

14449

No. _____

Supreme Court of Illinois

Leighton

vs.

Hall

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185 43
STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division

No. 169

14449

Lighton

vs
Hall

1862

of the order with which he was first
 furnished. ~~He~~ ^{He} thought that order did not
 furnish ~~the~~ ^{the} sheriff with sufficient
 authority to make the arrest. It was neither
 a writ, or procep. It did not run in the name
 of the people. It was simply an order on
 which such procep might have issued. There
 is a statute which authorises conservators
 of the Peace to arrest for criminal offences committed
 in their presence, and if they make arrests
 in other circumstances, they do so
 at their peril, ^{and} must take the responsibility
 of showing that the prisoner has been
 guilty of a crime. Executive officers
 of a court may, upon a mere order of
 the court, detain persons who are in the
 presence of the court, or who are already in
 custody; but it does not follow that such
 an order may be sent into the country,
 without procep, which will authorise
 an arrest. But the first order was not
 in a criminal proceeding. Until it
 was discharged by Hall, it did not furnish
 grounds, even, for a criminal proceeding.
 It was purely civil in all its features.
 And the sheriff should have been furnished
 with such authority as the constitution requires,
 before he could be required to make the arrest.
 The ^{arrest} ~~procep~~ order against the sheriff must be reversed.

In this opinion the whole Court concurred

Decree reversed

Lighton

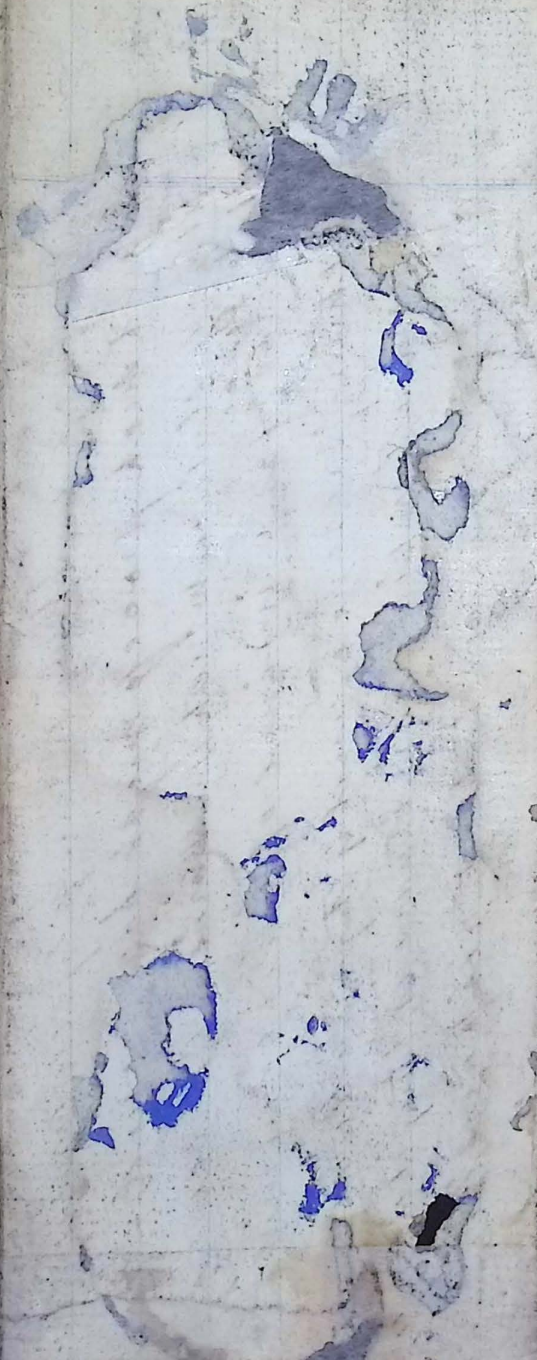
Hall

Simon
Horton

OK

Recorder Book 13
1863,

Simon?



