

14301

No. _____

Supreme Court of Illinois

O' Donnell

vs.

Howe

71641  7

STATE OF ILLINOIS,

SUPREME COURT.

Third Grand Division.

14301

No. 96.

*Palmer
vs
Hawes*

1862

Refused

declaration + notice is necessary

See Russia statute of 1875 Page 206

Chap. 36, sec 13.

The divorce the writ of error made a *replevius*

Brown & Harney
Attys for Plff in error

Brief

Know all Men by these Presents- That
me John Bonnell and Owen Ferrey
of the County of Winnebago and State of Illinois
are held and firmly bound unto Phineas Howz
in the sum of one hundred dollars to be
paid to the said Phineas Howz his executor
administrators or assigns, to which payment they
bind themselves, their heirs, executors or admin-
istrators, jointly and severally, firmly of these
presents-

Sealed with their seals and dated the
day of July A.D. 1861-

Whereas the above
bounden John Bonnell is about to
me out a writ of Error from the Supreme
Court of this State of Illinois to remove unto
the same Court - a certain judgment - Colly
recovered in the County Court of the County
of Winnebago by one Phineas Howz plain-
tiff against the said John Bonnell defen-
dant - thereon in a few of trespass in
Ejectment - and is about to pray that the
said writ of Error may be made a supersedeas
to said judgment -

Now therefore the condition
of the above obligation is such - that if the above bounden
John Bonnell shall duly prosecute the said
writ of Error and shall pay the judgment
costs interest - and damages in case the said
judgment shall be affirmed according
to the form of the statute in such
case made and provided:

Then

this obligation shall be void otherwise
to be and remain of full force and
virtue -

John Danforth

Coleman Garvey

State of Illinois
 Winnebago County - J^{rs} Owen Gerrey being duly
 sworn upon his oath - says that
 he is a landholder at Rockport in the land gone
 saw and is worth four hundred dollars over and
 above all his debts and liabilities and that he
 is indebted only about the sum of thirty dollars

Subscribed & sworn to
 before me this 15th July 1861
 O. H. Sawyer Clerk

Owen Gerrey

John B. Donnell, Plff in Error } Supreme Court -
 vs } of Illinois
 Phineas Howz, (Def't in Error)

I do hereby enter myself security for
 costs in this cause, and acknowledge myself
 bound to pay or cause to be paid, all costs which
 may be made by the above named Plaintiff in Error
 or which he may be adjudged to pay in this action
 in pursuance of the laws of this state

Dated July 15th 1861 - Owen Gerrey

To the Clerk of the Supreme Court of the State of Illinois
 for the 2^d division

or the Please issue
 a writ of Error to remove the record of this cause of
 Phineas Howz against John B. Donnell in Execution
 from the County Court of Winnebago County Illinois
 to the said Supreme Court

Yours &c

Surnap & Harvey Attys for John Donnell

John C. Downall

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Phenias Hervey

Supds Bond

Filed August 6. 1851

L. Leland

Clk



STATE OF ILLINOIS, }
SUPREME COURT, } ss.

The People of the State of Illinois,

To the Sheriff of the County of Winnebago Greeting:

Because, In the record and proceedings, and also in the rendition of the judgments of a plea which was in the County Courts of Winnebago County, before the Judge thereof, between Phineas Howes

plaintiff; and John O. Donnell

defendant.....; it is said that manifest error hath intervened, to the injury of the said defendant

as we are informed by his complaints the record and proceedings of which said judgments we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law: Therefore, We Command You, That by good and lawful men of your County, you give notice to the said ~~Phineas Howes~~ Phineas Howes

that he be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, to hear the record and proceedings aforesaid, and the errors assigned, if he shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said Phineas Howes

notice, together with this writ.

Witness, The Hon. John D. Eaton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this Sixth day of August in the Year of Our Lord One Thousand Eight Hundred and Sixty one

L. Leland

Clerk of the Supreme Court.
W. J. B. Hill Deputy

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John O'Donnell

No.

vs.

