No. 12329

Supreme Court of Illinois

Steamboat "Clarion"

vs.

Moran

71641 7

67

Steamboat Clarion

vs

Patrick A. Moran

67

1857

12329

State of Illinois
Sixth Judicial Circuit } sct.
Carroll County

Be it remembered that in the case of Patrick A. Moran against The Steam Boat Clarion in the Circuit Court in & for said County, the Hon. John W. Drury presiding appears the following proceedings to wit:

On the 1st Day of November A.D. 1855 upon the Docket Entry Book appears the following Entry to wit:

J. Wilson Patrick A. Moran
vs } Attachment
Steam Boat Clarion } November 1st 1855

Also upon said 1st day of November A.D. 1855 upon the files of said Court appears the following Affidavit to wit:

State of Illinois }
Carroll County } ss

Patrick A. Moran in said County being duly sworn on oath says that on or about the 9th day of July A.D. 1855 that he made an agreement with the Agent and Supercargo of the Steam Boat Clarion to serve as Master of said boat and for which service by said agreement he was to receive

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one hundred dollars per month he further states that in pursuance of said agreement he entered upon said Boat and took charge of her as Master and has continued as Master thereof from the time of said agreement aforesaid up to the present time - He also states that said Boat is indebted to him for extra services as Pilot, upon said Boat He would further state that said Boat is indebted to him for services thereon as Master & Pilot as aforesaid in the sum of five hundred ~~and~~ fifty-four dollars after deducting all just credits He would further state that said indebtedness accrued while said Steam Boat Clarion was running upon the Mississippi River one of the navigable waters of the State of Illinois. that he does not know whether said Boat is owned by Copartners nor does he know who are the owners thereof at the present time - He therefor prays an attachment against said Steam Boat by her name authorising and directing the seizure and detention of the same with her engines Machinery apparel

and furniture.

Subscribed and sworn to before me this 26th day of October AD 1855

Patrick his X mark Moran

J. P. Emmert Clerk

Which said affidavit is endorsed as follows to wit: Filed Nov 1st 1855

J. P. Emmert Clerk

Also upon said ~~30th~~ 1st day of ~~October~~ November 1855 upon the files of said Court in said Cause is an attachment bond of which the following is a Coppy to wit:

Know all men by these presents that we Patrick A. Moran and John Wilson of the County of Carroll and State of Illinois are held and firmly bound unto the people of the State of Illinois for the use and benefit of the owner or owners of the Steam Boat Clarion in the sum of Eleven hundred eight dollars to be paid to said people of the State of Illinois for the use aforesaid to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators jointly and severally firmly by these presents, sealed with our seals and dated this 26th day of October

A.D. 1853. The Condition of this obligation is such that whereas the above bounden Patrick A Moran has on the day of the date hereof prayed an attachment out of the Circuit Court of said County of Carroll at the suit of himself against the steam Boat Clarion with her engines machinery apparel and furniture the owners of which are unknown for the sum of five hundred fifty four Dollars and the same being about to be sued out of said Court returnable on the fourth Monday of May next to the term of the Court there to be holden Now if the said Patrick A Moran shall prosecute his ~~said~~ suit with effect or in case of failure therein shall well and truly pay and satisfy the said People of the State of Illinois for the use and benefit of the owner or owners of the said Steam Boat Clarion all such costs in said suit and such damages as shall be awarded against the said Patrick A Moran his heirs executors or administrators in any suit or suits which may hereafter be brought for wrongfully suing out the said attachment

then the above obligation to be void otherwise to remain in full force and effect

Witness to Patrick A Moran's Mark
J. P. Emmert

Patrick A his × mark Moran (Seal)
John Wilson (Seal)

Which said Bond is endorsed as follows to wit: Filed Nov 1st 1855.
J. P. Emmert Clerk

Also upon said 1st day of November 1855 upon the files of said Court in said cause is a Bond for costs of which the following is a copy to wit:

Patrick A Moran
vs
The Steamboat Clarion

Carroll County
Circuit Court
to the May term A.D. 1856

I do hereby enter myself security for costs in this ~~[illegible]~~ cause and acknowledge myself bound to pay or cause to be paid all costs which may accrue in this action either to the opposite party or to any of the officers of this court in pursuance of the laws of this state Dated this 26th day of October A.D. 1855
John Wilson

