No. 14

5/13

Mathew Boren & William R. Boren
v.
John Welty

September 1834 - Cape Girardeau - #168

Placita

Record of pleas & proceedings before the Circuit Court for the County of Cape Girardeau in the Fourth Judicial Circuit of the State of Missouri held at Court house in the town of Jackson in said County at the Term of April One thousand eight hundred and thirty two before the honorable John D. Cook Judge

Appearance Term

Be it remembered that on the 9th day of April A.D. 1832. The following application for a writ of Certiorari was filed in the office of the Clerk of the Circuit Court for said County by Johnson Ranney Esqr. as attorney for Matthew Boren and William R. Boren = and the following proceedings were had thereon, between said Deffr. John Welty Deft

Application for writ of Certiorari

State of Missouri
Cape Gerrerdeau County } Personally apeared before me an acting Justice of the peace in and for the County afforesaid John Welty, who being duly sworn says, that he has reason to beleave that William R. Boren and Hiram E. Boren has been guilty of malicious mischief, by wounding, stabing maiming and killing his sorel mare of the value of Forty dollars, and has reason to believe that he is in danger of loosing the benefit of an action against them and their father Matthew Boren, unless a forthwith

"warrant issued and further this deponent says
"not. Sworn to and subscribed this 6th day of
"Feby 1832 before me John his × Welty mark
"John McLane J.P.

"State of Missouri Cape Girardeau County

Warrant "To the Constable of Apple Creek Township
"You are hereby commanded to take William
"R. Boren and Hiram E. Boren (minor) and
"Matthew Boren their father, and bring
"them forthwith before me the undersigned
"a justice of the peace in and for said County
"to answer John Welty in action of Trespass
"Given under my hand the 6th day of Feby
"1832 Jno. McLane J.P.

"William R. Boren and
account "Matthew Boren father an Guardian
"of Hiram E. Boren
To John Welty Dr.
"To 1 mare destroyed $40
Feby 6th 1832

Feby 6th "No. 18
1832 forthwith issued

John Welty
vs
William R. Boren
Hiram E Boren and
Matthew Boren his
father
} action of Trespass

| | | |
|---|---|---|
| Justices fee 3 oaths | 18¾ | |
| "summons | 18¾ | |
| "subp. | 18¾ | |
| "Order for Jury | 25 | |
| "Judgmt. | 3½ | |
| "swearing Jury | 25 | |
| "Constables fees | | |
| "summons for | | |
| "8 persons | 75 | |
| "summons Jury | 100 | |
| "2 Witness | 50 | |
| "2 Witnesses as | | |

"The parties appeared
"the plaintiff applied for a jury
"which was granted. Jury called
"and sworn (viz)
Alexander Reed, Joshua Fealer
Francis Blair, Joseph McLane
Mark Shoultz, Robert Hinkle
Daniel Sides, Edmond Hodge

" 50 Cents each 100
" Execution issued
" March 5th

Samuel Young, Simon Sides
William O. Carlock, Peter Hinkle
after hearing the evidence do say;
" We the jurors find in favor of the
" plaintiff the sum of thirty
" two dollars to be recovered of the
" defendants, Matthew Boren &
" William R. Boren
" Signd. Joseph R McLane form
" Wherefore it is considered ordered
" and adjudged, that the plain
" tiff have and recover of the
" defendants Matthew Boren
" and William R. Boren the
" sum of thirty two dollars in
" manner and form affresaid,
" togather with Costs of suit
" this 7th day of Feby 1832.
Jno. McLane J. P.

" From which Judgement the defendants
" appealed to Court, But in Consequence
" of Failing to give security agreeable to act
" of assembly, the above apeal dismised
" this 21st day of Feby 1832.

" Matthew Boren and
" William R Boren
" vs
" John Welty

On application to for a Certiorari, In the Circuit Court of Cape Girardeau, April Term A.D. 1832

