Byrne, Morgan vs State of MO 1827 4th D/4th Cir. Cape Gir Co 143/14

26

Breach of cov

$135

Term.

Pleas at the circuit court, of the county of Cape Girardeau, in the state of Missouri; held at Jackson, in the fourth judicial circuit of said state, of the Term of August, in the year of Our Lord One thousand Eight hundred and twenty Six, and of the Independence of said State the Seventh year.

Before the Honorable John D Cook Judge of the circuit courts in said circuit.

Time of filing

Be it remembered that on the 11th day of July in the year aforesaid, was filed with the Clerk of said circuit court, a certain declaration and precipe, which are in the following words. to wit

Declaration

"State of Missouri, Fourth Judicial circuit SS.
"In the Circuit Court for the county of Cape Girardeau
"August Term, in the year of Our Lord One thousand
"eight hundred and twenty Six — The State of Missouri complains of
"Morgan Bryne, of a plea of breach of Covenant, for that whereas, hereto
"fore Towit, at the County of Cape Girardeau aforesaid, in the State afore
"said — On the twenty sixth day of October, in the Year, Eighteen hundred
"and twenty two, the said Morgan Bryne, by the same style and descrip
"tion of Morgan Bryne, executed his certain writing, obligatory, sealed with
"his Seal and to the Court now here shown, the date whereof, is the day
"and Year last aforesaid, by which he promised to pay to the State of
"Missouri, on the twenty sixth, day of October, in the Year of our Lord
"eighteen hundred and twenty three, the sum of One hundred and thirty
"five Dollars and the two p.r centum p.r Annum (on said Amount) it
"being the interest accruing on the Certificates borrowed (borrowed
"by said Bryne of said State) from the first day of October, eighteen
"hundred and twenty one, at the Jackson Loan Office, for value recei
"ved — Yet the said defendant not at all regarding his Covenant
"and liability as aforesaid did not pay to the said State of Missouri
"on the said twenty sixth day of October, eighteen hundred and twenty three
"The said sum of thirty five Dollars and the two per centum per Annum
"on said amount accruing on the certificates borrowed from the first
"day of October, eighteen hundred and twenty one, at the Jackson Loan
"Office according to the form and effect of said writing, nor has the said

"defendant at any time, Paid to the said State of Missouri, the said
"sum of One hundred and thirty five Dollars and the two Per centum, Per
"annum, on the said amount, the interest accruing on the Certificates, bor-
"rowed from the said ~~State~~ first day of October, eighteen hundred and twenty
"one — But to Pay the same had hitherto wholy neglected and so the
"said State saith, that the said defendant, altho often requested, had
"Kept his said Covenant, so by him made as aforesaid, but hath broken
"the same and the same to Keep, hath hitherto wholy refused and
"still doth refuse to the damage of the said State of Missouri, Two
"hundred Dollars and therefore suit is brought &c.

Greer Davis, Attorney for the State —

"The Clerk will endorse this an action of Covenant, issue Summons
"and no bail required — G W Davis Att.y for State —

Summons. "State of Missouri fourth Judicial Circuit, S.S. — — The
"State of Missouri — To the Sheriff of the County of Cape Girardeau,
"Greeting: These are to command you to summon the within named
"Morgan Byrne, to appear before our Judge, at our Circuit Court, at
"a Court to be held at Jackson, within and for the County of Cape Girar-
"dean, on the second Monday of August next, to answer to the within
"named State of Missouri of the within complaint. Witnesseth
"Ralph Daugherty Clerk of our said Court at Office the eleventh day
"of July, in the Year of our Lord, one thousand eight hundred and
"twenty six, and of the Independence of the United States the 51 Year.

R Daugherty Clerk
by his deputy — Hy Sanford

"On which said summons the Sheriff made his return in the
"following words, "Executed this Writ on Morgan Byrne in Cape Girar-
"dean Township 20th July 1826." Jesse Hail Dy. for
William Creath Shff —

"At the term aforesaid, On the 10th day of said Term, the following
"Proceedings were had before the said Court, in the suit aforesaid,

The State of Missouri
vs
Morgan Byrne } Covenant —

appearance Term.