Which said Bond is endorsed as follows to wit: Filed Nov 1st 1856
J. P. Emmert clerk

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Also upon said first day of November AD 1855 in said cause was issued a writ of attachment of which the following is a Copy to wit:

State of Illinois
Carroll County } ss

The people of the State of Illinois to the Sheriff of Carroll County Greeting Whereas Patrick A. Moran hath Complained on oath before J P Emmert Clerk of the ~~Circuit~~ Circuit Court of said Carroll County, that the Steam Boat Clarion is justly indebted to the said Patrick A Moran to the amount of Five hundred and fifty four Dollars and oath having been also made that the said Patrick A Moran does not know whether said Boat is owned by Co Partners and that he said Moran does not know who are the owners thereof at the present time and the said Patrick A Moran having given bond and security according to the directions of the act in such case made and provided. We therefore command you. that you attach the said Steam Clarion and that you seize and detain the same with her Engines Machinery apparel and

furniture, or so much thereof to be found in your County, as shall be of value sufficient to satisfy the said debts and costs according to the Complaint, and such estate so attached in your hands to secure, or so to provide, that the same may be liable to further proceedings thereupon, according to law, at a court to be holden at Mount Carroll, in the County of Carroll aforesaid upon the fourth Monday of May next, so as to compel the said Steam Boat Clarion or its legal representatives to appear and answer the Complaint of the said Patrick A Moran - and that you also summon as garnishee, to be and appear before the said Court on the said day of next, then and there to answer what may be objected against when and where you shall make known to the said Court how you have executed this writ. And have you then there this writ. Witness J P Emmert Clerk of the Circuit Court of Carroll County Illinois at Mt Carroll, this 1st day of November AD 1855. Attest J P Emmert Clerk

The said attachment is endorsed as follows to wit, by virtue of the within writ I have Attached the Steam Boat Clarion her Engines machinery appearel & Furniture as she lies in Plumriver this 2th day of Nov 1855

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Serving Attachment 50
11 Miles
55
$1.05

S S Dunn, Sheriff

And afterwards to wit: the 15th of May 1856 in this cause was filed a declaration of which the following is a copy to wit: Of the Carroll County Circuit Court of the May Term A D 1856.

~~by John Wilson~~ Patrick A Moran by John Wilson his attorney Complains of the steam boat Clarion navigating the Mississippi river one of the navigable waters of the State of Illinois for that whereas the said Steam Boat Clarion heretofore to wit on the 26th day of October A.D. 1855 at Carroll County, Illinois was indebted to the said Plaintiff in the sum of five hundred and fifty dollars for that whereas on or about the 9th day of July in the year of our Lord one thousand eight hundred & fifty five the agent of the owners and supercargo of said steamboat in consideration that the plaintiff at the request of the said agent and supercargo as aforesaid had then and there agreed to enter into the service of said steamboat as master then

thereof, the said Supercargo and Agent as aforesaid agreed on the part of said Steam Boat to and with the said Plaintiff to pay the said Plaintiff at the rate of one Hundred dollars per month for each and every month the said plaintiff should serve said Steam Boat as Master of the same and the plaintiff avers that in pursuance of said Contract he entered into the service of said Steam Boat as Master

as aforesaid and continued to serve said Boat as Master thereof until the 22d day of October A.D. 1855 at which time said steam Boat at Carroll County aforesaid discharged said Plantiff from further service and that said service was performed by said plantiff for and upon said said boat while running upon the mississippi river being one the navigable waters of said State of Illinois and afterwards to wit: on the day and year last aforesaid the said Steamboat in consideration of the premises respectively promised to pay the said Plaintiff the said sum of money when requested and the said plantiff that the said Steam boat nor any one in her behalf although often requested hath not paid said one hundred Dollars per month or any part thereof but to pay the same hath hitherto wholly neglected and refused and still do do neglect and refuse to the damage of the said plantiff of five hundred and fifty Dollars also for and whereas the said steamboat afterwards to wit: on the day and year first aforesaid at Carroll County aforesaid was indebted to the said Plantiff in the further sum of five hundred and fifty Dollars for that whereas heretofore to wit on the 9th day of July A.D. 1855. The agent for the