" To the Honorable the said Court, the petition
" of Matthew Boren and William R
" Boren, humbly complaining maketh
" known, to this honorable Court that on the

application Continued

"Sixth day of February 1861 said John Welty
"made an affidavit before John McLean
"a justice of the peace for Apple Creek
"township in said County, stating that he
"believed, that William R Boren and
"Hiram E. Boren had been guilty of ma-
"licious mischief, by wounding, shooting
"maiming and killing his sorrel mare of the
"value of Forty dollars, and that he had reason
"to believe that he was in danger of loosing the
"the benefit of an action against them, and
"their father Matthew. Boren, unless a forth
"with warrant issued, on which affidavit
"a writing purporting to be a forthwith issued
"against said William R Boren, and Hiram
"E. Boren, together with the said Matthew
"Boren, father of said Hiram, to answer in
"action of trespass, and filed an account for
"forty dollars, upon which warrant your
"petitioners and said Hiram were immediate
"ly brought before said Justice, and no delay
"was allowed, but defendants were retained
"in custody, while the justice proceeded to
"try said Case in the manner of an Ex parte
"proceeding; examining only witnesses on plain
"tiffs side, defendants only appearing in
"custody of Constable; by that means the defen
"dants being in custody, and refused the oppor
"tunity of making the proper defence by the
"uncontradicted testimony of facts which never
"existed. The jury found a verdict against
"the said Matthew Boren and William
"R. Boren for the sum of thirty two dollars
"upon which the defendants prayed an appeal
"and in about six days after took security

"for the purpose of giving a recognizance
"of appeal, or appeal bond that on presen-
"ting such security, some means were taken
"to discourage such security, and while hesi-
"tating the said Justice took the said Matthew
"out privately and told him not to trouble
"himself or be in a hurry, as he had twenty
"days to appeal in, and told said Matthew to
"say nothing about to keep it to himself, as
"that law was a secret, and not known but
"to few, and that at any time within twenty
"days he could appeal, thereupon said
"Matthew supposing said justice to be right
"delayed for some days another attempt, and
"then again went to appeal within said twenty
"days from the rendition of judgement, and
"offered to furnish security, but was told
"by justice that it was to late to appeal after
"ten days, whereupon execution has been issued
"and the property of your petitioners sacrificed
"That your petitioners demanded a full
"copy of all the proceedings of said cause
"which was given to your petitioners, and is
"hereunto annexed, and made a part of this
"petition, by which it will be found by this
"Court to be wholy illegal, that your petitioners
"were arested detained in custody, and carried
"before said justice and tried without any
"wright or authority. Further your petitioners
"allege, that said Welty had no ground to
"commence said suit against said defendants
"nor any of them, and never could have recov-
"ered, but by the basest fraud, in the first
"place by arresting and making the only party of
"the only friend who could
"give assistance, and nextly by refusing all
"delay of trial and giving no time for the said

Petition Continued

"defendants to procure witnesses. Your petitioners "therefore pray this honorable Court to provide "a remedy in this Case, to award a Certiorari "or grant some other remedy in said Case "and your petitioners as in duty bound will "ever pray

Matthew V Boren
William R. V Boren

"Sworn to and subscribed "the 9th April 1832
"Wm Sanford Clk
"

Filing

" Filed April 9th 1832
"Wm. Sanford Clk
"By his deputy
"Wm C. Ramsey"

Apl. 1832

April 11th 1832

The Circuit Court met at nine O Clock in the morning according to adjournment. Present the Honorable John H. Cook Judge

Order for Writ Certiorari

" The parties by their attornies appear and "on motion of the plaintiffs by Johnson Ramsey "Esqr. their attorney it is ordered that a writ "in the nature of a writ of Certiorari, do issue "to John McLane a justice of the peace for apple "Creek township, ordering him to send to "this Court, on or before the first day of the next "thereof, a full true and perfect record, of "the proceedings had before him, in this Case "on the plaintiffs giving bond with ~~and~~ approved "security in the sum of Sixty dollars. And "this Cause is Continued to the next term of "this Court.

April 21st 1832

The Circuit Court met at 9 O Clock on Saturday morning according to adjournment

Present the same Judge

approval of bond

" These parties by their attornies appear
" whereupon J. Ranney Esqr. attorney for pliffs
" presents a bond in this Case, signed by the
" plaintiffs, with Riley Boren and William
" Reeves as security, and on motion of the plain
" tiffs attorney it is ordered that said bond be
" approved.

