507

JULY 1846 #25

STATE OF MO
VS
AMOS THOMAS

Chariton County

} assault + battery

Of Humphrey Adams
disturbing the peace

Assault + Battery

1

Missouri

Pleas at the Courthouse of Chariton County before the Honorable James A Clark judge of the Eleventh judicial district within & for said State of Friday the 9th day of May 1845

BE it remembered that heretofore to wit on Tuesday the 6th day of May 1845 Came Amos Thomas [illegible] Court a transcript taken from the docket of Loran D Ellis a justice of the peace within and for said County of Chariton together with the original papers of a suit lately pending before said justice wherein the State of Missouri was plaintiff and the said Amos Thomas defendant which said Transcript & papers are in the following words and figures to wit:

"Transcript"

State of Missouri Plt

Case

Amos Thomas Dft Assault & Battery

Writ issued from Complaint of Humphrey Oct. 8th 1844 To James Gains Constable Writ returned served by bringing the body of the defendant Oct. 10th 1844.

Parties appeared jury called and sworn and heard the evidence and returned a verdict as follows We the jury agree and find the defendant guilty and assess the fine at fifty dollars Frederick Peters foreman therefore judgment is rendered against the defendant for fifty dollars with costs of suit Oct 10th AD 1844 Loran D Ellis JP

defendant prayed for an appeal which was granted the defendant filed his affidavit with his bond the being rejected the defendant was ordered to be kept in custody of the officer until eight Oclock AM the next morning being Oct 11th AD 1844 - Bond given and approved and defendant released October 11th AD 1844 Loran D Ellis JP

Justices fees $3.00
Constables fees $3.00
Witnesses fees $3.00

I certify ~~that~~ the above to be a true copy from my docket

Loran D Ellis Justice of the peace in Chariton County

Affidavit

State of Missouri }
County of Chariton } ss

Humphrey Adams of Grand River township in Chariton County and State of Missouri being first duly sworn upon my oath do say that on the night of the 7th day of October 1844 at said Township and County one Amos Thomas did then and there commit an assault and battery upon ~~my person~~ me by then and there assaulting and beating my person in a boisterous and threatening manner. I do therefore complain to Loran D Ellis a justice of the peace of said Township and County for a warrant to arrest the said Thomas for a breach of the peace as aforesaid. (There is no justice of the peace in the township of Franklin where said Thomas lives except himself) Given under my hand this 8th day of October AD 1844. Humphrey Adams

~~Sworn and subscribed to before me Loran D Ellis the under signed justice of the peace of Grand River Township in Chariton County State of Missouri at said township on the 8th day of October AD 1844. Loran D Ellis J.P.~~

Warrant

The State of Missouri To the Constable of Grand River Township in Chariton County Greeting. Whereas complaint has been made before me Loran D Ellis the undersigned one of the justices of the peace of Grand River Township in Chariton County upon the oath of Humphrey Adams of said Township & County that one Amos Thomas of said County on the night of the 7th day of October AD 1844 at said Township and County did in a boisterous and threatening manner commit an assault and battery upon the person of him the said ~~Amos Thomas~~ Adams by then and there assaulting and beating him the said Adams. These are therefore to command you forthwith to apprehend the said

Amos Thomas if he be found in said County of Chariton and bring him before me the undersigned justice of the peace as aforesaid at my office in the town of Brunswick in said Township and County to answer the premises & further to be dealt with according to law

Given under my hand this the 8th day of October AD 1844

Loran D Ellis J.P.

Return

Served the within writ by bringing the Body of the within named Amos Thomas Oct 10th AD 1844. James Grant Const.

Affidavit of Dft for appeal

State of Missouri Chariton County SS

I Amos Thomas being first duly sworn do say that in the case of the State of Missouri against myself for a breach of the peace before Loran D Ellis a Justice of the peace & Grand river township in said County wherein a verdict and Judgment was rendered against me for the sum of fifty dollars and I do verily believe myself aggrieved by the verdict of the jury and the judgment of the justice A. Thomas

Appeal bond

We the undersigned Amos Thomas and Daniel Sharp and Alexander Beatie acknowledge ourselves indebted to the County of Chariton State of Missouri in the sum of One hundred dollars to be paid upon this condition whereas Amos Thomas has appealed from the judgment of L D Ellis a justice of the peace in an action between State of Missouri Pltff and Amos Thomas Defendant for a breach of the peace Now if on such appeal the judgment of the justice be affirmed or if in the trial anew in the Circuit Court judgment be given against the appellant and he shall satisfy such judgment or if his appeal shall be dismissed and he shall pay the judgment of the justice together with the costs of the appeal the recognizance shall be void Given under our hands & seals this 11th day of Oct 1844. Amos Thomas (Lsd)
Alexander Beatie (Lsd)
Daniel Sharp (Lsd)

Approved Oct 11 AD 1844
Loran D Ellis Justice

3

And at a Circuit Court Continued & held for the County of Chariton at the Courthouse thereof on Tuesday the 6th day of May AD 1845

This day came the plaintiff by her attorney and filed her motion in writing praying the Court to affirm the judgment of the justice in the Court below.