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owners of said Steam boat and super cargo of the same in consideration that the plaintiff had then and there agreed with the said agent aforesaid of said Steamboat Clarion to enter into the service of the said Steam Boat Clarion as master thereof the said agent agreed on the part of the said Steam boat Clarion as master thereof the said agent agreed on the part of the said Steam Boat to and with the said plaintiff at the rate of one hundred Dollars per month for each and every month and part of month said plaintiff would so serve said Steam Boat as master thereof and the Plaintiff avers that in pursuance of said agreement he entered into the service of said Steam Boat as Master thereof and continued to serve said Steam Boat as master thereof untill on or about the 26th day of October AD 1855 And also for that whereas afterwards to wit on the day and year first aforesaid at Carroll County aforesaid the Steam Boat aforesaid was indebted to the said plaintiff in the further of five hundred and fifty Dollars for the work labor care diligence and skill of the said

plantiff before that time done performed and bestowed upon said boat as master and pilot thereof for a long space of time to wit for the space of three months at the request of the agent for the owners of said boat and supercargo thereof and that said service was performed by said plantiff for and upon said boat while running upon the Mississippi river it being one of the navigable waters of the State of Illinois and for money found due said plantiff from said steamboat on an account due said plantiff from said steamboat in the sum of five hundred on the day and year first aforesaid yet the said steamboat nor any one in her behalf without paid the said plantiff the said sum of money nor any part thereof but wholly neglected and refused and doth still neglect and refuse to the plantiff damages of five hundred and fifty dollars and therefor he sues &c

John Wilson
Pltff Attorney

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Copy of Account
Sued on
Steam Boat Clarion to Patrick
A Moran Dr
To Wages as Master of said boat 550-
To Work & labor as master & part
of said Steam boat 550-
To Amount found due on account for $1500

And afterwards to wit: On the 27th day of May 1856 at the May Term 1856 of the said Carroll County Circuit Court upon the records of said Court appears the following Entry To wit:

Patrick A. Moran
v
Steam Boat Clarion } Attachment

And now at this time came the plaintiff by his Attorney and on his motion it is ordered by the Court that the Steam Boat Clarion be called, and the same being called three times by the Sheriff and not appearing it is ordered by the Court that Judgment by default be entered and that a writ of Enquiry be awarded for the assessment of damages, and now here the said writ having been executed came the following good and lawful men to assess said damages To wit: John

Roland, Thomas Kinney, George Eisenbeis, James Lanker, Sumner Downing, Aaron Huffman Ferdinand Rupple, Samuel Stouffer, L. S. Benjamin, John Fuller, J. T. White and James Green, who being duly elected, tried, sworn and affirmed to well and truly assess the damages aforesaid, after having heard the evidence returned a verdict of damages in favor of the said Plaintiff and against the said defendant for the sum of one thousand dollars. Whereupon it is considered and adjudged by the Court that the said Plaintiff have and recover of said Defendant the aforesaid sum of One thousand dollars so as aforesaid, together with his costs and charges in this behalf by him expended, and that he have a special Execution for the sale of the property attached to satisfy the same.

And afterward, To wit: On the 28th day of May A.D. 1856 at the May Term aforesaid upon the records of said Court appears the following Entry to wit:

Patrick A. Moran
" } Attachment
Steam Boat Clarion

And now at this time came the plaintiff and enters a remittiter of the sum of four hundred and forty six Dollars from the damages assessed in his favor in this cause and upon which judgment was rendered against said Defendant. Whereupon it is ordered by the Court that

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the Special Execution be issued for the sum of Five Five hundred and fifty four dollars being the balance of said Judgment after deducting the above amount remitted.

State of Illinois
Carroll County ss

I J. P. Emmert clerk of the Circuit Court in and for said County do certify that the foregoing is a correct Transcript of all the proceedings in said Court in the case of Patrick A. Moran against Steam Boat Clarion up to and including the rendition of the Judgment as appears by the records of said Court. Also a complete copy of all the papers filed in said cause in said Circuit Court

Witness my hand and the Seal of said Court at Mt. Carroll this 13th day of August A.D. 1856

J. P. Emmert Clerk

State of Illinois Set.
In Supreme Court. Third Grand division

Steamboat Clarion
vs
Patrick A. Moran
Deft in Error
} Error to Carroll County.