not shown against said rule any cause sufficient
 for the discharge thereof. &c. and hereupon became
 it sufficiently appears to the court here, upon a
 hearing and consideration as well of the cause shown
 by said defendant - against said rule as of the
 matters alleged by said complainant - in support
 thereof, that the said defendant, ought to pay
 such alimony, to enable the said complainant
 to prosecute this suit - Yes - that a part of the
 sum specified in the rule nisi aforesaid -
 to wit - the sum of one hundred dollars, will be
 sufficient - for the present - accounts of said com-
 plainant, in this behalf. Therefore it is ordered
 by the court, that the said defendant, upon
 the service of this order, by delivery of a
 copy thereof, to him by the Sheriff to whose
 hand the same may come for service, do
 without delay pay to such Sheriff to be by
 him deposited with the clerk of this court,
 subject to the order of the court, the sum of
 one hundred dollars, part of the sum directed
 to be paid to enable the said complainant to
 prosecute the suit - &c. And in default of such
 payment, by the said defendant, it is further
 ordered, by the court - that such Sheriff, do
 thereupon attach the body of the said Jacob
 B. Hall, and him safely keep, in close cus-
 tody until he shall have paid the said sum.

of one hundred dollars, as appraised together with the costs of such Sheriff upon this order, or until he shall be otherwise discharged by the Court.

And let the Clerk give the said complainant a certified copy of this rule, directed to the Sheriff of any county in this state to execute and the Sheriff without requiring prepayment of his costs by said complainant make return of his proceedings hereupon on or before the third Monday of March next with the said sum of one hundred dollars or the body of the said defendant there before the Court &c

State of Illinois
County of Cook I do

I William L. Church clerk of the circuit Court within and for the County of Cook and State of Illinois do hereby certify that the above and foregoing is a true copy of an order had and entered of record in the foregoing entitled case on the twenty first day of February A.D. 1861.

W L Church
Clerk

In witness whereof I have hereunto set my hand and affixed the seal of said Court at Chicago in said County this 28th day of February A.D. 1861.

William L. Church

and afterwards to wit on the fourth day of April
in the year last aforesaid said copy of writ
was returned into said Court by S. J. Lighton
Sheriff. endorsed as follows to wit-

"I return this writ served by
reading the same, to the writter named, Jacob
V. Hall, and demanding the money which was
not paid and cannot be made by law".

S. J. Lighton Sheriff
W. C.

March 25th 1867.

And afterwards to wit on the
Eighth day of May in the year last aforesaid, there
was issued out of and under the seal of said Court
a writ of an Attachment for alimony
granted to the Sheriff of Scott County to execute
clothed in the words and figures following to wit-

State of Illinois
County of Scott }
Carthage Hall }
 } g
Jacob V. Hall }

In the Circuit Court for said
County. In Chancery
For Alimony

Special Attachment
to enforce order for alimony pendente lite

The People of the State of Illinois
To

The Sheriff of Scott County - Quitting

Whereas the above-named Defendant hath been duly ordered and required by the said Circuit Court, to pay into the hands of the Clerk thereof the sum of One hundred dollars, as alimony pendente lite to enable the said complainant to prosecute this suit &c. of which said order and requisition said Defendant hath had due notice and information, but hath nevertheless altogether disregarded and disobeyed the same in contempt of our said Circuit Court &c.

And whereas you the Sheriff of said County of Scott, although certified among other things, duly commanded to bring the body of the said Defendant before our said Court to answer for his contempt aforesaid and obey the said order and requisition for the alimony aforesaid, nevertheless neglected, and refused so to do, alleging for your said refusal and neglect the insufficient reason that your costs and charges were not advanced and paid you for that service, all of which appears to us of record in this cause.

Now therefore we do require and command you that without the prepayment of your costs and charges therefore, or other excuse or delay whatsoever, you do forthwith take the body of the said Jacob B. Hall and commit him to the common jail of your County there to remain without bail or other privilege of liberty, until he shall have paid into your hands to be forthwith deposited with the Clerk of this Court

the said sum of One hundred Dollars together with
 the further sum of four dollars and forty
 five cents, the amount of costs adjudged against
 him in this behalf, or until in default of such
 payment, you shall take the body of the said
 Jacob B. Hall, thence to have him before our said
 Circuit-Court on the first day of the term thereof to
 be holden at the Court-House in the City of Chicago
 in said county of Cook, on the fourth Monday of May
 instant: then and there in our said Court to answer of
 and concerning his contempt aforesaid, and the
 non-payment of the said sum of Alimony and
 Costs.