Afterwards (To Wit) on the 18th day of June
1832 a writ of Certiorari was issued by the Clerk
of said Circuit Court which is in the fol-
lowing words,

writ Certiora ri

" The State of Missouri To John McLean
" Esquire an acting justice of the peace
" within and for Apple Creek Town
" ship in the County of Cape Girardeau
" and state of Missouri Greeting

" We being willing for certain Causes to be Certi-
" fied of a plaint levied in our ~~said~~ Circuit
" Court, before you against Matthew Boren
" and William R. Boren at the suit of John
" Welty of a plea of Trespass, Command you
" that you send to the judge of our Circuit
" Court, at the Court house in the town of
" Jackson in said County of Cape Girardeau
" on the second monday of August next, the
" plaint aforesaid with all things touching
" the same as fully and entirely as it remains
" in our Court before your, by whatsoever names
" the parties may be called therein, together
" with this writ, that we may further cause
" to be done thereupon, What of right shall be
" fit to be done. Witness Henry Sanford
Clerk of the said Court at office this
18th day of June, A.D. 1832 —

Nty Sanford Clk. By his

" deputy Wm C Ramey

return On which said writ of Certiorari the said John McLane has made the following return," In obediance to the within writ, I hereby "return herewith a copy of my orget in said "Cause, together with the original account and "affidavit of Wetty, the original warrant the "venire, together with the Judgement in said "Cause, as fully as the same appears before "me John McLane J.P.

Which papers are in the word following

account "Wm R Boren and Matthew Boren father of Hiram E. Boren

To John Wetty Dr.

To One mare (destroyed) $40

Feby 6th 1822

affidavit of Wetty "State of Missouri

"Cape Girardeau County } Personally apeared "before me an acting justice of the peace "in and for the County aforesaid, John Wetty "who being duly sworn says that he has "reason to believe that William R. Boren "and Hiram E. Boren have been guilty of "malicious mischief by mourning, stabbing "maiming, and killing his sorrel mare "of the value of Forty dollars and has reason "to believe that he is in danger of the benefit of "an action against them, and their father "Matthew Boren unless a forthwith warrant "issues, and further this deponent saith not

John his + mark Wetty

Sworn to & subscribed

"this 6th day of Feby 1832
Jno McLane J.P.

forthwith warrant "State of Missouri Cape Girrerdeau County
" To the Constable of Apple Creek township
"You are hereby commanded to take William R
"Boren and Hiram E. Boren minor, and Matthew
"Boren their father, and bind them forthwith
"before me, the undersigned a justice of the
"Peace, in and for the County afforesaid to an-
"swer John Welty in an action, of Trespass
"Given under my hand this 6th day of February
"1832 Jno. McLane J.P.

Constables return "In obedience to the within Command I return
"it Executed, by presenting the body of the within
"named before John McLane, J.P. in applecreek
"Township, this the 7th day of February 1832
Stephen Malon Cost A.C.T —

Justices Transcript "Feb: 6th 1832
"forthwith issued
"Justices fees
"Boaths 18¾
"Summons 18¾
"Subpeona 18¾
"Order for Jury 25
"Constables fees
"Summons 75
"Jury 1.00
"Qwtn. 50
"Witn. fees.
"Qwitn. at fifty
"Cents each 1.00
"Execution issued
"and march
"fifth

No. 18 —
John Welty
vs
William R Boren
Hiram E. Boren &
Matthew Boren his father
} action of Trespass

The parties apear
ed. the plft aplied for a jury
which was granted, Jury Called
aproved of and Sworn Viz
Alexander Reed, Joshua Fields
Francis Blair, Joseph McLane
Mark Shoultz Robert Hinkle
Daniel Sides Edmond Hodge
Samuel Young Simon Sides
William O. Carlock, Peter Hinkle
after hearing the evidence do

Judgmt. Continued "say, We the jurors find in favor of the "pltf the sum of Thirty two dollars, to be recov "ered of the defendants Matthew Boren and "William R. Boren sined

" Joseph R. McLane forem.

"Wherefore it is Considered ordered and "adjudged by the Court, that the pltff "have and recover of the defendants, mat- "thew Boren and William R Boren the "sum of Thirty two dollars, in manner and "form aforesaid, together with Costs of "suit this 7th day of Febr. 1832

Jno. McLane J.P.

"From which judgement the defendant "apeals to Court, But in Consequence of "failing to give security agreeable to act of "assembly the above apeal dismissed, this "21st day of Febr. 1832 — Jno McLane J.P.

"Execution returned April 4th satisfied in full =

I do hereby Certify that the above statement is a true Copy from my docket August 11th 1832 —

Jno McLane J.P.

Aug. T. 1832 Saturday August 25th 1832. 12th day of the Term

The Circuit Court met at Eight A.M. according to adjournment =

Present The Honorable
John D Cook Judge

Matthew Boren
William R. Boren
versus
John Welty

Certiorari
The plaintiffs by J.