And now comes the said Plaintiff in Error by Thos. A. Smith. Attys. and says that in the Record & proceedings & in the Rendition of Judgment in said

Cause in said Circuit Court, there is manifest Error in this Court.

85

1st Said Court erred in holding Jurisdiction of said Cause

2d Said Court erred in granting the writ of Attachment in said Cause, against said Steamboat upon the Affidavit filed in said Cause -

3d Said Court erred in not dismissing said Cause, for Reasons appearing upon the face of the papers

4th Said Court erred in entering Judgment by default against said Steamboat, without publication or other legal Notice to the Owners thereof -

5th Said Court erred in entering any Judgment against said Steamboat in favor of said Plaintiff, who was Master of said Boat & as such not authorized by law to maintain an action against said Steamboat by its name -

6th Said Court erred in awarding a writ of Inquiry to assess Damages in said Cause

7th Said Court erred in entering Judgment upon the finding of the Jury -

8th Said Court erred in awarding Execution for the sale of said Steamboat.

9th Said Court erred in other respects & for other Reasons appearing upon the face of the Record

Wigfly & Scott
Attys for Plff in error.

Let a supersedeas issue upon the owners of the Steam Boat Clarion the pltff in error entering into bond assigned in the penal sum of seven hundred dollars with George R Mulville or John D. Simmons. or Morris P. Silver bargh Surety

J D Caton

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Moran
vs
St Bt Clarion

Error

And the said deft in Error comes & defends &c. And says there is no error in the Record and proceedings in the above entitled cause and that the Judgment & proceedings in all things should be affirmed &c

M Y Johnson
Atty

Patrick O. Moran
vs
Steam Boat Clarion

Transcript of Record

Filed August 16th 1856
T Allen
Clerk

Fees for Transcript $1.50

STATE OF ILLINOIS, }
Supreme Court, } ss. **The People of the Ssate of Illinois,**

To the Sheriff of the County of Jo Daviess **Greeting:**

BECAUSE in the record and proceedings, and also in the rendition of the judgment of a plea which was in the circuit court of Carroll county, before the Judge thereof, between Patrick A. Moran Plaintiff and The Steamboat Clarion

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

as we are informed by the of said defendant complaint, the record and proceedings of which said judgment 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 Patrick A. Moran

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 Second Monday in June next, to hear the records 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 Patrick A. Moran

notice, together with this writ.

WITNESS, the Hon. ~~Samuel H. Treat,~~ Walter B. Scates Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 21st day of August in the Year of Our Lord One Thousand Eight Hundred and Fifty-six

L. Leland
Clerk of the Supreme Court.
By J. B. Rice Deputy

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Patrick A. Moran
vs
Steamboat Clarion

Sci fa.

Costs
Mileage .65
Service .50
Return .10
1.65

W. R. Rowley

Filed Oct. 15 1856
S. Leland
Clerk
By J. B. Rice Deputy

Office of the Justice of the Peace in and for said county
To the Constable of Shawnee Co.
Oct 13th 1856

Whereas Patrick A. Moran
Plaintiff has filed
Complaint against
the Steamboat Clarion

Steam Boat Clarion
vs.
Patrick A. Moran } Error to Carroll

Affidavit insufficient.

Because,
1st it does not state name of agent & Supercargo who contracted the debt.
Steamboat Tom Boulding v. Hough
5 Blackford 188.

2d it does not sufficiently show names of owners or their co-partnership name, to have been unknown.
1st Purplis Stat. 107 sec. 2.

3d it does not sufficiently show that the services were rendered on the boat while she was running on the navigable waters of the State of Illinois, or that the boat was thus running. Jenik et al. vs. King 3 Scam. 150. (top of page). 1st Purplis Stat. 107 sec. 1.

Declaration insufficient for same reasons that affidavit is.

On return of writ notice by publication should have been given.
1st Purdy's Stat. 107 Sec. 3 – ibid pg. 99, Sec. 14.
(There was no service, & no notice of any kind given, & no appearance.)