Phineas Howes

SCIRE FACIAS.

FILED

April 23^d

A. D. 1862

L. Leland

Clerk.

State of Illinois }
County of Winnebago } ss.

I duly served the within
by reading the same to the
within named Phineas
Howes, on this tenth day of
August A.D. 1862.

James Wright
Sheriff



Phineas Howes

STATE OF ILLINOIS, }
SUPREME COURT, } ss.

The People of the State of Illinois, }

To the Clerk of the County Court for the County Winnipeg. Greeting:

Because, In the record and proceedings, as also in the rendition of the judgments of a plea which was in the County Courts of Winnipeg County, before the Judge thereof, between Phineas Hewes

plaintiff, and John O. Donell

defendant, it is said manifest error hath intervened, to the injury of the aforesaid defendant

as we are informed by his complainant and we being willing that error should be corrected, if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the first Tuesday after the third Monday in April next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this sixth day of August in the Year of Our Lord One Thousand Eight Hundred and Sixty two

L. Leland

Clerk of the Supreme Court.

J. B. Burr

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John O Donnell

No.

vs.

Phineas Hervey

WRIT OF ERROR.

This writ of Error is made
a supersedeas and as such
is to be obeyed by all
concerned

L. Leland Clerk
by J. H. [unclear]

FILED

August 6

A. D. 1861

L. Leland

Clerk.

In the Supreme Court of Illinois

April Term 1862

John O Donnell	}	Error to Winnebago County Court Action of Ejectment
vs Phineas Howz		

The record from the Court below sets out a

Page 1-
 1st A declaration in ejectment by Phineas Howz the plaintiff below against John O Donnell the defendant below. filed 12th March 1861 in March Term

Page 2-
 2 The notice of filing the declaration & that rule to plead would be entered

Page 3-
 3^d The following return of Sheriff & Deputy-
 Clerk of Illinois } if on the declaration & rule et
 Winnebago County } I have this day served this
 writ of ejectment & delivering
 a copy of the same to the within named
 John O Donnell this 12 day of March
 1861
 Res \$1.15 M J Wright-Sheriff By J E Dennis Dep

Page 4-
 4 Also the following form of an
 affidavit without any protest upon the declaration
 which
 Mch of Illinois } Jos E Dennis being first def-
 Winnebago County } sworn deposes and says

That he has this day to-wit: the 12 day of March 1861 delivered to the within named John O'Donnell a true copy of the within declaration & notice and that the said defendant is in possession of the within described lands.

M J Wrought, Sheriff By J J Dennis Dep
Enclosure

Filed March 12-1861

Wm. Kulem Clerk

03-5

The rule to plead

Page 4-2

The judgment by default of June term 1861

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Errors assigned

Page 7-

1st That it does not appear by the record that any copy of the declaration & notice to appear & plead was ever served upon said John O'Donnell

2^d That no affidavit of service of a copy of the declaration & notice to appear & plead was ever filed in the cause as required by the statute

3^d That it does not appear by the said record that the Clerk of Court was required or had jurisdiction of said cause or of the person of said John O'Donnell in respect thereof

Brown & Harvey attorneys
for Plaintiff in Error

John A. Sannell
Pittsboro

y

Phineas Glenn
Suff. or Dor.

Abstract

John O. Derrill⁹⁶

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Phineas Howes

Transcript of
Records & Ass't of Howes

Filed August 6 1861
L. Leland
Clerk

United States of America
 State of Illinois, County of Winnebago } ss.

Pleas before the Hon. Anson S. Moiller,
 Judge of the County Court of Winnebago County in the
 State of Illinois, at a term of the said Winnebago County
 Court, begun and holden at the Court House in the City
 of Rockford in the County aforesaid on the Fourth day
 of March in the year of our Lord one thousand eight
 hundred and sixty one.