The parties appear, and by consent, the defendant, is permitted, to plead at the next Term of this Court, as of this Term and this cause is continued. Afterwards Towit; At the Term of December in the Year aforesaid, before the Judge aforesaid, on the 21st day of the said Month of December, in the said Year, The Plaintiff filed his Plea in the following words —

State of Missouri }
Morgan Byrne } Cape Girardeau Circuit Court —
State of Missouri } ss

Plea

And the said defendant by Bird his Attorney, comes and defends the wrong and injury to him to and says said Plaintiff ought not to have and maintain its said action against him, because he says that the said State of Missouri by an Act of the Legislature thereof entitled "An Act for the establishment of Loan Offices" approved by the Governor of said State, on the 27th day of June 1821. divided said State into five Districts, in each which Districts was established a Loan Office & by said Act, the Auditor of Public Accounts and Treasurer of said State, under the Governor thereof, were required to issue Certificates signed by the said Auditor, and Treasurer, to the nominal amount of $200.000 Dollars, of denomination not exceeding Ten Dollars nor less than fifty cents, in the following form Towit, "This Certificate shall be receivable at the Treasury or any of the Loan Offices of the State of Missouri in discharge of Taxes or debts, due to the State, for the sum of — Dollars, with interest for the same, at the rate of Two Per centum from this date, the — day of — 182" And that by said Act, said Certificates were made receivable at the Treasury of said State and by all the Tax gatherers and other Public Officers, in Payment of Taxes and other monies then due or to become due to said State or any county or Town therein, and by all Officers civil and military in said State, in discharge of Salaries and by said act it was further made the duty of said Auditor and Treasurer according to the Provisions of said Act to deliver to the Clerk of the said general Loan Offices a proportionable amount of the Certificates by said Act required, to be issued as aforesaid — And certain Commissioners by said act required to be appointed were by said Act, impowered to loan said

Plea Continued, Certificates, to the Citizens of said State, residing within their respective districts at interest not exceeding six per centum per annum on the Amount and to se=cure the repayment of said Loans, by Mortgages or Personal security and by said act, the Salt Springs belonging to the Estate were to be leased out, on the condition that the Lessee or Lessees, should receive said Certificates in Payment for Salt, not exceeding that which might be prescribed by law — and that the Proceeds of said Salt Springs, the interest accruing to the State and all Estates Pur=chased, by the Officers of the said Loan Offices, under the Provisions of said act and all debts then due and become due to said State, were by said Act pledged and made a fund for the redemption of said Certificates and by the same act, the faith of said State was also pledged for the same Purpose, and said defendant further saith, that Pursuant to the provisions of said act, a large Amount of said Certificates, Towit; the nominal Sum of $50,000 was deposited in the said Loan Office at Jackson, to be loaned out by Commissioners ap=pointed Pursuant to said act to such individuals as should make applica=tion for a Loan of said Certificates, according to the Provisions of said Act, and the said defendant further saith that he has received from said Loan Office at Jackson, the nominal Sum of one hundred and thirty five Dollars in said Certificates, for the loan of which certificates and for no other conside=ration whatever, the said defendant made and executed to said State, said writing obligatory mentioned. And said defendant aver that said Loan Office Certificates, so loaned to said defendant as aforesaid, were Bills of Credit, emitted by said State, in violation of the Constitution of the United States, all of which said defendant is ready to verify, Wherefore said defendant Prays Judgment, if said State ought to have and main=tain its said action against him be —— G. Bird Atty for defᵗ —

Demurrer And the said State comes and demurs to said plea and says it is bad in law — And that the matters and things therein stated require no ansʳ. Wherefore Plaintiff Prays Judment, for want of a sufficient Plea —

Greer W. Davis Att. for State —

Joinder in Demurrer And said Byrne comes and says that his said Plea is good in law and sufficient to bar said State from having and maintaining its sᵈ. action.

At the Term aforesaid, On the 11th day of said Term, before the same Judge, the following proceedings were had by the Parties — aforesaid —

The State of Missouri
versus
Morgan Byrne } Covenant —

Term of Judgment

The Plaintiff by Greer W. Davis Esqr. comes, and the defendant by his Attorney appears, and the demurrer to the defendants Plea, herein being seen, and agreed the Court doth consider that the matters and things in said Plea mentioned and contained are not sufficient in Law, to bar and Preclude the said Plaintiff from having and maintaining his action against said defendant, therefore it is considered and adjudged that the said Plaintiff do have and recover against said defendant Morgan Byrne, her damages to the sum of one hundred and fifty two Dollars and seventy two cents, which she has sustained by said defendant not Performing his said Covenant, together with her costs and charges in this behalf expended, and the said defendant in Mercy &c. &c,

The writing obligatory on which this Suit is founded, is in the following words To Wit, We jointly and severally Promise, to Pay to the State of Missouri on the twenty sixth day of October, in the Year of our Lord, eighteen hundred and twenty three, the sum of One hundred and thirty five Dollars and the two P.r centum per annum, the interest accruing on the Certificates, borrowed from the first day of October, eighteen hundred and twenty one, at the Jackson Loan Office, for value received, this 26th day of October 1822.