Kinney their attorney come, and

"and on their motion it is ordered that
"John McLane the justice who tried said
"Case, do show Cause why he shall not
"be attached for failing to return the writ
"of Certiorari herein =

Decr 10 1832 December 10th 1832. 1st day

The Circuit Court met according to adjournment

Present the Honorable John D Cook Judge

"The plaintiffs by J. Ranney their attorney
"[illegible] & files their assignment of errors
"in Certiorari =

Which assignment is in the words following =

"Matthew Boren and
"William R. Boren
" vs
"John Welty

In the Circuit Court of Cape Girardeau County in the State of Missouri, Term of December 1832 =

"And now the said Matthew and
"William, come and say, that in the proceedings and rendition of said Judgement, before
"said Justice, there is manifest irregularity
assignment of Error "in this = 1. The justice issued a warrant
"against Matthew Boren with others, merely
"because the affidavit of Welty, charged charged
"him, with being the father of Hiram E. Boren
"who had done malicious mischief =
"2. The proceedings before the Justice, shows, that the
"said Welty, had no Cause of Complaint against
"Matthew Boren, but Judgment, was entered
"against him, because he was the father of a
"minor Complained of =
"3. The warrant in this Case is void, for the
"reason, that the justice had no power by law

"to issue the same, the Complaint being for
"a Crime and the warrant in a suit of tres-
"pass, without any Complaint or declara
"tion =

"4 The proceedings are wholly irregular and con
"the Complaint of injury against William R
"Boren and Hiram E. Boren and judgement is
"entered against Matthew Boren =

"5. The verdict and judgement does not agree
"The verdict is not against William R. Boren and
"Matthew Boren, but the judgement is, the defts
"were forcibly brought before the justice, against
"all law, and detained in Custody, until judge
"ment was entered, without the time which
"law gives to make defence, for these and
"other irregularities, said William and Matthew
"pray that the judgement of the justice may
"be reversed, and said proceedings set aside

S Rainey for
Matthew Boren & William R Boren

Filed Dec. 10th 1832 =

Monday December 31st 1832 —

The Circuit Court met at Ten O'Clock in
the morning according to adjournment

Present the Honorable
John H. Cook Judge

"The parties by their attornies appear and
"the matters for Error being signed heard
"and argued, the Court after mature consid
"eration doth find that in the recorde
"proceedings Certified here, there is no Error,
"It is therefore Considered that the defendants
"recover, against the, plaintiffs, his Costs
"in and about in and about his suit of
"Certiorari, in this behalf Expended =

Tuesday January 1st 1833 20th day
The Circuit Court met at 8 O'Clock in the morning according to adjournment
Present the same Judge

"The plaintiffs by their attorney come and "move the Court to grant an appeal in this "case to the Supreme Court, and it appearing "to the satisfaction of the Court, that the affi-"davit on which said motion is founded is "sufficient, Ordered that said appeal be granted

which said affidavit is in the words following=

| | |
|---|---|
| "Matthew Bowen & "William R Bowen "vs "John McCoy | An Certiorari in Circuit Court of Cape Girardeau County, Judgement of the justice affirmed |

"appeal prayed for by the said "Matthew & William R Bowen to Supreme "Court

"Johnson Ramsey for and on the behalf of the "said Matthew Bowen and William R Bowen "being duly sworn deposeth and saith, that "the application for an appeal in this the "said case, by the appeal ants, is not made "for the purpose of vexation or delay, but because "the the said affiant verily believes the "applicants aggrieved by the judgement "of the said Court nowhere in this case "made

"Sworn to & subscribed "the 31st of December "1832

Johnson Ramsey

S Y Sanfordeker

(8)

I Henry Sanford Clerk of the Circuit Court for the County of Cape Girardeau in the fourth Judicial Circuit — of the state of missouri do Certify that the foregoing seven pages Contain a full true and perfect record of the proceedings had in said Court between Matthew Boren & William R. Boren plaintiffs and John Welty deft, as fully and perfectly as the same remains of record in my office.

