Fine, Elisha vs Conner, Benjamin 1851 St. Louis Co. 338/5

568/19

Assumpsit on account for $20.00
Conner employed by Fine on Steam A.J.

Pleas held before John H Watson Law Commissioner of Saint Louis County in the County of Saint Louis state of Missouri Be it Remembered that on the twenty fifth day of April Eighteen hundred and fifty one was filed in the Law Commissioners Court the transcript and original papers in the case of Benjamin Conner Vs Elisha Fine before Peter W Johnson Justice of the peace within for the County aforesaid which transcript and original papers are words and figures following

Transcript

State of Missouri }
County of St Louis } ss

Pleas held before Peter W Johnson a Justice of the Peace in and for the County of St Louis –

Benjamin Conner }
Vs } In Assumpsit
Elisha Fine }

Be it remembered that on the 13th day of March 1851 Came the plaintiff and filed a bill of Items and sued out of the office of the said Justice a writ of Summons which was duly served on the Defendent and the Constable return made thereon according to Law and the following is a full true and Complete transcript from the Docket of the said Justice

To Wit

Benjamin Conner, Vs Elisha Fine

assumpsit on account for $20.00 Summons issued to Constable Clark on the 13th day of March 1851 Returnable on the 29th day of March 1851 Returned Executed The plaintiff appeared The defendent being Solemnly Called Came not but made default Whereupon the Justice after hearing the Evidence Considered and adjudged that the plaintiff have judgement for Twenty dollars for his debt and also for the Costs in this behalf Expended and that he have execution thereon according to Law Now on the 7th day of April Came the defendent and moved the justice to set aside the judgement of default which was granted and a new trial set for the 18th day of April 1851. On that day the parties appeared and being ready for trial submitted the Case to the Justice who after hearing the Evidence Considered and adjudged that the defendent is justly indebted to the plaintiff in the sum of Twenty Dollars It is therefore ordered and adjudged by the Justice that the plaintiff have judgement for the sum of Twenty Dollars for his debt and also for the Costs in this behalf Expended and that he have Execution thereon according to Law. Now on this 19th day of April 1851 Came the Defendent and prayed an appeal to the Law Commissioners Court of St Louis County and Entered into recognizance in the sum of Seventy Dollars with David Pearce as Surety Appeal Allowed

Judgement by deft $
Justice Johnson $ 75
Const Clark 75
Reopened

Judgement for Pltff $20
Justice Johnson — 55
Constable Clark 25

Certificate State of Missouri
County of St Louis

I Peter W Johnson a Justice of the Peace in and for the County of St Louis do hereby certify that the above and foregoing is a full true and Complete Transcript from the docket entries in the above entitled Case and that the papers hereto attached are all the papers now on file in my office in any way appertaining to the same

Given and certified this 19th day of April 1851 Peter W Johnstone Justice of the peace

account

Elisha Fine

To Benjamin Conner Dr

To services rendered as Steersman on St Boat Andrew Jackson for you on trip to St Joseph and back to St Louis

as per Agreement $50.00
Cr By Cash by Mr Downs Clk of Boat 30
1 Bal Due 20.00

The State of Missouri

To any Constable of Saint Louis Township in St Louis County — Greeting

Summons

We Command you to Summon Elisha Fine to appear before the undersigned one of the Justices of the peace of St Louis Township in St Louis County on the 29 day of March 1851 at Ten of the Clock in the forenoon at his office in the same to answer the Complaint of Benjamin Conner for $20.00 and suppose defendent as witness for plaintiff

Given under my hand this 13th day of March 1851

Peter W Johnston Justice

Return — Executed this writ by leaving a true copy of the same at the usual place of abode of the within named defendants with a white member of the family above the age of 15 Years in St Louis Township March 20th 1851

