

No. 13188

Supreme Court of Illinois

Henderson

vs.

Tullis

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 194.

Henderson
^{vs}
Feller

1861

Referred

13188

Supreme Court of the
STATE OF ILLINOIS;
THIRD GRAND DIVISION,

APRIL TERM, A. D. 1861.

JONATHAN TULLIS, Appellant.

vs.

ANDREW W. HENDERSON, Appellee.

ABSTRACT OF RECORD.

Record.
Page 1.

This action was originally commenced before a Justice of the Peace, and Judgment rendered against the Appellant, from which judgment the Appellant took an appeal to the Circuit Court of La Salle County.

At the June Term, A. D. 1860, of said court, certain proceedings were had in said cause, which fully appear in the Bill of Exceptions filed by appellant in said cause, at said June Term, in the words and figures following:

Page 10.

"STATE OF ILLINOIS } AND CIRCUIT COURT THEREOF,
LA SALLE COUNTY. } To JUNE TERM, 1860.

ANDREW HENDERSON, Appellee,

vs.

JONATHAN TULLIS.

BILL OF EXCEPTIONS.

Page 11

Be it remembered that on this twenty-second day of June A. D. 1860, the same being one of the days of said term of Court a cause was on trial in said Court and undetermined, before the Court, and a jury, entitled Samuel E. Morris, *et al* Administrators of Joseph Yoder, deceased, *vs.* The Chicago and Rock Island Railroad Company and before said cause was submitted to the jury, by consent of the Court, and agreement of counsel for Plaintiff and defendant in said cause, said jury were taken to Tiskilwa in Bureau County, to make an examination of the grounds on the line of said Railroad, where said Joseph Yoder was killed by a train of cars running upon said Road, for which killing said action was brought.

After said Jury returned, said cause was argued by counsel, and the jury instructed by the Court, and said cause finally submitted to them, said jury. Be it further remembered, that on said twenty-second day of June after said jury in said cause had departed to Tiskilwa, for the purpose aforesaid, and during their absence, which was for one half day, the cause of which this Bill of Exceptions is entitled, namely: Andrew Henderson *vs.* Jonathan Tullis, was called for trial in its regular order, and, on the call of the docket, the counsel for both parties being absent, the Court dismissed the Appeal for want of prosecution.

Page 12.

Be it further remembered, that on the fifth day of July, A. D. 1860, the same being one of the days of said Term of Court, came the defendant, by his counsel, Charles Blanchard, and entered his motion to reinstate said cause so dismissed upon the docket of said Court for the reason that the was dismissed by the Court in the absence of counsel for both parties, and while the aforesaid cause of Morris *et al* the Chicago and Rock Island Railroad Company, was on trial and undetermined as aforesaid. Notice had been previously given to Plaintiff's Attorney that such motion would be made.

And again, on the sixth day of July, A. D. 1860, while said Court was still in session, said Court overruled said motion to which decision of the Court in overruling said motion, said defendant by his counsel then and there excepted, and prayed an appeal to the Supreme Court, and asked the Court to sign and seal this his Bill of Exceptions, and it is done.

M. E. HOLLISTER,
Judge.

* SEAL *

STATE OF ILLINOIS, } APRIL TERM, 1861.
SUPREME COURT.

JONATHAN TULLIS, Appellant,

vs.

ANDREW HENDERSON, Appellee,

And now comes the said Appellant, Jonathan Tullis, by C. & M. Blanchard, his attorneys, and says that in the record and proceedings aforesaid, and in the judgment dismissing the appeal aforesaid, and overruling the motion to reinstate aforesaid, in manner aforesaid, there is manifest error: and assigns the following grounds of error:

1st. The Court erred in dismissing the appeal for want of prosecution.

2nd. The Court erred in overruling the motion by defendant below to reinstate said cause on the Docket.

3rd. The judgment of the court in dismissing said appeal and refusing to reinstate on motion, are each against law.