Given under my hand and seal of Court of office in Jackson the 25th day of March 1833

Hy Sanford Clk

By his deputy

Wm Caton Ramsey

| | |
|---|---|
| Tax | $0.62½ |
| Copying | 3.25 |
| Certificate & Seal | $0.50 |
| | $4.37½ |

~~6~~ No. 168

Matthew Boren
William R. Boren
vs
John Welty

Sept. Term, 1834

14

Filed April 30th 1835
Benjamin Bacon D. Clerk
Supreme Court for
Peter R. Garrett Clk

Mathew Boren &
William R Boren
vs
John Wetly

On Appeal in the
Supreme Court from
the Circuit Court of Cape
Girardeau County May
Term AD 1833

And now at this time comes the
the said Mathew Boren and William R Boren
by their Attorney and says that in the record and
proceedings aforesaid and also in giveing the judgem
ent aforesaid there is manifest error in this
(Said it) that there is manifest error and irregularity
in said suit before the justice of the peace there is
also error in this (Said it) that by ~~the~~ record and proceed
ings aforesaid it appears that the judgement aforesaid
in form aforesaid given was given for the said John
Wetly against the said Mathew Boren William
R Boren whereas by the law of the land the said
Judgement aught to have been given for the said Mathe
w Boren and William E Boren against the said John
Wetly and the said William and Mathew prays that
the judgement aforesaid for the errors aforesaid and other
errors in the record and proceedings aforesaid may be
reversed annulled and altogether held for nothing and
that they may be restored to all things which they have lost by
occasion of the said judgement ~~and amongst~~

J Ranney Attorney for
William R. and Mathew Bor
en

There is no error in the
above proceedings
G W Davis for
appellee

66

William R Bowen &
Mathew Bowen
vs
John Wetty

Assignment of error
J Ramsey Atty
for Appellants

filed May 18th 1833
Benja Bacon C. Clerk
for P. R. Garrett Clerk

Borens
vs } on appeal to the Supreme Court
Melty

The Defendant by atty moves the court to dismiss the appeal in this case for reasons that the record was not filed in this court ten days before the next ensuing Supreme Court after the rendition of the judgement in the Circuit Court. 2d That the record in the above case was not filed in this court thirty days next before the second term of the Supreme Court ensuing after the rendition of the judgement in said case in the Circuit Court

Geo W. Davis for
Appellee

66

Borin
vs
Welly } Motion

filed 27 May 1834
P R Gant Hclk

Matthew Boren &
William R Boren
vs
John Welty

An appeal

The said John Welty by his attorney moves the court to dismiss the appeal in the above cause for the following reasons

1st The appellant did not file or cause to be filed a complete transcript of the record & proceedings in the above cause with the Clerk of the Supreme Court of the Cape Girardeau district ten days before the first term of the Supreme Court holden after such appeal was taken.

2. That said appellant did not file or cause to be filed with the Clerk of the Supreme Court of the Cape Girardeau district a complete transcript of the record and proceedings in the above cause thirty days before the next term of the Supreme Court ~~to be holden~~ next after the first term thereof holden after the ~~first term~~ rendition of the judgement appeal taken in the Circuit Court in said cause. For these ~~sothe~~ reasons the appellee prays said appeal may be dismissed

Greer W Davis for appellee

66

Boren & Boren
vs
Melty } appeal

motion to dismiss

filed 27 May 1894
P. R. Garrett

State of Missouri Fourth Judicial District. ss

The State of Missouri To the Circuit Court of the fourth Judicial Circuit of our State of Missouri Greeting

Because in the record and proceedings, in our circuit court for the County of Cape Girardeau before our Judge thereof at the suit of Mathew Poren and William R. Poren plaintiffs against John Welty Defendant An Certiorari manifest error hath intervened to the great damage of the said Mathew Poren and William R. Poren, as by their Complaint We are informed, and We being willing, that the error if any there be, should in due manner be Corrected, and full and speedy Justice done to the parties aforesaid in this behalf, Command you, that if Judgment thereon be given; Then You send to our Judges, of our Supreme court, of Our State of Missouri aforesaid, distinctly, and Openly, under seal the record and proceedings in the action aforesaid, with all things Concerning the same, And this Writ, so that the same may be before our Judges of our Supreme Court aforesaid at their next term, to be held for the fourth Judicial District, at the town Of Jackson in the County of Cape Girardeau On the fourth monday of September next, that the record and proceedings aforesaid being seen and examined, may cause to be done therein for correcting that Error, what of right and according to the law of our State ought to be done

Witness Peter R. Garrett Clerk of our said Supreme Court, at office this fourteenth day of August in the Year of our Lord One thousand Eight hundred and thirty four, And of the Independence of the United States of America the fifty ninth

