

12028

No. _____

Supreme Court of Illinois

Bragg

vs.

Fessenden ~~EN~~ EN

71641  7

William Fessenden
vs
Addison G Bragg
State of Illinois
Lrr County

Pleas before the Honorable the Circuit Court
in and for the County of a Lrr and
State of Illinois at a Term of said Court
began and held on the Eighth day of
April in the year of our Lord one thousand
Eight hundred and Fifty. Before
the Honorable Benjamin R Sheldon Judge of said Court
in which said Court the above entitled suit was at said
Term then pending the following Record Motion orders
and proceedings were had entered and made ~~To Wit~~;
in said Cause to Wit;

Addison G Bragg
vs
William Fessenden

} Appeal

~~This day came the Plaintiff by~~
~~Obaser his Attorney~~ The defendant
by his attorney enters his Motion that plaintiffs
Attorney produce his Authority for executing the
Appeal bond herein

Addison G Bragg
vs
William Fessenden

} Appeal

And now at this time comes the
Plaintiff by Glaser his Attorney
and moves the Court to vacate the order heretofore made
requiring the Attorney to file his Authority to execute the
Appeal Bond herein. After suggestions of Counsel It is
ordered by Court that the record aforesaid order heretofore
entered be so amended as to require the appellant to file
his authority for executing the appeal bond herein

1st
Addison H Bragg
vs
William Ferrenden } Appeal

This day comes the said plaintiff by his Attorney and files his Power of Attorney herein whereupon the said defendant enters his Motion to dismiss this appeal for the want of a sufficient appeal bond being filed within twenty days from the rendering of this judgment - Which being heard by the Court it is ordered that the appeal herein be dismissed for the want of a sufficient Bond as aforesaid to which ruling of the Court the Plaintiff by his counsel excepted and prayed an appeal herein which appeal to the Supreme Court is granted upon the said Plaintiff entering into bond to the said Defendant with Robert L Masters as his security conditioned according to Law within forty days from the adjournment of this Court in the ~~Appeal~~ Penal Summons 200, Dallas

Addison H Bragg
vs
William Ferrenden } Appeal

This day came the Plaintiff by Southwick his Attorney and enters his Motion to vacate and set aside the former order of this Court dismissing this appeal and dismiss this suit which Motion after argument of Counsel being considered by the Court is overruled whereupon the ^{said} plaintiff tenders his bill of exceptions and prays an appeal herein to the Supreme Court.

And there upon the said Plaintiff upon the 12th day of April A D 1850 filed the following bill of exceptions in said Court which is in the words and figures following to wit

Addison H Bragg } April Term 1850
vs } ~~to the State of Illinois~~
William Ferrenden }

Addison H Bragg } April Term of the Sr County Circuit
v } Court A D 1850 of the State of Illinois
William Ferendou }

Appeal from a Judgment of the Justice of the Peace, Be it Remembered that at the above Term of this Court on Wednesday the tenth day of April A D 1850 the plaintiff in obedience to the rule heretofore made in this cause that he produce and file the authority of Robert L Masters to execute the appeal bond in this cause the Plaintiff filed the following power of Attorney To Wit;

I Know All Men by these presents that I Addison H Bragg of the City of St Louis State of Missouri have made constituted and appointed and by these presents do make constitute and appoint Robert L Masters of the County of Bureau State of Illinois my true and lawful Attorney for the following purposes Namely, Whereas on the 2^d day of July A D 1849 William Ferendou did recover a Judgment against me for about the sum of Twenty one Dollars before George E Haskell Esqr a Justice of the Peace of the County aforesaid State of Illinois from which said Judgment I have taken an appeal or have intended to take a perfect appeal according to Law to the Circuit Court of Sr County Now therefore I do empower the said Masters for me and in my name to execute a full and perfect Appeal Bond in said suit now pending before the Circuit Court of Sr County aforesaid and to file the same among the papers of said suit and to do all other things for the perfection of said Appeal, in my name as fully and as perfectly as I might do in my own Person and I do hereby ratify and confirm all acts heretofore done by the said Masters in said suit

4ⁿ
Given under my hand and seal this 3^d day
of April A D 1850

"A H Bragg" Seal

upon the back of which said power of Attorney is the following
acknowledgement and filing by the clerk of said Court.