Whereof fail not under penalty of Summary
 order that you do pay the ~~sum~~ ^{sum} of the Alimony
 and costs aforesaid - as a penalty for any
 disobedience of this our writ -

Witness William L. Church
 Clerk of our said Court - and the seal thereof.

W.L.C.

At Chicago this Eighth day of
 April May 2d 1861

Wm L. Church, Clk.

And afterwards to-wit on the 31st
 day of May, in the year last aforesaid, said writ

was returned into said Court. By said Sheriff sur-
rendered as follows to-wit

"Return this writ sub-
poena, as I cannot find, the within named,
Jacob B. Hall, in my County this the 27 day
of May 1851

A. S. Lighton Sheriff S.C.
By Wm. C. Davis dep.

And afterwards to-wit on the first day of June in the
year last aforesaid, said complainant, by her said
Solicitor filed in the said Court a certain Petition
which is in the words & figures following to-wit:

State of Illinois
County of Scott

In the Circuit-Court
in Chancery.

Parthenia Hall
&
Jacob B. Hall

vs
Alvira

Motion for order
that - Sheriff pay Alimony &c. for his contempt &c.

The said complainant by Charles
C. Bousney, her solicitor now comes and moves the
Court to order and adjudge that the said,
A. S. Lighton Sheriff of the county of Scott aforesaid
do forthwith pay into the hands of the Clerk of

this Court, the sum of one hundred Dollars - and
 the further sum of four dollars and forty five cents -
 specified in the writ of attachment - against the
 said defendant, issued herein on the 8th day of
 May last and returned by said N. G. Lightone
 under date the 27th day of the said month of
 May - and filed herein on the 31st day of that
 month - because it manifestly appears on file and
 of record in this cause that - the said N. G. Lightone
 hath failed, neglected and refused to obey the
 orders and process of this Court to him directed
 and delivered, and by him returned &c. - Altogether
 of his own wrong and without any good or sufficient
 excuse therefore in this, that - he read to the
 said defendant the order issued herein of date
 the 21st day of February last - and returned by him
 the said N. G. Lightone under date the 23rd day
 of March last - and filed herein on the 4th day of
 April last - to attach his body &c. and nevertheless
 suffered the said defendant to remain and go at
 large, in contempt of the mandate of that Order,
 and also in this, that - the said N. G. Lightone hath
 returned the writ of attachment aforesaid - which
 was sent to him under the direction of the Court
 on the 10th day of said month of May, without any
 execution thereof, alleging for excuse of his default
 in that behalf, that on the 27th day of May aforesaid,
 he could not find the said Jacob B. Hall in

moves the Court to order and adjudge that the
 said N. G. Lighton Sheriff of the County of Just
 Aforeaid do forthwith pay into the hands of
 the Clerk of the Court - the sum of one hundred
 dollars. And the further sum of four dollars
 and forty five cents - specified in the writ of
 attachment - against the said defendant - issued
 herein on the 8th day of May last - and returned
 by said N. G. Lighton under date the 27th
 day of the said month of May and filed herein
 on the 31st day of that month - because it man-
 ifestly appears on file and of record in this
 cause that the said N. G. Lighton hath failed
 neglected and refused to obey the orders and
 process of this Court - to him directed and deliv-
 ered, and by him returned &c. altogether of his
 own wrong and without any good or sufficient
 excuse therefor in this. That he read to the
 said defendant - the order issued herein of date
 the 2nd day of February last, and returned
 by him the said N. G. Lighton under date
 the 23rd day of March last, and filed herein
 on the 4th day of April last - to attach his body
 &c. and nevertheless suffered the said defendant
 to remain and go at large in contempt of the mandate
 of that order, and also in this that the said
 N. G. Lighton hath returned the writ of attach-
 ment - aforeaid, which was sent to him under the