Peter R. Garrett Clerk

By his Deputy

Benjamin Bacon

County of Cape Girardeau } Sec
State of Missouri }

In obedience to the within writ
herewith is forwarded and returned with said writ
a certified copy of the record of the case of Mathew
Boren and William R Boren vs John Wetty on
certiorari in the Circuit Court of said County August
Sept 1834

By Sanford Leek Ryhis
deputy Wm C Ramey

No

Writ of Error To
Cape Girardeau Circuit Court

Fourth Judicial District
State of Missouri Sept Term 1834

Mathew Boren and
William R. Boren
Versus
John Wetty

Sep August 14th 1834
P. R. Garrett Clk
By Benj Bacon D. Clk

Mathew Boren &
William R Boren
vs
John Wetty

Error
In the Supreme Court of the
State of Missouri of the 4 Judicial
District September AD 1834 -

And now at this time comes the said Mathew Boren and William R Boren plaintiffs in error by their Attorney and says that in the record and proceedings aforesaid and also in giveing the judgement aforesaid there is manifest error in this Fawit that there is manifest error and irregularity in said suit before the justice of the peace of Wetty vs said Borens there is also error in this Fawit that by the record and proceedings aforesaid it appears that the judgement aforesaid in form aforesaid given was given for the said John Wetty against the said Mathew Boren and William R Boren whereas by the law of the land the said judgement ought to have been given for the said Mathew Boren and William R Boren against the said John Wetty And the said Mathew and William pray that the judgement aforesaid for the errors aforesaid and other errors in the Record and proceedings aforesaid may be reversed annulled and altogether held for nothing and that they may be restored to all things they have lost by occasion of said judgement and for special causes specially in addition assigns herein

Ranney Atty for Pl's
in error

no error
Grollavis for appellee

1 The proceedings before said justice were irregular and the Court erred in affirming the judgement and declareing that no error appeared therein -
2 The Court erred in giveing judgement for costs against Borens

Mathew Boren and
William R. Boren
Versus } Errors
John Welty

filed August 21st 1834
Benjamin Bacon C. Clk
Tor. P. R. Gaunt Clk

Mathew Boren and
William R Boren
Plaintiffs
versus
John Hetty defendant

On Certiorarie
and Judgement in
favour of said John
Hetty against the said
Borens in the Circuit
County Cape Girardeau County

To the above named John Hetty defendant

Sir

Take notice, that we the undersigned
said Plaintiffs
have caused to be issued on our behalf a writ of
error from the from the Clerks office of the Supre
me Court of the Fourth Judicial District by
the Clerk thereof commanding the said Cir
cuit Court of Cape Girardeau County that
the record and proceedings of said cause be
certified to the said Supreme Court at the
next term of said Supreme Court to be holden
at Jackson within and for said District on the
Fourth monday in September next, that
the error if any there be in said case may be
corrected if need and when you may attend
and contest the errors to be assigned by us if
you think proper

Jackson 20th of August AD 1834

Mathew Boren
William R Boren
by J Ranney their Attorney

Sacerrer

Served this writ by leaving a copy of the same in the hands of the within in name John Wetty ~~by leaving a copy~~

Service $0,50 cts

This 3 of August 1834

Thomas Johnson Deputy Coronor

Mathew Boren
William R. Boren
vs
John Wetty

Original Notice
of writ of error in Supreme Court.

J. Ramsey Atty
for Borens Pltff

Filed August 30th
1834
Benjamin Bacon Clerk
Tho. P. R. Gauck Clerk

Mathew Boren & William R. Boren appellants vs John Wetty Appellee

Appeal from the Circuit Court of Cape Girardeau In the Supreme Court 4th Judicial District

This case was originally a proceeding commenced by John Wetty against William R. Boren Hiram E. Boren and their father Mathew Boren founded on an affidavit of Wetty in which he states that he believes that William R Boren and Hiram E. Boren had been guilty of Malicious mischief in killing his Wetty's mare and requires a warrant to issue against them and their father Mathew Boren, which was done, and the three named arrested and brought before the Justice. Upon which the Justice proceeded to try the matter of malicious mischief on an account filed as a civil action - in which Wetty charges Mathew Boren as the ~~fath~~ Guardian and father of Hiram E Boren for the mare destroyed $40

and a jury finding in favour of the plaintiff $32. Judgement was entered accordingly against William R Boren and against Mathew Boren in lieu of Hiram E. Boren the minor.