State of Missouri }
County of St Louis }

This day personally appeared
before me the undersigned a Notary
Public in and for the County and State aforesaid
Addison H Bragg who is personally known to me to
be the same person whose name is signed to the foregoing
power of Attorney and acknowledged the same to be
his act and deed for the purposes therein contained

Seal

In Testimony Whereof I have hereunto
set my hand and affixed my Notarial
Seal at my Office in the City and State
of St Louis and County and State aforesaid
this 3^d day of April A D 1850

R F Stout Notary Public
for St Louis County Mo

Filed April 10th 1850

Chase Clerk. by N F Porter Deputy

Whereupon the said Defendant moved the Court to dis-
miss the appeal in said cause upon the ground of the in-
sufficiency of the appeal bond purporting to have been exe-
cuted by the plaintiff (Bragg) in this suit. The plaintiff
on ^{the} hearing of said Motion introduced Robert L Masters
as a witness who testified that he (Masters) had a letter
from said plaintiff requiring him to take said appeal
and that he (Masters) supposed that was sufficient
authority that some time in the month of August
last past Mr Southwick one of the Attorneys of said
Court drew a power of Attorney sanctioning and confirm-
ing the act of said Masters in executing the appeal

bond filed in July A D 1849 in this cause which said last mentioned bond is in the words and figures following, to wit: "Know all men by these presents, that we Addison G. Bragg, and Robert C. Masters, are held and firmly bound unto William Fesenden in penal sum of forty three dollars and twelve cents, 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 firmly by these Presents. Witness our hands and seals this 21st day of July A D. 1849. The condition of the above obligation is such, that, whereas, the said William Fesenden did, on the 2nd day of July A D. 1849, before George E. Haskell, Justice of the Peace for the County of Lee, recover a judgment against the above bounden Addison G. Bragg, for the sum of twenty one Dollars and fifty six cents, from which judgment the said Addison G. Bragg, has taken an appeal to the Circuit Court of the County of Lee aforesaid, and State of Illinois. Now if the said Addison G. Bragg, 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.

"approved by me
this 21st day of
July. 1849.

George E. Haskell, J. P. (seal)"

Addison G. Bragg. (seal)
By Robert C. Masters his attorney in fact.
Robert C. Masters. (seal)"

That it was afterwards forwarded to the Plaintiff to execute and said Southwick testified that said power of attorney was executed by said Plaintiff and filed by him with the Clerk of said Lee Co. Circuit Court in this cause on or about the ninth day of November last past, which motion to dismiss said appeal was sustained by the Court and said appeal was dismissed on the ground alledged by the Court that the

Plaintiff did not execute an appeal bond in this cause within twenty days from the rendition of the judgment of the Justice of the Peace to which said decision and order of the Court dismissing said appeal, the said Plaintiff (Bragg,) by his counsel excepts and thereafter on Friday the twelfth day of said month, at said Term of Court, the said Plaintiff, by his attorney moves the Court to vacate the prior order made in this suit, and to dismiss said appeal and dismiss said suit, which said order the Court refused to vacate and said Court refused to dismiss said suit, to all of which said rulings and decisions of the said Court the Plaintiff aforesaid by his counsel excepts and prays that this his bill of exceptions may be signed and sealed: which is done.

Benj. R. Sheldon. (Seal)

State of Illinois }
Lee County } J. Charles T. Chase, Clerk of the Circuit Court
in and for said County of Lee, State of Illinois,
do hereby certify that the foregoing is a full, true and perfect copy or transcript of all the papers, records, orders, motions and proceedings on file in my office in the aforesaid suit, wherein Addison G. Bragg. is Plaintiff and William Tependen is Defendant, and that the appeal Bond authorizing the appeal of said cause, by the order of said Circuit Court to the Supreme Court, was duly executed and filed in my office within the time prescribed by said order and conditioned according to the same.