Present: The Hon Anson S. Moiller, Judge
 William Houlin Clerk
 and Morris J. Wright Sheriff.

Attest. Wm Houlin Clerk.

And afterwards to wit on the Twelfth day of March
 in the year of our Lord One thousand eight hundred and
 sixty one, it being one of the days of the said March
 Term of the County Court of said County the following
 was in said Court filed, as appears of the Court files and
 record in case of Phineas Howes Plaintiff against
 John O. Donnell. Defendant, to wit

State of Illinois }
 Winnebago County } ss. Winnebago County Court March Term, 1861.

Phineas Howes by O Moiller his Attorney
 complains of John O Donnell for that whereas said Phineas
 Howes on the eleventh day of March in the year of our
 Lord one thousand eight hundred and sixty one was
 possessed of certain lots or parcels of land to, wit: One
 fourth of an acre in section twenty six (26) bounded as
 follows, on the north by the ^{South} line of the Galena & Chicago

Union Rail Road & on the west by a continuation of
 seventh street in Gregory's addition to the City of Rockford
 on the East side of Rock River, on the east by a line
 10 rods east of and parallel with the west line, and on
 the south by a line running East & West, far enough south
 of the Rail Road to contain one fourth of an acre, which
 said Howes claims in fee and he the said Phineas Howes so
 possessed thereof, the said John O. Donnell afterwards on
 the said Eleventh day of March in the year of our Lord
 one thousand eight hundred and sixty one entered into
 the said premises and ejected the said Phineas Howes
 therefrom and unjustly withholds from the said Phineas
 Howes the possession thereof to the damage of the said
 Phineas Howes of the sum of Five Hundred dollars,
 and therefore he brings suit. O Meiller Atty. for Plff.

To John O Donnell.

You are hereby notified that
 the declaration with a copy of which you are now here-
 with served & to which copy this notice is subjoined will
 be filed in the office of the Winnebago County Court on
 Friday the fifteenth day of March A.D. 1861 being
 the Eleventh day of the March Term of the County
 Court of Winnebago County in the State of Illinois.
 That upon filing the same a rule will be entered
 requiring you to appear & plead thereto within twenty
 days after the entry of such rule & that if you neglect
 so to appear & plead a judgment will be entered
 against you & the Plaintiff will recover possession
 of the premises specified in the said declaration.
 Dated this 12th day of } Yours &c
 March A.D. 1861. } O. Meiller Atty. for Plaintiff.

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State of Illinois }
Winnebago County }

I have this day served this writ of ejectment by delivering a copy of the same to the within named John O. Donnell this 12 day of March A.D. 1861. Me. J. Upright Sheriff By J. E. Dennis, Dep. Fees \$1.15.

State of Illinois }
Winnebago County }

Jas. E. Dennis being first duly sworn deposes and says that he has this day to wit the 12 day of March A.D. 1861 delivered to the within named John O. Donnell a true copy of the within Declaration & notice and that said Defendant is in possession of the within described lands. Me. J. Upright Sheriff By J. E. Dennis Dep.

Endorsement. Filed March 12, 1861
Wm Hubin clk.

And afterwards to wit on the Fifteenth day of March aforesaid, it being one of the days of the said March Term of the said Court, the following entry was in said Court made, as appears of the Court record in said Case of said Fifteenth day of March

1052

Phineas Howes }
 agt } Ejectment
John O. Donnell }

This day comes the Plaintiff by his Attorney, and on his motion, it is ordered that the Defendant herein plead within Twenty days from this date.

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And afterwards to wit: on the Fourth day of June A.D. 1861
it being one of the days of June Term of said Court, the
following entry was in said Court made, as appears of
the Court record in said case of said Fourth day of
June.

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No. 27 Phineas Howes
 agt
John O' Donnell } Ejectment.