E G Clark Const
per Edw E Allen
Dpy

Fee 50¢

Benjamin Conner
vs.
Elisha Fine
} Before Peter W Johnston 30 March 1851

Notice — To the above named Pltff Take Notice that the judgement of Default in the above Entitled Case is set aside on motion of Defendant and a new trial Granted which is set for the 18th day of April 1851 at my office in the City and County of St Louis at 7 O'clock A M last hour 10 a m of that day Given under my hand this this 7th day of April 1851

Peter W Johnstone
Justice of the peace

Return — Served this notice by reading the same to the within named Benjamin Conner in St Louis Township April 12th 1851

E G Clark Const
per Edwd E Allen
Dept

Benjamin Conner } plaintiff
vs
Elisha Fine } Defendant

This day personally appeared before Peter W Johnstone a Justice of the peace in and

for the County of St Louis in the State of Missouri
Elisha Fine who being duly sworn upon his oath
says that the application for the appeal in the above
entitled case is not made for vexation or delay but
because he believes the appelant is injured by judgment
of the justice

Elisha Fine

Sworn to and subscribed before me this 19th day
of April 1851

Peter W Johnstone Justice

We the undersigned Elisha Fine and David
Pearce acknowledge ourselves indebted to Benjamin
Conner the Sum of Seventy Dollars to be void
upon this Condition. Whereas Elisha Fine has appealed
from the judgment of Peter W Johnston a Justice
of the Peace in a certain action between Benjamin
Conner plaintiff and Elisha Fine defendant. Now
if on such appeal the judgment of the justice be affirmed
or if on the trial anew, in the Said Commissioners Court
of Saint Louis County judgment be given against the
appelant and he shall satisfy such judgment or if
the appeal shall be dismissed and he shall pay the
judgment of the Justice together with the costs of the
appeal the recognisance shall be void

Elisha Fine
David Pearce

attest this 19th day of April 1851
Peter W Johnston Justice

And now To Wit on the first day of July Eighteen hun
dred fifty one Come the parties by their attorneys
and by agreement the matters of Law and fact arising
in this Cause are submitted to the decision of the
Court without the intervention of a Jury the Evidence
and argument being heard the Court is of the opinion

that the plaintiff is entitled to recover the sum of Twenty Dollars it is thereupon ordered by the Court that the plaintiff recover against the defendant the sum of twenty dollars for his debt and also his Costs in this behalf laid out and expended whereof he has execution and thereupon the defendant filed a motion for a New Trial and now to wit on the 5th day of July 1851 came again the parties by their attorneys and the defendant moved the Court to set aside the judgement herein rendered and grant a New Trial which motion being heard & argued and the Court being sufficiently advised it is ordered by the Court that said motion be overruled

Bill of Exceptions

And now to wit on the 12th day of July comes the defendant and prays the Court to sign the same which is signed accordingly which Bill of exceptions is in the words following

Benjamin Conner }
vs } Before the Law Commissioner
Elisha Sine } of St Louis County

Be it remembered that on the submission and trial of the above cause it was admitted that plaintiff was employed by defendant at the rate mentioned in his said account & that it is the custom on the Missouri River for first pilots to hire and pay their assistants Here plff rested

Deposition

Defendant then read the following Deposition
Depositions of Witnesses taken in a cause pending before the Law Commissioner of St Louis County wherein Benjamin Conner is Plaintiff and Elisha Sine is Deft in pursuance of the notice hereto attached and at the City and at the City of Piqua Miami County Ohio where said Downs resides
Wm S Downs of the County of Miami and State of Ohio of lawfull Age being first duly sworn