And at a Circuit Court Continued and held for the County of Chariton at the Courthouse thereof on the day & year last aforesaid

This day came the defendant by his attorney & filed his motion in writing praying the Court to enter up a rule against the justice in the Court below requiring him to certify up to this Court a true and perfect record of his proceedings herein as they occurred before him

And at a Circuit Court Continued and held for the County of Chariton at the Courthouse thereof on Wednesday the 7th day of May 1845.

This Cause this day came on to be heard upon the Motion of the defendant for a rule against the Justice in the Court below and was argued by Counsel on Consideration whereof it is ordered that the said Motion be overruled.

And Now at this day to wit: At a Circuit Court Continued and held for the County of Chariton at the Courthouse thereof on Friday the 9th day of May AD 1845

This Cause this day came on to be heard upon the Motion of the plaintiff to affirm the Judgment of the justice in the Court below & was argued by Counsel. On Consideration whereof It is ordered by the Court here that the said judgment be affirmed & that the said State of Missouri to the use of the County of Chariton recover against the said defendant & Daniel Shark and Alexander Bouly his securities the sum of fifty Dollars it being the amount of the fine imposed by the judgment of said justice with six per cent per annum interest from the date thereof till paid together with all her costs by her in this behalf expended & that she have

thereof execution &c - Thereupon the said defendant Amos Thomas prayed an appeal to the Supreme Court of this State & produced & filed his affidavit in writing which was sworn to in open Court & ordered to be filed as a matter of record & an appeal allowed accordingly. Whereupon the said defendant Am Thomas with Samuel Dinsmore & Alexander Beaty his securities being in Court acknowledged themselves to owe & be indebted to the State of Missouri in the sum of four hundred dollars that is to say the said defendant Amos Thomas in the sum of Two hundred dollars & the said Samuel Dinsmore & Alexander Beaty in the like sum of two hundred dollars to be made & levied of their respective goods and Chattels lands & tenements to the use of the plaintiff rendered - But to be void upon condition that the said defendant Amos Thomas will prosecute his appeal with due diligence to a decision in the Supreme Court if the judgment appealed from is affirmed or his appeal dismissed he will pay whatever damages & costs have been recovered against him by the judgment of this Court & that he will also pay all costs & damages that may be adjudged against him in the Supreme Court upon his appeal. And the defendant by his Counsel produced & filed his bill of exceptions to several opinions of the Court to Wit: in overruling the defendants motion for a rule on the justice & in refusing to permit the defendant to file a new bond & affidavit & in sustaining the plaintiffs motion & affirming the judgment of the justice which was received signed & sealed by the Court & ordered to be made a part of the record in this Cause -

The affidavit & Bill of exceptions referred to in the foregoing order are in the following words & figures to Wit:

Affidavit

State of Missouri
vs } Assault & Battery appeal from L D Ellis
Amos Thomas } J.P. to May term of C Court 1845

4 The said defendant moves the Court to grant said defendant an appeal from said Court. And being duly sworn deposeth and saith that this appeal is not made of vexation or delay but because this affiant verily believes that said defendant is aggrieved by the judgment of said Court

Amos Thomas

Subscribed & sworn to in open court this 9th day of May 1845

E.B. Cabell clerk

Bill of exceptions

State of Miss. } Assault & Battery appeal from
vs } L D Ellis J.P.
Amos Thomas } May term 1845

BE it remembered that on the second day of said term of the Honorable circuit Court of Chanton County the attorney for the State filed a motion to affirm the judgment of the justice in above cause. In the Chanton Circuit Court

May Term 1845

The State of Missouri
vs } Assault & Battery appeal
Amos Thomas

The State in the above cause move the Court to affirm the judgment of the justice for the following reasons

1st the appeal was not taken on the day of the trial & the rendering of the verdict & judgment before the justice

2nd because no affidavit was filed before the appeal was granted

3rd because no sufficient bond was filed ~~the app~~ before granting the appeal

4th because the affidavit & bond were not filed on the day the rendition of the judgment by the justice

5th Because the appeal was not taken & perfected on the day of the rendition of the judgment by the justice