Borens under the order of the Circuit Court of Cape Girardeau County removed the proceedings by certiorari into that Court and affirmed the Judgement of the Justice

The question now presented to this Court is did the Court below err in affirming the Judgement of the Justice - It is clear that the Court did err for the causes

1 From the affidavit of Wetty the Justice could lawfully have done nothing else but to have required William R Boren and Hiram E Boren to appear at the

next term of the Circuit Court to answer to a charge of Malicious Mischief State laws 1st Vol page 308 - Sec. 83 and in no event could Mathew Boren the father as guardian be made answerable for the act of the son -

2 There was no statement of the cause of action filed by plaintiff with the Justice to authorise the proceeding in trespass as a civil action. State laws 1st Vol page 473. Sec 5.

3 The Justice could not have entered judgement against two of three persons on an account filed against the defendants 1st Vol Chitty 31 - page 7th T R. 341 - 1st East 52 - 1 Esp Reports 363 Bull. N P. 129. - 1 Henry Black 37 -

Johnson Ramney Attorney for Appeallants.

4 If no Certiorari lay The Court Could not affirm the judgement U States Repts.

Borens Appeallants
vs
Witty Appellee

Brief of J Ramney Attorney for Appeallants
J Ramney Atty for Appeallants

Statutes - 308 - S. 83
" " 473 S. 5
1 Chitty - 031.
7 T R 348
1 East - 052.
1 Esp Repts 363
Bull N. P. 129
1st H. Black - 0 37
Reports Supreme Court

Boren } In Supreme Court
vs
Welly }

And now the said plaintiff moves for a rehearing in this cause for the reason that this Court ~~have~~ If the Circuit Court had no jurisdiction over the case by certiorari they the Court could not affirm the judgement of the Justice in a case not within its jurisdiction therefore this Court for that reason this Court should reverse the judgement of the Circuit Court and dismiss the case inasmuch as the Circuit Court could not have rendered a judgement in a cause not within its jurisdiction — For a Court to render such judgement — And this Court should render such judgement in the case as the Court below should have rendered —

Authorities

J. Dunning for
Petitioner

Boren
vs
Welly

Brief of Boren on
application for rehear-
ing

J. Rauney for Pltg
in error

Borem & Borem }
vs } in appeal
John Nelty }

This was an action originally commenced before a justice of the peace by John Nelty against the Borems to recover damages for an injury done by the defendants to a mare of the plaintiffs. The plaintiff had judgment signed the 9th day of February 1832 for thirty two dollars. The plaintiff prayed an appeal; but failed to give security; and the papers were not sent up to the Circuit Court. At the April term of the Circuit Court, the defendants, Borems filed an application for a certiorari, which was granted by the court, and the papers ~~returned~~ ordered to be sent up. On the argument of errors assigned (before the Circuit Court) on said cause, the court decided there was no error, and John Nelty had judgement for costs: from which judgment the Borems appeal to this Court.

It is contended on the part of Nelty— 1st, That the statute laws of this state do not authorise the Circuit Court to issue a writ of certiorari; and that in so doing, they exercise an extraordinary power. 2d, That exercising an extraordinary power, they must be satisfied not only, that clear and manifest injustice was done; but that the party applying for said writ, had done every thing required of him by the statute, to obtain the benefit of the remedy given him by the statute. 3rd. In this case the Justice of the Peace certifies a judgment of this Court, by which it appears, that the appeal from the Justice was not perfected by reason of the neglect of the defendants in that court— It is contended the affidavit of the Defts filed on an application for a writ of certiorari in the Circuit Court cannot vary the case, so as to affect the rights of John Nelty, originally plaintiff. The

strength of the return by the justice is equal to the oath, made on application for certiorari and the Circuit Court were bound to take that as the truth of the case. It is also contended, that where a justice of the Peace is guilty of malfeasance or nonfeasance in office, in cases of this kind, the party aggrieved might have his action on the case; and where the misdemeanor is wilful the justice, may be indicted: but in that in no case, where the reasons stated why the statute remedies were not complied with by the person appealing, can the innocent party be affected in his rights.

Geo W. Davis for
Appellee

There is no bill of exceptions showing the ~~proceed~~ objectionable proceedings expressly decided in the Circuit Court. See revised code page 634. sec 49.

~~It is~~ 5

~~Affirmed~~

66

Borens } appelants
vs } appeal
Welty appellee

Brief of appellee

G W Davis atty