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direction of the Court on the 10th day of said
month of May without any execution thereof
alleging for excuse of his default in that behalf
that on the 27th day of May aforesaid, he could
not find the said Jacob G. Hall in his county.
whereas if his said return be true, the escape
and departure of the said Jacob G. Hall was
altogether by his permission and of his wrong,
and furthermore in this, that all the pro-
ceedings of the said N. C. Lighton in this behalf
raise a strong presumption that he is collu-
sioning with the said defendant to evade the
process of this Court and obstruct the admin-
istration of justice. *Semin. &c.*

(Signed)

Charles G. Finney
Solr for Complainant

Entry of foregoing Motion and Directions
thereon.

Saturday June 1st A. D. 1861

This day came the said
complainant by Charles C. Finney her solicitors
and entered and filed her petition herein for
an order that N. C. Lighton Sheriff of the
County of Scott in this State do forthwith pay
to the Clerk of this Court the alimony and
costs heretofore adjudged against the said

Defendants-together with the reasons for said motion & wherefore it is ordered and directed by the Court that the Clerk hereof do send a copy of the said motion and reasons to the Coroner of said County of Catt. for his without-prepayment of his fees thereof. to serve the same by reading to the said N. S. Leighton Sheriff as aforesaid. and thereupon to return that service with a taxation of his costs &c and that the hearing of this motion be stayed until the return of such notice.

Then appears upon the back of said last mentioned "Copy of motion and Rule" the following return to-wit:

State of Illinois
Scott Co

I have served the within order or process by reading to said N. S. Leighton Sheriff of Scott Co Ill. as witness my hand and seal this June 8. 1861
J. G. Whitehurst. Coroner
of Scott Co Ill

And afterwards, to-wit: on the Twenty fourth day of June in the year last aforesaid, the said N. S. Leighton filed in said Court his certain affidavit, which is in the words and figures following, to-wit:

and proposing to bring and deliver in Court the
 body of said Hall in receiving an advance of
 fees in the case. On receiving the second
 writ commanding me to absolutely to bring to
 without prepayment of fees I made diligent search
 and could not find said Hall in my county,
 without my advice or procurement he left this
 county before the reception of said second writ
 and still remains away from this county and
 beyond my knowledge.

M. S. Lighton Sheriff

State of Illinois. Scott County ss

Nemell S. Lighton Sheriff of &c this day
 made oath before me that the statements of the
 foregoing writing are true, witness my signature
 + seal this 14th June 1861

Seal

Thomas P. Roman clerk

And afterwards, to-wit: on the said Fourth
 day of June in the year last aforesaid, there was
 filed in said Court, the affidavit of T. F. Jerome,
 in said cause, which is in the word and figures
 following to-wit-

"Circuit Court Cook County Illinois
 - Term A D 1861.

Proceeding against Nemell S. Lighton Sheriff of
 Scott. for Contempt-

Theodore F. Jerome in oath

says, I am now and for three years last past
have been a Constable of said County of Scott
I know Jacob B Wall, as Constable. I
have frequently during the past three years held in
my hands Executions against said Wall and
have found him during the past year prof against
all attempts to collect debts on Executions. He is
now, was on the 27th day of May 1860 and for a
long time preceding that date had been utterly
and hopelessly insolvent. Nothing could be
made from him on an execution within the
past year to my certain knowledge. He is
without credit or resources and has been during
my knowledge of him which extends over the period
above specified

Emmott subscribed J. F. Jerome

before me this 20th day of June 1861

Seal The S. P. Roman Clerk Co Court

State of Illinois }
Scott County }

I N. M. Knapp atty at Law
on oath state that I have full knowledge of the
pecuniary condition circumstances of Jacob B
Wall named within and have the contrroll of
several judgments against him which I cannot
make. I know that he has been hopelessly insolvent
and utterly invulnerable to an execution for

three years past.