And the appellant prays that the aforesaid judgment and ruling of the court below for the errors aforesaid and other errors in the said record and proceedings may be reversed &c.

G. S. ELDREDGE,
Att'y for Appellee.

C. & M. BLANCHARD,
Att'ys for Appellant.

194. - 65

Jonathan Gullis
Appellant
vs.
Andrew Henderson
Appellee
Abstract -

Filed Apr 16. 1861
A. Deland
Clerk

1
State of Illinois } S.S. Pleas before the
Safalle County } Honorable Madison E. Hollister
the Judge of the Ninth
Judicial District of the State of Illinois
and the Presiding Judge of the Safalle County
Circuit Court in Said State, at a term
of Said Court, commenced and held at
the Court House in Ottawa, in Said County
and State, on the Second Monday in the
Month of June, the Same being the eleventh
day of June, in the year of Our Lord One
Thousand Eight Hundred and Sixty
and of the Independence of the United States
of America the Eighty Fourth.

Present

The Honorable Madison E. Hollister, Presiding Judge

John S. Nash, Clerk

Washington Bushnell, States Attorney

Francis Warner Sheriff

Copy of Summons, issued out of the
Justices Court, July 20th A.D. 1860, which
is in the words & figures following: viz:

"State of Illinois } S.S. The People of the State
Safalle County } of Illinois to any Constable
of Said County Greeting,

You are hereby commanded to Summon
Jonathan Dillis, to appear before me at

My office in Peru on the 27th day of Febru-
 -ary 1860, at 10 O'clock A. M. to answer
 the complaint of Andrew W. Henderson
 for a failure to pay him, a certain de-
 -mand, not exceeding One Hundred Dol-
 -lars, and thereof make due return as
 the law directs
 Given under my hand } James S. McLain 383
 and Seal this 20th day } Justice of the Peace
 of February A.D. 1860 }

Copy of Endorsement of Summons, in words &
 " figures following; viz;
 No. 133

Summons, A. W. Henderson vs J.
 Tullis Demand - \$86.70
 Costs due - 56
 \$87.26

Served by reading ^{to} the Within named
 Deft February 21st 1860. Wm H Foot
 Const

Service 25,

Mileage 15

40.

Copy of Transcript and Appeal Bond
 Filed April 9th 1860. In the words and
 figures following; to wit

3
Anderson W. Henderson } Before J. S. McLean J. P.
as } Plaintiff Demands \$86.70
Jonathan Cullis } 3

Suit brought on a note for Seventy Six $\frac{75}{100}$ Dollars, executed to Joel W. Hopkins, or order, due Six Months after date - interest 10 per cent from date. Feb 20th 1860, Summons issued, returnable on the 27th inst at 10 O'clock A. M., and delivered to W. H. Foot Const - Summons returned ^{Served} by reading to defendant February 21st 1860, W. H. Foot Const. Fees, Service 25, Mileage 15, 40. Feb 27, 1860 Parties appeared and by consent, cause continued to the 13th day of March 1860, at 11 O'clock A. M. March 13th 1860, Plaintiff Subpoena ~~There~~ for 3 witnesses issued, and delivered to W. H. Foot Const, Subpoena returned, Served by reading to witnesses, March 13th 1860, Const. Fees 62½. March 13th 1860 Plaintiff appeared, with Joel Hopkins, George E. Henderson and Archibald Dyert, witnesses on his behalf, and who claimed their fees, Defendant failed to appear, whereupon, George E. Henderson, was sworn and examined. It is thereupon considered by me that Plaintiff recover of Defendant, Eighty Six Dollars and Seventy cents for his demand, and the cost herein taxed at Three dollars and

