore on motion ordered
that the Appeal herein be and it hereby
is dismissed for want of prosecution and
that a procedendo issue to the Court
below and ^{it is further ordered & conveyed by the Court} that said plaintiffs have
and recover of said defendants
Defendant's ^{his} damages of ten percent on
the amount of the judgment in the Court
below amounting to Ten Dollars together
with his costs in that behalf expended & that he
have execution therefor.

And afterwards to wit on the 24th day of
March A.D. 1838 it being as yet one of
the days of the March Term of said
Court for said Year the following among
other proceedings was had and entered of
Record in said Court to wit:

James Kelley

Richard L. Swift
Lyman P. Swift
James S. Johnson

Appeal

This day came the said
Defendants and pray an Appeal
to the Supreme Court of the State
of Illinois which is granted on
Condition that said Defendants
Enter into and Execute their Bond
in the penal sum of Three Hundred
Dollars with Van B. Higgins as
Surety Conditioned according to Law

And afterwards to wit on the
24th day of March A.D. 1838 There
was filed in the Office of the
Clerk of the Circuit Court aforesaid
a certain Appeal Bond which is in
the words and figures following to wit:

Know all men by these presents that
Richard K. Smith James J. Johnston
and Man H. Higgins are duly and firmly
bound unto James Kelly in the paid
sum of Three Hundred Dollars for
payment of which well and truly to
be made to said James Kelly his
heirs or assigns we bind ourselves
jointly and severally our heirs
executors and administrators firmly
by these presents Sealed with our seals
and dated this twenty third day of
March 1858.

The Condition of this Obligation
is such that whereas, in a certain
suit in the Circuit Court of Cook
County State of Illinois wherein
said James Kelly was Plaintiff
and the said R. K. Smith and
Jas J. Johnston & Lyman P. Smith were
Defendants the said Plaintiff
on the sixth day of March 1858
received a judgement against
the said Defendants R. K. Smith
and James J. Johnston for ten percent
damages & dismissing their appeal taken
to said Circuit Court from a judgement
in said suit against them for the
sum of One Hundred Dollars damages

besides costs of suit rendered by D. C.
Beattie Esq a justice of the peace
of said County from which said
Judgment dismissing said appeal &
allowing the per cent damages said
last named Defendants have prayed
an appeal to the Supreme Court
of the State of Illinois which
appeal has been granted upon
the said Defendant giving Bond

And if the said above bounden
Defendants shall well and truly
pay the Judgment, Costs, interest
and damages, in Case the said
Judgment dismissing said appeal
& allowing damages as aforesaid
shall be affirmed by said Supreme
Court and shall duly prosecute their
said appeal to said Supreme
Court then the above obligation
to be void otherwise of force

J. H. Smith Seal
J. F. Johnston Seal
J. M. Higgins Seal

State of Illinois, }
COUNTY OF COOK. } s. s.



I, WILLIAM L. CHURCH, Clerk of the Circuit Court of Cook County, in the State aforesaid, do hereby certify the above and foregoing, to be a true, perfect and complete copy of The orders had and entered of record in said Court & the appeal bond in a certain cause pending in said Court on the Common Law side thereof, wherein James Kelly was Plaintiff and H. H. Smith and Lyman P. Smith and J. J. O'Donoghue were defendants

IN WITNESS WHEREOF, I have hereunto set my hand, and affixed the seal of our said Court at Chicago, this First day of May A. D. 1888

Wm L Church

Wm L Church

Clerk.

Col. Co. for Court

James Kelley

R. H. Smith

7th

certified

Filed May 4, 1858
S. Leland
clerk

Dec 1, 1858