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And now comes the Plaintiff by his Attorney, and
the defendant being three times solemnly called comes not
nor comes any one for him but makes default. And the
said defendant having wholly failed to comply with the
order made by this Court at the last March term thereof
requiring the said Defendant to plead herein within twenty
days from the date of the entry of said order, and no
plea having been filed in behalf of said Defendant, it
is further considered and ordered by the Court that
the said Plaintiff have judgment by default against
the said Defendant, and that the Plaintiff recover
possession of the premises according to the description
thereof in the declaration in this case filed by said
Plaintiff, together with his costs and charges herein
expended, and that he have Execution therefor. And
it is further order that said Plaintiff have his writ of
possession according to the Statute in such case made
and provided, and that upon and by virtue of said
writ the Sheriff deliver to the said Phineas Howes
possession of the premises so recovered with the ap-
-purtenances, according to said Statutes, which said
premises are described in said declaration as follows,
to wit: One fourth of an acre in Section twenty six (26)
bounded as follows: On the North by the South line of
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the Galena & Chicago Union Rail Road, & on the west by a continuation of seventh Street in Gregory's Addition to the City of Rockford on the East side of Rock River, on the East by a line 10. Rods East of and parallel with the west line, and on the south by a line running East & West far enough south of the Rail Road to contain one fourth of an acre.

And afterwards to wit on the Fifteenth day of July A.D. 1861. the following was in said Court filed as appears of the Court files and record in said case

Phineas Howes
 agt
John O'Donnell } In the Winnebago County Court

The Clerk of the Winnebago County Court will make a transcript of the records and papers in the above entitled cause in said Court for the Supreme Court.

July 15th 1861

Burnap & Harvey
Atty's for Defendant O'Donnell

Endorsement on Precipe: Filed July 15. 1861
Wm Huliv Clk.

State of Illinois
County of Winnebago } ss.

I, William Huliv, Clerk of the County Court of said Winnebago County, do certify, that the foregoing is a full and correct transcript of all the Records and papers in the above entitled cause, in my office remaining, required by the above precipe.
Given under my hand and the Seal of said Court at my office in Rockford this fifteenth day of July

84 13



in the year of our Lord one thousand
eight hundred and sixty one.

William Hulin

Let a supersedeas issue in this case
Bail \$100.- with own money surety
J. D. Barton

In the Supreme Court.

John O'Donnell
 agt.
 Phineas Howes.

And now to wit on the first day of the April term of the Supreme Court of the State of Illinois, before the Justices thereof, at the Court-house at Ottawa in the County of La Salle, comes the said John O'Donnell, by Burnsop & Harvey his attorneys, and says, that in the record and proceedings aforesaid, and in the giving of the judgment aforesaid, there is manifest error in this, that it does not appear by the said record that any copy of the declaration aforesaid, or any notice to appear and plead to the same was ever served upon the said John O'Donnell. And also there is error in this, that an affidavit of service of a copy of the said declaration, and of a notice to appear and plead to the said declaration was not filed in the said cause, as is required by the statute in such case made and provided. And also there is error in this, that it does not appear by the said record, that the said County Court ever acquired or had jurisdiction of the said cause, or of the person of the said John O'Donnell in respect thereof, and the said John O'Donnell prays that the judgment aforesaid, for the errors aforesaid, and for other errors in the said record and proceedings be

ing, may be reversed, annulled and altogether
holden for nought, and that he may be re-
stored to, all things which he has lost by occa-
sion of the said judgment, &c.

Barnes & Flanery
Attornies for Plaintiff in Error.

Chicago July 31

I recd this just as I was leaving office
& have looked into it this morning. The rule
requires an abstract of the record before
I am authorized to order a supersedeas
let in to obtain by Saturday. B. Flanery

And the said Defendant in Error by
Jason Marsh his Attorney comes & says there
is no error in the said record & proceedings

to
April 25. 1862

Jason Marsh
Defendant in Error