Morgan Byrne (L.S.)
Robert Green —
Thomas W. Graves —

Date of Execution.

Afterwards on the fifth day of February A.D. 1826. Execution issued on the aforesaid Judgment against the aforesaid Morgan Byrne for the sum of One hundred & fifty two Dollars and seventy cents, the amt of the damages in the aforesaid Judgment specified — also for the sum of eleven Dollars, eighty one & a fourth cents, the costs of said Suit, which said execution is in the hands of the Sheriff of said County of Cape Girardeau —

Costs of Suit	Damages	$152.72
	Att'y Davis	5.00
	Tax on original writ	1.00
	Tax on original Execution	1.00
	Clerk R. Daugherty	3.81¼
	Shff William Creath	1.00
		$164.53¼

One hundred and sixty four Dollars, fifty three and one fourth cents

State of Missouri }
fourth Judicial Circuit } ss.

I Ralph Daugherty Clerk of the Circuit Court, within and for said County of Cape Girardeau in said Circuit, Certify that the six foregoing Pages contain a full, true & Perfect Transcript of the Record and Proceedings of the Plaint aforesaid as fully and completely as the same remains of Record in said Court

In Testimony whereof, I have hereunto set my hand & affixed the Seal of said Court, at Office this 17th day of February 1827 —

R Daugherty Clerk
by his deputy
Hy Sanford

Tax	$1.00	3.70
Copying 2200 words	2.20	
Certificate & Seal	.50	
	$3.70	

Rec'd of Morgan Byrne ~~Three~~ 70/100 Dollars ~~& fifty cents~~ on acct. of this Recon — Hy Sanford Dy Clk in full

3.70
1.00

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The State of Missouri
vs
Morgan Byrne } Covenant Record.

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Filed March 27th 1827
P. R. Garrett Clerk
by his deputy
Hy Sanford

The State of Missouri, 4th Judicial district.

The State of Missouri, To the circuit Court of the county of Cape Girardeau in said State Greeting

Because in the record and procedings, in the circuit court for the said county of Cape Girardeau, before Our Judge thereof, at the suit of The State of Missouri plaintiff against Morgan Byrne defendant, in an action of Covenant, manifest Error hath intervened to the great damage of the said Morgan Byrne, as by his 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 of judgment thereon be given, there you send to the judges of the Supreme court of said State, distinctly and openly, under your seal, the record and procedings in the action aforesaid; with all things concerning the same, and this writ, that the same may be before the judges of Our said supreme court, at their next term, to be held for the 4th judicial district aforesaid, at the town of Jackson in the county of Cape Girardeau aforesaid on the ~~third~~ fourth monday of May next; that the record and procedings aforesaid, being seen and examined, may cause to be done therein for correcting that Error what of right Ought to be done.

Witness Peter R Garrett clerk of Our said supreme Court, at office, this 26 day of February A.D. 1827.

Ay Sanford Deputy
for
Peter R Garrett clk

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Supreme Court May T. 1827.

Morgan Byrne
vs
The State of Missouri

Covenant

Writ of Error

Tax paid 1$

Returned and filed
March 27. 1827
P R Garrett Clk
by Hy Sanford & Clk

State of Missouri
vs
Morgan Byrne

In the Cape Girardeau
Circuit Court 4th Ind circuit

To G. C. Davis Esquire circuit
attorney for said circuit Sir
take notice that I have brot a writ
of Error to remove this cause from
said circuit to the supreme Court
at Jackson Cohere I shall expect
a trial at the next Term

May 16th 1827

G. Bird for Pltff
in Error
Morgan Byrne

Notice Served on Mr May
16th 1827

I served this notice the above dated & Mr Davis
said he wanted an knowledge
it at any time

G A Bird

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Morgan Byrne
no 5 Notice
Tho State of Missouri

Filed
18 May 1827
C S Thomas
d. clk

State of Missouri

Morgan Byrne
vs
The State of Missouri

In prime court at Jackson
on Error from the
Cape Girardeau
Circuit May term
A.D. 1827

And said Morgan cannot say that in the record & proceedings aforesaid & also in the rendition of Judgment in said court there is manifest Error in this that said Circuit Court gave Judgment for said State when by the law of the land Judgment should have been given for said Morgan & for the error aforesaid & others apparent in the record & proceedings in said cause said Morgan prays that said Judgment may reversed & that he may be restored to all which he has lost by occasion of said Judgment &c