Forty six cents, James S. McLain J. P.
 Justice fees: Summons $18\frac{3}{4}$, Docketing $12\frac{1}{2}$, Continuance $12\frac{1}{2}$, $43\frac{3}{4}$
 Plff's Subpoena $18\frac{3}{4}$, Swearing 1 witness $6\frac{1}{4}$, Judgment 25, 50
 93 $\frac{3}{4}$
 W. H. Foot, Const. Fees, Summoning 40, Plff Subpoena $62\frac{1}{2}$, 1.02 $\frac{1}{2}$
 Witness fees Joel Hopkins 50, George E. Henderson 50, Arch. Dyett 50, 1.50
 Costs of Suit — \$3.46

March 30th 1860, The Above named Defendant with
 Richard A. Winston as his Surety filed his Bond for an
 appeal to the Circuit Court, which bond was ap-
 proved by me, and appeal granted.

Costs of Appeal, Bond for appeal 25, Entering appeal 25, 50
 Transcript 25, Certificate 25, 50
 \$1.00

State of Illinois, S. S.

Safall County

I, James S. McLain a
 Justice of the Peace in and
 for said County, do hereby Certify that the
 foregoing transcript, and enclosed papers, con-
 tain a full and perfect Statement, of all the
 proceedings heard by and before me, in the
 above entitled case.

In witness whereof, I have hereunto
 set my hand, this 30th day of March
 1860,

James S. McLain, J. P. *[Signature]*

S-

I know all men by these Presents that we Jonathan Tullis and Richard A. Winston - are held and firmly bound unto Andrew W. Henderson, in the penal Sum of One Hundred and Eighty Dollars and Thirty Two 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 and Severally and firmly by these presents,

Witness our hands and Seals This 30th day of March A.D. 1860.

The Condition of the above obligation is Such, That whereas the Said Andrew W. Henderson, did on the 13th day of March A.D. 1860 before James S. McCain, a justice of the Peace for the County of Safole, recover a judgment against the above bounden Jonath Tullis, for the Sum of Eighty Six Dollars and Seventy Cents, debt, and Three Dollars and forty Six Cents, ^{costs} from which judgment the Said Jonathan Tullis, has taken an appeal to the Circuit Court of the County of Safole aforesaid, and State of Illinois, Now if the Said Jonathan Tullis Shall prosecute his ^{appeal} ~~suit~~ with effect, and Shall pay whatever judgment may be rendered by the Said Court, upon dismissal or trial of said appeal, then the above obligation to be void, otherwise to remain in full force and effect.

Jonathan Tullis
R. A. Winston

Approved by me at my office this 30th
day of March 1860 James S. McCain J.P.

6
Copy of Appearance of Plaintiff in words
& figures following, to wit:

"State of Illinois, Safer County Circuit
Court to June Term 1860.

Andrew Henderson
vs
Jonathan Sullis

Appeal.

I hereby waive service
of process, & enter my appearance in
this cause, & stipulate that said cause
may proceed in all respects the same
as if I had been personally served, with
process, May 30, 1860.

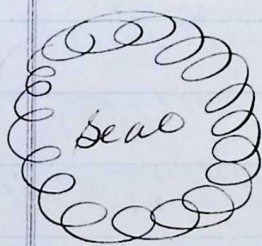
Andrew Henderson plaintiff
by G. S. Eldridge his atty. "

Copy of Summons, in the words & figures fol-
lowing, to wit:

"State of Illinois } s, The People of the
Safer County } State of Illinois
To the Sheriff of said
County Greeting.

We command you to
Summon Andrew W. Henderson, if
to be found in your county, personally
to be and appear, before the Circuit Court

of Said County, on the first day of the next term thereof, to be holden at the Court House in Ottawa, on the 11 day of June next to prosecute his Suit which he instituted against Jonathan Tullis and recovered judgment before Judge S. McLean, a Justice of the Peace of Said County on the 13 day of March 1860, for the Sum of \$86.76 besides costs, from which Said judgment Said Tullis, has taken an appeal to the Circuit Court of Said County, and further to do and perform whatever the Said Court may then and there consider in the premises And have you Then and there This writ



Witness John F. Nash, Clerk
of Said Court, and the Seal
of Said Court at Ottawa this
9th day of April A.D. 1860
J. F. Nash Clerk

"Endorsement of Summons" in the words
and figures following; viz;

"197 Andrew W. Henderson

vs

Jonathan Tullis,

Sums to plff to June Term 1860.