by me as hereafter certified deposes as follows
1st Interogatory Were you ever employed on the Steam Boat Andrew Jackson if so when and in what capacity - State also whether plaintiff & Defendent or either of them were employed on said Boat and in what Capacity
Ans. I was employed on the Andrew Jackson at sundry times the last time from the 1st January 1850 till the 20th May 1850 in the Capacity of 1st Clerk about the 25th April Elisha Fine the Defendent was employed as Pilot of the Steamer Andrew Jackson for one trip up the Missouri River as far as Sant Joseph for which he was to receive Four hundred Dollars or perhaps $300 to St Joseph & one hundred dollars more if he went to Council Bluff Benjamin Conner the Plf had been employed previous to that time as a Pilot from St Louis to New Orleans and at the request of W J Eckert Capt of the Andrew Jackson he was employed by Elisha Fine the Dft a steersman or assistant Pilot for the trip up the Missouri for which service said Fine was to pay him Fifty dollars,
2nd If Plaintiff was employed on said boat in the spring of 1850 State for what length of time by whom and what wages he was employed and when such employment terminated. State further all facts which you may know of your own knowledge touching the payment of Pltffs wages and whether or not he was paid in full
Ans Elisha Fine the Dft was employed by W. J. Eckert Capt of the Andrew Jackson

for one trip only Plaintiff Conner was employed in the Spring of 1850 as above stated for one trip only by Elisha Fine Deft at Fifty dollars for the trip - On return of the Steamer Andrew Jackson to St Louis the trip terminated on the return of the boat Jackson to St Louis I settled with Mr Fine the Deft and by his order paid Conner Pltff Fifty dollars and when I settled with Conner for his services as Pilot in the New Orleans trade trade previous to his being employed by Deft I neglected to charge him with fifteen dollars that I had paid him at Louisville on our way to Saint Louis which Conner will no doubt recollect and also at the same settlement I advanced him (Conner) Ten Dollars more than his salary amounted to, as he said his property was under Execution & would be sold unless he could raise that much more money - and I advanced it to him with the understanding that he would pay me when we got back from St Joseph when Defendant Fine told me to pay Conner Pltff Fifty Dollars I had but Thirty dollars about me which I gave him at the time & I told him of the fifteen dollars not charged at Louisville and I told him that we would settle that and the other as soon as I had leisure as I was busy at that time Conner went off and I did not see him again before I left St Louis so that Conner has got Five dollars more than the Amount due him from Fine that is fifteen dollars advanced at Louisville which was not included in our settlement previous previous to our going

up the Missouri river and the ten dollars advanced on Settlement as above stated making $25.00 and $30.00 paid him at that time above stated

3rd State whether or not you ever paid plaintiff any Money money as Deft request If Yes when & what Amount, on what account and any Conversation touching the matter which took place between yourself and Plaintiff or between plaintiff and defendent in Your Presence

Ans. I paid him Fifty dollars or rather $55.00 as stated in my answer to 2nd Interrogatory is answered by me fully in my answer to the 2nd interrogatory

Cross Interrogatory

By whom was Plaintiff Employed on the Canal Jackson

Answer. By defendent Elisha Sine at the request of Capt W I Eckert as he Pltff understood handling the Boat and was in need of Employment-

W J Downs

I William Elliot a notary public in and for the County of Miami and State of Ohio do hereby certify that the above named William J Downs was by me first duly sworn to testify the truth the whole truth and nothing but the truth and that the foregoing deposition by him subscribed was reduced to writing by me and was taken at the City of Piqua on the 27th day of May AD 1851 In testimony whereof I have hereunto set my hand and affixed my notarial seal at my office in the City of Piqua

(Seal)

this 27th day of May 1851

Seal William Elliot Notary public

Plaintiff in rebuttal called a witness who proved that he and Plff were both Employed on the Andrew Jackson, previous to the trip in question at the rate of $225 per month that said boat was then running from Cincinnati to St Louis that said boat was then short of funds: that she settled with witness for his wages & that witness did not know the Plff being paid for his services Plff also introduced testimony proving that when a boat starts from a port to make a trip to some other port & back if she does not make the return trip but proceed on another voyage it is customary to pay her pilots for the whole trip The Plff then asks the Court to declare the law as follows Viz

Instruction No 1 Plff "The plaintiff asks the Court sitting as a Jury to declare that if from the Evidence the Court is satisfied that defendant employed the plaintiff and that he was to give him Fifty Dollars then an order given by Fine upon the Steam Boat Andrew Jackson unless there is proof that plaintiff accepted the same in full satisfaction of the debt due him by defendant Any debt due the plaintiff to the Boat Cannot be plead as an offset or payment by Fine.