Witness my hand and seal of said Court
at Dixon this 8th day of June

A.D. 1850.

to T L Chase Clerk
By N H Porter Deputy

Clerk Fees for Transcript of the above suit ~~to the~~ \$6.46
unpaid

to T L Chase Clerk of Cir Ct
By N H Porter Supo

State of Illinois
Third Grand Division

And now comes the said appellant
~~now~~ says that in the record and
proceedings aforesaid there is manifest
error in this to wit

1st The Court erred in dismissing the appeal
of the plaintiff.

2^d The Court erred in rendering the judgment
aforesaid in manner & form aforesaid
GIVEN UNDER
attys for appellant

And the said Appellee says there
is not error in the record and proceeds
as aforesaid and prays that the judgment
aforesaid be affirmed. That I further
state & certify

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Addison G. Bragg

vs

William Sparden

Record



Filed June 12. 1880.
Leland Ch.

Appt of error & judgment
Filed June 22. 1880.
L. Leland Ch.

Addison G. Bragg }
as } Appeal
William Henden }

This was a Judgment originally rendered
by a Justice of the Peace, ^{July 21st 1849} and appealed to
the Circuit Court of Lee County, on the 21st day
of July AD 1849

The appeal bond was ^{dated July 21st 1849} made form but was
~~executed~~ ^{signed} as follows

Addison G. Bragg ^{seal}
by Robert C. Masters his attorney in
fact

Robert C. Masters ^{seal}

at the April Term AD 1850 of the Circuit Court
The dept^r moved that the plaintiff file the authority
of Masters to sign the name of said Bragg
to said appeal bond.

The Plaintiff

It appears to the Court that said Masters
signed said Bragg's name to said appeal
bond by virtue of a ^{letter reciting him to that an appeal} ~~power of attorney~~ not
under seal

That in November 1849, Plaintiff
executed & filed in the office of the Clerk of
the said Circuit Court a power of atty
under seal ratifying & confirming the
act of Masters in signing said bond
& taking said appeal, which ^{power of atty} ~~bond~~ was
lost ^{before} at the term of the Court of for said

On the 3^d day of April AD 1850 the plaintiff

filed another power of atty executed by
said Addison B. Bragg under seal constituting
the said Masters this atty in fact for
the purpose of prosecuting said
appeal & expressly ratifying all that
had been done by Masters in relation thereto
and which power of atty was then on
file in said Circuit Court

upon this State of facts upon motion
of defendant the Court dismissed the
appeal, for the reason that at the time
the appeal bond was executed Masters, had
not authority under seal to execute said
Bond in the name of Bragg

The parties stipulate that the only question
to be presented to the Court is
Did the Circuit Court err in dismissing
the appeal upon the above state of facts
for the reason aforesaid

James H. Bragg

Atty for Bragg

W. J. Linn

Atty for Appell

Admission of Bragg
as
Frenden

Appeal for Sen

That I Turner for Appelle files
the following points and
authorities

1st A power of Attorney to execute an
appeal bond under the Statute
authorizing appeals from Justices
of the peace must be under seal
and if Masters who signed the appeal
bond in this case had not authority
under seal to execute the bond in
the name of Bragg the bond was
invalid and void 2nd Revs Com 613

Cook's Leth 52 7 Lenn Rel 209 = 5 Banny Rel 613 = Bell's Rel 174 = 5 Hop Rel 40
9 Murrell 68 Polyan agent by Leth 158-160 6 Lenz & Rawls 331

2nd No appeal can be taken from
the judgment of a justice of the
peace unless an appeal bond
be filed within twenty days from
the rendition of the judgment
and if the party taking the appeal
fails to file a bond within twenty
days the appeal will be dismissed
Revised Stat 323 Sec 58 1 Seamon
423-424