Filed June 6, 1860, J. J. Nash clk

Served the within by reading same
to Andrew W. Henderson, June 1st 1860

H. Warner Shiff
by J. W. Matlocks, Depy

Just Ser & Ret. 60

24 Miles 1.20

1.80

"

" Saffell County Circuit Court June
Term 1860, Thursday June 28th

The following order ^{in said cause} was entered of Record in
said court in the words and figures following;

Andrew W. Henderson }

197

vs

Jonathan Dullis }

Appeal,

This day the Plaintiff
comes by G. S. Eldridge, his attorney and
~~the defendant~~ and the defendant being
three times solemnly called in open Court
comes not, nor any one for him but makes
Default. Whereupon on motion of Plaintiff
attorney it is ordered by the Court that
the appeal herein be dismissed for want
of prosecution, that a procendo issue
and that the Plaintiff have and recover
of the defendant his costs and charges
by him herein expended and that he
have execution therefore. "

Safallie County Circuit Court June
Term 1860. Friday July 6th.

On this day, the following order
was entered of record, in said Court,
in the words and figures following.

" Andrew W. Henderson }
197 vs } Appeal.
Jonathan Sullis, }

This day the de-
fendant comes by C. Blanchard, his
Attorney and moves the Court to set a-
side the default heretofore entered
in and to reinstate this cause
upon the Docket which motion is
overruled by The Court.

Defendants Counsel now pray
an appeal to the Supreme Court which
is granted upon condition, that defen-
dant within Ten days, after the ad-
journment of this Court, file an appeal
Bond payable to the Plaintiff in the
penal sum of Two Hundred Dollars
with Samuel Mago and Charles
Blanchard as his Security. "

Bill of Exceptions, to the Ruling
of the Court, by Defendant, Filed
July 21, 1860, which is in the words
and figures following:

State of Illinois } Am.
Safall County } and Circuit Court
Thereof to June Term 1860.

Andrew Henderson }
 appellant
 vs
Jonathan Tullis } Defendant

Bill of exceptions

Be it remembered That on this twenty
second day of June A.D. 1860, the same
being one of the days of said term of
Court, a cause was on trial in said
Court, and undetermined before the Court
and a jury entitled, Samuel E. Morris
et al, Administrators of Joseph Yoder
deceased vs The Chicago and Rock
Island Rail Road Company, and
before said cause was submitted, to the
jury, by consent of the Court and agree-
ment of Counsel for Plaintiff and Defen-
dant in said Cause said jury were
taken to Siskilawa in Bureau County
to make an examination of the ground

on the line of Said Rail Road, where Said Joseph Gader, was killed by a train of Cars, running upon Said Road for which killing Said action was brought, After Said jury returned Said Cause was argued by Counsel, and the jury instructed by the Court and Said Cause finally Submitted to them, Said jury.

Be it further remembered that on Said Twenty Second day of June, after Said jury in Said Cause had departed to Tiskilwa for the purpose aforesaid, and during their absence which was one half day, the cause of which this bill of exceptions is entitled namely, Andrews Henderson vs Jonathan Tullis was called for trial, in its regular order and on the call of the docket, and the Counsel for both parties being absent, the Court dismissed the appeal for want of Prosecutions.