Halliburton & Abell atty for the State

whereupon the defendant filed his affidavit & motion praying a rule against said justice to show cause why he should not

amend his return in conformity with the facts which are contained in said affidavit. State is Amos Thomas appeal from L. D. Ellis J.P. Amos Thomas being first duly sworn depeth and saith that he believes that the return of the justice in said cause is defective, that the said Thomas did on the day on which a verdict was rendered in above cause tendered bond to said justice after having qualified to an affidavit that judgment was suspended until the day following when this affiant made out another bond which was approved by said justice. That said justice on the day of trial as certified by him informed this affiant that further proceedings in the cause would be continued, and no judgment given in the premises until the next day and that this affiant so considering did on the next day offer the bond filed herein which was received by the justice and this affiant prays for a rule against said justice commanding him to certify up to this court a true and perfect record of his proceedings herein as they occurred before him Amos Thomas

Subscribed & sworn to in open court this 6th day of May A.D. 1845 E.B. Cabell Clk

which said motion of defendant was overruled by the court. The defendant then offered to file a new bond & affidavit in the following words and figures "Bond" We the undersigned Amos Thomas Alexander Beaty & Jacob Tschippit acknowledge ourselves indebted to the State of Missouri in the sum of one hundred dollars to be void upon this condition whereas Amos Thomas has appealed from the judgment of Lorain D. Ellis a justice of the peace in an action between the State of Missouri plaintiff & Amos Thomas defendant for an assault & battery. Now if on such appeal the judgment of the justice be affirmed or if on the trial a new in the circuit court judgment be given against the appellant and he shall satisfy such judgment or if his appeal shall be dismissed & he shall pay the judgment of the justice together with the costs of the appeal the recognizance shall be void

3 Given under our hand & seals on this the sixth day of May A D 1845

Amos Thomas (Seal)

Subscribed in the presence of E B Cabell Clerk

Alexander Beaty (Seal)

Jacob Tschippat (Seal)

Approved May 6th 1845 E B Cabell Clk.

The State of Missouri

vs

Amos Thomas

Assault & Battery appeal

Amos Thomas being first duly sworn deposeth and saith that in the judgment of the justice in the above cause he verily believes that he is aggrieved by said judgment & he therefore prays an appeal to the circuit Court May 6th 1845 Amos Thomas. Sworn & subscribed to in the presence of E B Cabell Clerk. But was overruled by the court and the motion of the attorney for the State was sustained and the judgment of the Justice affirmed — To which opinions of the Court to telet in overruling the defendants motion for a rule on the ~~defendant~~ justice & in refusing to permit the defendant to file a new bond & affidavit & in sustaining the plaintiffs motion and affirming the justices judgment the defendant excepts & prays this bill of exceptions may be signed and sealed by the Court & made a part of this record which is done accordingly James A Clark (Seal)

State of Missouri County of Chariton SS

I Edward B Cabell Clerk of the Circuit Court within and for said County do hereby certify that the foregoing is a true and perfect Transcript of the record & proceedings in the above entitled cause taken from the records and files of said Court

In testimony whereof I have hereunto set my hand & affixed the seal of said Court this 28th day of May A D 1846

E B Cabell Clerk

Costs

E B Cabell Clk including 2 Certified Trans of this Cause at $3 70/100 each $12 91

John M Davis Shff 55 L D Ellis Jus $3 - Jas Gaines Cons $3 6 55

Witnesses before Jus 3 00

$22 46

~~42~~ (~~26~~) (25)

State

vs } Trans of Record

Amos Thomas - apt

Filed June 6. 1846

H. L. Boon clk

Chariton

State of Missouri
vs
Amos Thomas } Appeal from the Chariton Circuit Court

This was a prosecution commenced before a justice of the peace, in Chariton County, on the 8 October 1844, against the defendant, for an assault and battery committed on the person of one Humphrey Adams. A trial was had on the 10th of the month before a jury when the defendant was found guilty and a fine of $50. was assessed against him, on which the justice rendered judgment. On the same day the defendant asked for an appeal to the Circuit Court and tendered his bond which ~~not~~ being adjudged insufficient by the justice was rejected. On the next day, the defendant tendered another bond, which being approved of by the justice, an appeal was ~~allowed~~ granted to the Circuit Court.

In the Circuit Court, at the May term 1845, the Circuit Attorney filed his motion for an affirmance of the judgment of the justice, for the reason (among others) "because the appeal was not taken and perfected on the day of the rendition of the judgment by the justice." Before a disposition of the motion, the defendant filed an affidavit and motion, praying for a rule against the justice, to ~~compel~~ shew cause why he should not amend his returns, in conformity with the facts, as they occurred on the trial. The statement in the affidavit is, that on the day of the trial before the justice and after the rejection of the first recognizance bond offered by the defendant, the justice informed him that all further proceedings in the cause would be suspended until the

next day.

The Circuit Court overruled the defendants motion for a rule against the justices, and sustained the motion of the Circuit Attorney, for an affirmance of the judgment; thereupon the defendant appealed to this Court.