3

If Masters authority for executing the appeal bond was not under seal the bond was void and could not be supplied by another bond after twenty days have expired

4th

The power of attorney executed by Briggs in November 1849 and his other powers of attorney executed afterwards in 1850 will not relate back so as to give validity to the appeal bond

5th

If there was no appeal bond executed and filed in this cause within ^{after the rendition of the judgment by the jury} twenty days, there was no appeal and the proceedings were properly dismissed by the circuit court

Addison & Bugh
as

Friends

Ponto made
By Appelle

Held June 27. 1850.
A. Leland Clerk.

Addison G. Bragg }
" }
William H. Hensenden }

This suit was commenced before Geo. E. Measell a Justice of the peace of Lee County - and on the 3 day of July A.D. 1849 Judgment was rendered by said Justice in favor of said defendant and against said plaintiff for \$21.

On the 21st day of July 1849 an appeal was taken from said Judgment to the Lee County Circuit Court an appeal bond dated on that ^{day} was filed which was in due form but was signed as follows

Addison G. Bragg ^{my} Seal
by Robert L. Masters his attorney
in fact
Robert L. Masters ^{my} Seal

At the next term of the Lee County Circuit Court the defendant moved that the appellant file this authority of the attorney in fact to execute the appeal bond and the appellant filed a power of atty. duly executed and acknowledged by the said plaintiff on the 3 day of April A.D. 1850. Which power of atty. after reciting the Judgment of the Justice affirmed & that the said plaintiff had taken an appeal or had intended so to do to the Lee County Circuit Court, expressly constituted and appointed

the said Masters his attorney in fact for the purposes of taking & prosecuting said appeal and expressly ratifying all that said Masters had done in said suit,

The plaintiff also proved by said Masters that at the time of taking the appeal in this cause he (Masters) had a letter from said plaintiff requiring him to take an appeal & that he declined at that time that was sufficient authority to take such appeal that in August 1849, a power of attorney was drawn by Mr Southwick ratifying & confirming the act of said Masters in executing said appeal being as atty in fact for said plaintiff.

Upon plaintiff then proved by Southwick that in November 1845 he filed in the office of the Sec Circuit Circuit Court a power of atty executed by said plaintiff ratifying & confirming all acts done by said Masters in taking said appeal that said power of Attorney is lost.

At the April Term A.D. 1850 of Sec Circuit Court the Plaintiff Defendant moved the Court to dismiss the Appeal which motion was sustained and the appeal dismissed for the reason that the plaintiff did not execute a power of atty appeal being in this case within 20 days from the time of the rendition of the Judgment before the Justice

The plaintiff assigns for error
1st The dismissal of the appeal
2 The rendition of the Judgment

Addison G. Boag
William Hessenden

Abstract

Filed June 25. 1880.
L. Seland Clk.

Addison Bagg }
is } Appeal from Dec
William Hresenden }

It is Stipulated by the parties hereto that
on the 21st day of July A.D. 1849 the
plaintiff filed in the office of the clerk
of the Circuit Court of Lee County Illinois
a transcript of a Judgment rendered
before George B. Haskell on the 2^d day
of July A.D. 1849 in a case wherein Addison
B. Bagg was plaintiff and William
Hresenden was defendant and which
Judgment was against said plaintiff
and in favor of said defendant for
the sum of \$21.00 and that at the same
time the appeal bond which is set
out in the bill of exceptions in this
case was also filed in said clerk's
office and that the proceedings set
out in the transcript of the record
were had & taken in said appeal
suit and that this facts in this
stipulation set out shall be taken and
considered by the Court in the same
manner as if they were fully set out in
the record in this cause,

Glover & Coon for ptffs
Thos J. Turner for dfns

Addison, G. Bragg

William Hessenden

Stipulation

Filed June 21. 1854.
L. Seland Clk.

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Addison G. Bragg
vs
Mr. Fessenden

1850

12028

Repared
Ed