Be it further remembered that on the Fifth day of July A.D. 1860 the Same being one of the days of Said term of Court, came the defendant by his Counsel Charles Blanchard and entered his motion to reinstate

Said Cause so dismissed upon the docket of Said Court, for the reason that the same was dismissed by the Court in the absence of Counsel for both parties and while the aforesaid Cause of Morris et al vs Chicago and Rock Island Rail Road Co, was on trial and undetermined as aforesaid Notice had previously been given to Plaintiffs Attorney that such Motion would be made,

And again on the Sixth day of July A.D. 1860, while Said Court was still in Session, Said Court overruled Said Motion to which decision of the Court in overruling Said Motion Said Defendant by his Counsel then and there excepted, and prayed an appeal to the Supreme Court and asked the Court to sign and Seal this ^{his} bill of exceptions and it is done,

M. E. Hollister sen
Judge, "

Copy of the Appeal Bond, Filed July 21, 1860, which is in the words and figures following To Wit:

Know, all men by these Presents that we Jonathan Dullis, Samuel W. Maze and Charles Blanchard of LaSalle County and State of Illinois are each held and firmly bound unto Andrew Henderson in the Penal Sum of Two Hundred Dollars for the payment of which well and truly to be made unto Said Andrew Henderson his heirs executors or administrators we bind ourselves and each of our heirs executors and administrators firmly by these presents. Witness our hands and Seals this Seventeenth day of July A.D. 1860

The Consideration of the above obligation is such that whereas a certain Cause entitled Andrew Henderson vs Jonathan Dullis, one of the above named obligors was pending in the June Term of LaSalle County Circuit Court A.D. 1860, and while so pending the appeal therein was dismissed for want of prosecution, and whereas Said Jonathan Dullis, did enter his motion during said term of Court to reinstate said Cause upon the Docket of said Court which motion was overruled by the Court, whereupon

Said Jonathan Tullis, prayed an appeal to the Supreme Court of the State of Illinois which was granted upon Condition, that Said Tullis would file Bond as required by the Court now if the Said Jonathan Tullis Shall prosecute his Said appeal with effect, and Shall pay the amount of the judgment, costs interest and damages, in case the judgment of Said Court shall be affirmed then this obligation to be void otherwise to remain in force.

Jonathan Tullis seal
Charles Blanchard seal
Saml. S. Maze seal

State of Illinois } Ss.
Safalle County } I, Absalom B. Moore
Clerk of the Circuit Court
in and for Said County, do hereby Certify
that the foregoing, is a full true
and complete ~~record~~ Transcript, ~~for~~
in this cause, as appears from the papers
on file in my office, and from the
records of Said Court, Witness my hand
and the seal of Said Court at Ottawa

This Ninth day of March A.D.
1861. Wm Moore
Clerk

State of Illinois
Supreme Court - 3 April Term 1861 -

Jonathan Fullis
Appellant
vs.
Andrew Henderson
Appellee

assignment of
Errors

And now comes

The said Appellant Jonathan Fullis
by C. D. Blanchard his attorney and
says that - as the record & proceedings of said
said and in the judgment dismissing
The appeal of said and overruling the
motion to reinstate of said there is
manifest error and assigns the following
grounds of error:

- 1st The Court erred in dismissing the appeal
for want of prosecution -
- 2nd The Court erred in overruling the motion
by defendant -
"below to reinstate said cause on the
docket -
- 3rd The judgment of the Court in dismissing
said appeal and refusing to reinstate
on motion are each against law -
- And the Appellant prays that

the aforesaid judgment - & ruling of the
Court below for the errors aforesaid and
other errors in the said record and
proceedings may be reversed &c

Wm. Blackwood
Att'y for Appellant

Supreme Court of the State of Illinois

Andrew Henderson April Term 1861

vs

Jonathan Tullis
Appellant

for error in error

And now comes
the said appellee G. S. Eldred
his Atty & says that there is no
error in the record
proceedings aforesaid or in
giving the said judgment and
judgment should be affirmed

G. S. Eldred
Atty for Appellee

174 7165
Andrew Henderson

Jonathan Tullis

Copy of proceedings
to the Supreme Court

Filed April 16. 1861
L. L. Leland
Clerk