Instruction No 2 Plff "That if the Court is satisfied that the Boat was indebted to the Plaintiff for services at the time she started up the Mississippi Then any Advanced by the Boat to Plaintiff previous to this trip must be applied to the Boats debt to Plaintiff. which the Court did. and the defendant duly ~~accepted~~ excepted

the Defendant than asked the following instructions
Instruction the first of which was also granted.
No 1 Deft If it appear from the Evidence that Plaintiff
Consented to receive his wages. for the trip in
Question of the Steam Boat Andrew Jackson that
he was paid in part by the clerk of said boat and
Granted that being indebted to said boat in a Sum to or exceeding
the balance he Consented to settle his account with
said boat at some other time the defendant is entitled
to a Verdict
And the second refused
Instruction
No 2 Dft If it appear that plaintiff received from defendant
a verbal order on the Steam Boat Andrew Jackson
for the Amount due him from defendant & that said
order was in part paid by the clerk of said boat plaintiff
refused Cannot recover the unpaid ballance of defendant
unless it appear that within reasonable time
thereafter he notified the defendant of such non payment
To which refusal the defendant excepted
The Court found for the plaintiff Defendant then
on the same day moved the Court to set aside the
Verdict for a New Trial which motion the Court
overruled & defendant excepted which motion is
in as following To Wit
Motion for New Trial Benjamin Conner
vs
Elisha Fine } Before the Law Commissioner of St Louis County
Defendant by his Attorney moves
the Court to set aside the verdict in this above entitled
Cause & to grant a New trial for the following Reasons
Viz
1 The finding of the Court was against the Evidence
and the weight of the Evidence.

2d The finding of the Court was against the ~~Evidence~~ law under the Evidence
3d The finding was against the law as declared by the Court at defendants request
4th The court Erred in declaring the law to be as set out in plaintiffs instructions -
5th The Court Erred in refusing the 2nd instruction asked by defendant

C Harding Jr
Atty for Aff

Motion overruled and aff excepted
And now on the 12th day of July 1851 Came the defendant and filed his appeal bond and Prays and appeals from the judgement of the Court herein rendered to the Supreme Court of the State of Missouri which is granted him said appeal Bond is in words and figures following

Bond

Know all men by these presents that we Elisha Fine as principal and Joshua Fine as security are indebted to Benjamin Conner in the sum of Eighty Dollars for the payment whereof we bind ourselfs our heirs executors and administrators jointly and severally firmly by these presents sealed with our seals and dated at Saint Louis this the 12th day of July Eighteen hundred and fifty one
The Condition of this obligation is such that whereas Elisha Fine has appealed from the judgement rendered against him and in favor of Benjamin Conner in the Law Commissioners Court of the County of St Louis for the sum of twenty dollars together

with the costs in said suit expended now if the said appelant will pay all costs and damages that may be awarded against him occasioned by such appeal and shall prosecute his appeal and shall perform such judgment as shall be given by the supreme Court and such as the supreme Court may direct the Law Commissioner Court of the County of St Louis to give, and if the judgment or any part thereof be affirmed that he will comply and perform the same so far as it may be affirmed and will pay all damages and costs which may be awarded against him by the Supreme Court then this obligation to be void otherwise to remain in full force and effect

Elisha Fine (seal)
Joshua Fine (seal)

State of Missouri
County of St Louis } ss

I

The Law commissioner of St Louis County do hereby certify the foregoing pages to be a true and perfect transcript of the record and proceedings in the case of Benjamin Conner vs Elisha Fine as the same remains of record in my office

In testimony whereof I have hereto set my hand and affixed my official seal at office in the City and County of St Louis this
A.D. 1851

John W. Cohen, Law Commissioner
of St Louis County, Mo

(19) 44

March. T. 1854

In the Supreme Court

Benjamin Conner
appellee

vs:

Elisha Fine
appellant

Dec. filed Apr. 1851

Transcript

C Harding Sr
for appellant

motion overruled

Filed Oct. 7th 1851
Wm. B. Starke
Clerk
Wm. J. Glanville
D.C.