The defendants Attorney relys ~~mainly~~ upon ~~two~~ the right of the defendant to give his appeal bond on the day after the trial, or, to perfect his appeal, by giving his bond, in the Circuit Court.

These two questions have been considered and determined by this Court in the case of Cox vs State. 9 Mo. R. 181.

The judgment of the Circuit Court is affirmed

J. H. McBride

3.

State of Mo.

vs

Thomas

Affirmed

Opinion
Mr. Brian

Filed Sept 18. 1846
H. L. Boon Clk

Supreme Court
July Term 1846

Amos Thomas
vs } Appeal from the Charlton Circuit Court
The State }

Thomas was arrested on the 8th day of October 1844 in Charlton County for an assault and battery committed upon one Humphrey Adams —— he appeared before the Justice and proceeded to a trial where he was fined fifty dollars. He prayed an appeal from the Judgment of the Justice and tendered bond made an affidavit &c - By the return of the Justice to the Circuit Court it appears that the said Thomas on the day of trial tendered an appeal bond which was refused, and that on the next day he tendered another bond which was received by the Justice - In the Circuit Court the State by her attorney moved to affirm the Judgment of the Justice upon the ground, that the appeal was not taken on the day of trial - Before this motion was disposed of Thomas made an affidavit that the return of the Justice was not correct in several particulars set forth in the affidavit, and moved the Court for a rule upon said Justice to perfect his return in conformity with the true facts as they occurred before him and were sworn to in the affidavit - the Court overruled the appellants motion, and affirmed the Judgment of the Justice and gave Judgment against Thomas and his securities for - which Judgment Thomas has appealed to the Court

It is contended, that the Circuit Court erred in refusing to grant the rule upon the

Justice upon the application of Thomas - the affidavit shows the the Justice had not made a Correct return, and the only way to Correct it was by rule - the ~~facts~~ errors in the record of the Justice are set out in the motion and sworn to by the appellant - It is also Contended that the Court ought to have permitted the appellant to file a new bond and affidavit after the Court refused the rule upon the Justice
Revised Statutes of 1835 page 374 4th Mo Rep 28
Jones vs Davis

Supreme Court

Amos Thomas
vs
The State
appellants
Brief

Authorities
4 Mo Rep 28
Statutes 1835 – 374

Clark for
appellants

Amos Thomas }
State }

The plf in error was prosecuted before a Justice of the Peace for an assault & battery and being convicted appealed to the Circuit Court.

In the Circuit Court the State moved to affirm the judgment because the appeal was not perfected on the day on which the judgment was rendered. The plf in error then moved for a rule on the Justice to amend his return. This motion was overruled. Thomas then asked leave to file a new affidavit & recognizance which being refused by the Court. The motion made by the State was then sustained. The defendant below then appealed & brot his cause to this Court.

The State to sustain the decision of the Court below will insist.

1. That the affidavit & recognizance of the defendant made before the Justice are insufficient.
See Rev. Co. 1835. p.

2. That the appeal was not taken & perfected on the day on which judgment was rendered.
Cox vs State 9 Mo. Rep. 181.

3. The circuit Court had no power to permit a new ~~[illegible]~~ recognizance and affidavit to be filed in that ~~[illegible]~~ Court

Cox vs Stan 9 Mo R. 181. Stat. 1835 p —

Thomas
vs
State

State's Brief

Thingfellow
Atty Clerk

In the Supreme Court

July Term 1846

Amos Thomas appellant

vs

The State of Missouri Appellee

And the said appellant by his attorney comes and says that there is manifest error in the record and proceedings of the Circuit Court of Chariton County in the above intitled cause viz

First By the Record and proceedings it appears that said Circuit Court refused to award a rule upon the Justice who tried the cause commanding said Justice to Certify and send up to the said Circuit Court a perfect transcript of the proceedings had before him in said cause when by the law of the land the said Circuit Court ought to have granted said rule, therefore in this there is manifest error -

Second It appears by the Record of said Circuit Court that the motion of the appellant to file a new bond and affidavit was overruled ~~by the Circuit Court~~ when by the law of the land said motion ought to have been sustained by said Circuit Court - therefore in this there is manifest error

Third - the Circuit Court dismissed the appeal of the appellant and affirmed the Judgment of the Justice against him when the said Circuit Court ought to have tried the same on its merits therefore in this there is manifest error

Wherefore for the errors aforesaid and other errors appearing in the said Record and proceedings aforesaid the said appellant prays this Court to set aside and reverse the Judgment of the Circuit Court herein &c

Clark for appellant

Amos Thomas
vs
The State
Assignment of mon

Filed July 11. 1846
A. L. Boon clk