The judgment should not have been for more than amount sworn to be due in affidavit – There being no service or appearance –
Rowley vs. Berrian 12 Sec. 201 & 202 –

Remittitur should have been entered before rendition of judgment.
Curtis vs. Laurence 17 Johns (Law R) page 110.

(2329-11)

67.

Steam Boat Clarion
vs
Patrick A. Moran

Brief of Attys for
Steam Boat

Filed May 2nd 1837
S Leland
Clerk

Leland & Leland

State of Illinois Set. In the Supreme Court
Wm. Power & Wm. Mills of } Third Grand Division
Steamboat Clarion
vs } Appeal from } Error to Carroll County
Palmito A Norris
Deft in error

I do hereby enter myself security for costs in the above entitled cause & acknowledge myself bound to pay or cause to be paid all costs that may accrue in this action, either to the opposite party or to any of the officers of this Court in pursuance of the laws of this State —

Dated this 16th Day of August AD 1856 —

John W Scott

Steamboat Clinton
Plff in error
v
Patrick A Moran
Deft in error

Bond for costs

Filed Aug. 16. 1856
L. Leland
Clerk

WRIT OF ERROR.

STATE OF ILLINOIS,
Supreme Court, } ss. **The People of the State of Illinois,**

To the Clerk of the Circuit Court for the county of Carroll **Greeting:**

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which was in the circuit court of Carroll county, before the Judge thereof, between Patrick A. Moran

plaintiff, and The Steamboat Clarion

defendant it is said manifest error hath intervened, to the injury of the aforesaid Defendant as we are informed by the complaint of said Defendant, 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 withot 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 Second Monday in June next, that the record and proceedings, being inspeted, we may cause to be done therein, to correct the error, what of right ought to be done according to law;

WITNESS, the Hon. ~~**SAMUEL H. TREAT,**~~ Walter B. Scates Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 21st day of August in the Year of Our Lord One Thousand Eigh Hundred and Fifty-six

L. Leland
Clerk of the Supreme Court.
By J. B. Rice Deputy

[12329-13]

Steamboat Clarion

vs

Patrick Moran

Writ of Error

This Writ of Error is to operate as a Supersedeas and as such is to be obeyed by all concerned.

L. Leland
Clerk
By J. B. Rice Deputy

Filed Aug. 21. 1848
L. Leland
Clerk

Know all men by these presents, that we, George R. West, Benj. P. Powers and Saml. S. Spaulding, partners under the name and style of West, Powers & Co. of the county of Dubuque and State of Iowa, as principals, and John D. Simmons of the county of Jo Daviess and State of Illinois, as security, are held and firmly bound unto Patrick A. Moran, in the penal sum of Seven hundred dollars, lawful money of the United States, for the payment of which well and truly to be made, we bind ourselves, our heirs, executors & administrators, jointly, severally & firmly by these presents. Witness our hands and seals this 18th day of August, A.D., 1856.

The condition of the above obligation is such that whereas the said Patrick Moran, did, on the 28th day of May, A.D. 1856, in the circuit court in and for the county of Carroll and State of Illinois, recover a judgment against the steamboat Clarion, for the sum of five hundred and fifty four dollars, and whereas said George R. West, Benjamin P. Powers & Samuel S. Spaulding, the owners of said steamboat Clarion, have prayed a writ of error & supercedeas, from the third grand division of the supreme court, of the State of Illinois, for the suspension & reversal of said judgment, - now if the said George R. West, Benjamin P. Powers & Samuel S. Spaulding, partners as aforesaid, shall duly prosecute said writ of error, and pay or cause to be paid such judgment, cost, interest & damages as the said Supreme Court shall adjudge against said Steamboat Clarion in this behalf, in case said judgment is affirmed, then this obligation to be void, otherwise to remain in full force and virtue.

In presence of
Jno N Scott

Geo. R. West (Seal)
Benj. P. Power (Seal)
Saml. S. Spaulding (Seal)
J. D. Simmons (Seal)

West Power & Mines
& Steamboat Claim
Plff in Error

v.

Patrick & Morgan
Deft in Error

Bond

Filed Aug. 21. 1856
L. Leland
Clerk