Subscribed + sworn before
me this 20 June 1861

N. M. Knapp

Seal Tho^s P. Rouse Co Clerk

And afterwards, to-wit: at the March Term of said Court
to-wit: on the 16th day of March in the year of our Lord
Eighteen hundred and sixty three, the following proceedings,
among others, were had and entered of record, to-wit:

Parthenia Hall

Jacob B. Hall

In Chancery

This day comes the said Complainant
by Charles LeBonney, her solicitor, and thereupon this
cause came on to be heard upon the motion of the said
Complainant heretofore filed and entered herein that
the Court do order and adjudge that Merrill S. Seighton
late Sheriff of the County of Scott do pay into the hands
of the Clerk of this Court the sum of One hundred
dollars to enable the said Complainant to prosecute
this suit and the further sum of four dollars and forty
five cents for costs incurred in that behalf for causes
apparent of record in this cause and specified in said
motion, and it appearing to the Court from a return
made by the Coroner of said County of Scott that the
said Merrill S. Seighton hath been duly served with a
copy of said motion and the order of notice made by
the Court thereon, and the said Sheriff having appeared

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herin and shomd cause against said motion, nor all
and singly the premises being seen and fully understood
by the Court here and as well the cause shorn by said
Sheriff and the matter alleged in behalf of said
Complainant to support said motion having been
fully heard and considered, it also appears to the
Court here that the said Merrill S. Saighton then
being the Sheriff of said County of Scott had process of
attachment issued in this cause against the body of
the said defendant to compel him to pay the moneys
aforesaid to enable the said Complainant to prosecute
her suit - and that the ability of said defendant
to make such payment has been conclusively established
for all the purposes of this motion and that the said
Merrill S. Saighton might and could well have taken
committed and produced before the Court here the body
of the said defendant as by such process he was comman-
ded to do, but that on the contrary the said Merrill S.
Saighton collusively, contemptuously and without any
just cause or reasonable excuse notified the said
defendant of that process against his body and allowed
him to go at large and escape from the said County of
Scott, whereby it further appears to the Court that the
said Complainant hath lost the means of compelling
the said defendant to furnish her the moneys necessary
to enable her to carry on this suit. Therefore it is ordered
adjudged and decreed by the Court that the said
Merrill S. Saighton do without further notice pay into the

hands of the clerk of this Court the sum of One hundred and four dollars and forty five cents above specified together with the costs of this proceeding against him to be taxed, to enable the said defendant to prosecute this suit, and that process of attachment issue upon the usual precept to enforce this order, and leave is given the said Merrill S. Saighton with the assent of said complainant to take these proceedings against him before the Supreme Court at the next term thereof for review if he shall be so advised. *rc*

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 Copy of rule + attachment against Ball + Motion + Copy of rule against Lighter + affidavits of Lighter, from + Knapp - and order on Sheriff in a certain cause now pending in said Court, on the Chancy side thereof, whetein

Parthena Ball is Complainant and
Jacob B. Ball is Defendant

In Witness Whereof, I have hereunto set my hand, and affixed the Seal of said Court, at Chicago, this
Fifteenth day of April
A. D. 1863

Wm L Church Clerk



Newell S. Leighton }
vs } Error to correct
Parthenia Hall }
Supreme Court April Term 1865.

And now comes the said Newell S. Leighton plaintiff in Error and says that in manifest error hath the interference in the foregoing proceedings and he assigns as error,

1st That the Circuit Court was in rendering a decree against him to pay the provisional amount allowed the said Parthenia Hall

2^d The proceedings are otherwise informal & erroneous

Wherefore he prays judgment &c.
W. C. Gandy
atty for plff in error.

135-164
Newell S. Leighton
vs
Parthenia Hall
Error to correct

Filed April 21, 1865
S. C. C. Clerk

W. C. Gandy
for plff in error

Answers -

And the said defendant in error says that there is no error in the proceedings and decree aforesaid, and prays that said decree may be affirmed &c.

Charles K. Bowers
attorney at law
for defendant in error

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Plas, 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 Third Monday, (being the
Fifteenth day) of March in the year
of our Lord One Thousand Eight Hundred and seventy-three and of the
Independence of the said United States the Eighty-ninth

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

Joseph Knopf States Attorney.

David S. Hammond Sheriff of Cook County.

Attest, William S. Church Clerk.