Gibbs Atty
for Pltff
in Error

In the

and the said Plft says that in the proceedings in the above cause there is no error G W Davis Ct

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Sup. Court Mo

Morgan Byrne

vs

The State of Missouri

Assignment of

Errors

B R Atty

for Pltff

Filed May 17. 1827

C S Thomas

D. Clk

S C 4 J. D

Copy

United States of America ss

To the State of Missouri — Greeting

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of January next, pursuant to a writ of error filed in the Clerks Office of the Supreme Court for the fourth Judicial District of the State of Missouri, wherein the State of Missouri is plaintiff and Morgan Byrne & Charles Shaw are defendants, to shew cause, if any there be, why Judgment rendered against the said Morgan Byrne and Charles Shaw as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf

Witness the Honorable Mathias McGirk President of the Supreme Court for the State of Missouri, May 10th 1831

Signed — M. McGirk

On this 10th day of September in the year of our Lord eighteen hundred and thirty one personally appeared John C. Gordon before me the Subscriber a justice of the peace for Cole County State of Missouri and makes oath that he delivered a true Copy of the above Citation to John Miller Governor of the State of Missouri and to Robert W. Wells Attorney General of said State on the 10th day of September 1831 at the City of Jefferson County of Cole and State of Missouri

Signed — Hiram H. Baber Justice of the Peace of Cole County State of Missouri

Morgan Byrne
Versus
The State of Missouri

Filed 17th Oct. 1831
P. R. Garrett
Clerk

Know all Men by these Presents, That we, Morgan Byrne, Charles Seavers & Thomas W Graves are held and firmly bound unto The State of Missouri

in the full and just sum of Two hundred dollars

to be paid to the said The State of Missouri

certain attorney, ~~executors, administrators,~~ or assigns: to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this Seventh day of October in the year of our Lord one thousand eight hundred and thirty-one

WHEREAS lately at a ~~Circuit Court of the United States, for the District of~~ Supreme Court for the Fourth Judicial District of the State of Missouri in a suit depending in said ~~Circuit~~ Court, wherein The State of Missouri was plaintiff and Morgan Byrne and Charles Seavers were defendants judgment was rendered against the said Morgan Byrne & Charles Seavers and the said Morgan Byrne and Charles Seavers having obtained a writ of error, and filed a copy thereof in the Clerk's Office of the said ~~Circuit~~ Court to reverse the judgment in the aforesaid suit, and a citation directed to the said The State of Missouri citing and admonishing to be and appear at a Supreme Court of the United States, to be holden at Washington the Second Monday of January next.

NOW THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That if the said Morgan Byrne and Charles Seavers shall prosecute their writ to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void, else to remain in full force and virtue.

Sealed and delivered in presence of

John D. Cook

Morgan Byrne [SEAL.]

Charles Seavers [SEAL.]

Thos. W. Graves [SEAL.]

Morgan Byrne
Venue & Bond
The State of Missouri

Filed 17th October 1831
P. R. Garrett
Clk

United States of America &c:—
The President of the United States of America
To the honorable the Judges of the
Supreme Court for the Fourth Judicial
District of the State of Missouri
Greeting:

Because in the record and proceedings, as also in the rendition of the Judgment of a plea which is in the said Supreme Court of the State of Missouri before you or some of you, being the highest Court of law or equity of the said State in which a decision could be had in the said suit between The State of Missouri Plaintiff and Morgan Byrne and Charles Seavers defendants, wherein is drawn in question the validity of a Statute of the said State of Missouri on the ground of its being repugnant to the constitution of the United States and the decision was in favor of such its validity, and wherein was also drawn in question the construction of a clause of the constitution of the United States and the decision was against the exemption set up under such clause; a manifest error hath happened to the great damage of the said Morgan Byrne and Charles Seavers defendants as aforesaid as by their complaint appears— We being willing that error if any hath been, should be duly corrected and full and speedy justice done to the Parties aforesaid in this behalf; do command you, if Judgment be therein given, that then under your

seal, distinctly and openly you send the record and proceedings aforesaid, with all things concerning the same to the Supreme Court of the United States, so that you have the same together with this writ at Washington on the second Monday of January next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done — Witness the honorable John Marshall Chief Justice of the said Supreme Court the first Monday of August in the year of our Lord One thousand eight hundred and thirty —

Signed — Wm Thos Carroll
Clerk of the Supreme Court
of the United States

Morgan Byrne
Versus
The State of Missouri

Filed 17th October 1831
P. R. Sarnt & Co Cl