Commissioners fees $3.95 pd. Judge
Watson by defts counsel

44

(2)

Benjamin Conner, appellant
vs
Elisha Fine, appellant

In the Supreme Court
October Term 1851.

And now comes the appellant, by his attorney, & says that there is manifest error in the record, proceedings verdict & judgment of the Court below, in this towit;

1st That the court below erred in giving the instructions asked by plaintiff & in refusing the 2d instruction asked by defendant

2d That the finding of the Court below, sitting as a jury, was against the evidence, the weight of the evidence & without evidence —

3d That the finding of the Court below, sitting as a jury, was contrary to the law as declared. —

Harding
for appellant

102

In the Supreme Court

Benjamin Conner
appellee
vs.
Elisha Fine
appellant –

Assignment of Errors
Harding
for appellant

Filed 24th October 1851
Wm. L. Glanville
Clerk.

Benjamin Conner
vs.
Elisha Fine

In the Supreme Court.
October Term A.D. 1850.

Statement of Case

This was an action brought, by appeal from a Justice of the Peace, before the Law Commissioner, to recover a balance of wages alleged by plaintiff to be due him from defendant.-

The case was tried by the court, sitting as a Jury.- At the trial it was admitted that plaintiff was employed by defendant at the rate mentioned in his account & that it is the custom on the Missouri river for first pilots to hire & pay their assistants.- Here plaintiff rested. - Defendant then read the deposition of W. I. Downs - (copied at length in the bill of exceptions) proving that deponent, who was clerk of the Steamboat Andrew Jackson on which both pltff & dft were employed, was directed ~~to pay~~ by ~~by the order of~~ defendant ~~this~~ to pay plaintiff the sum due ~~def~~ pltff ~~of fifty dollars~~; that deponent did pay ~~plaintiff~~ thirty dollars of said sum; ~~that~~ leaving unpaid the sum of $20, which is the amt claimed in this suit; that previous to the payment of said sum of $30, pltff was indebted to said boat in the sum of fifteen dollars for money paid him & not charged in a former settlement & in the sum of ten dollars for money advanced to pltff with the understanding that pltff would pay it ~~deponent~~ when the boat returned from St Joseph on the trip in question; that, at the time of the said payment of $30, deponent told plaintiff of the fifteen dollars not charged & that ~~the~~ ~~that~~ they would settle that & other matters as soon as deponent had leisure as he was busy at that time. that pltff then went off & that deponent did not see him again before he left St Louis, so that, deponent states, plaintiff has got $5. more than the amt due him from Defendant.

Here defendant rested.-

Pltff then called a witness who proved that he & pltff were both

employed on said boat, previous to the trip in question, at the rate of $225.00 per month; that said boat was then running from Cincinnati to St Louis; that said boat was then short of funds; that she settled with witness for his wages & that witness did not know of Plff being paid for his services. - Plaintiff also introduced testimony to show, that when a boat starts from a port to make a trip to some other port & back, if she does not make the return trip, but proceeds on another voyage, it is customary to pay her pilots for the whole trip. —

This was all the testimony. —

Plff then asked the court to declare the law as follows, viz:

1 "The plaintiff asks the Court sitting as a Jury, to declare ~~the law~~ that if from the evidence, the court is satisfied that defendant employed the plaintiff & that he was to give him fifty dollars, then, an order given by Fine upon the Steamboat Andrew Jackson, unless there is proof that plaintiff accepted the same in full satisfaction of the debt due him by defendant, any debt due by the plaintiff to the boat cannot be pleade as an offset or payment by Fine."

2 That if the Court is satisfied that the boat was indebted to the Plaintiff for services at the time she started up the Missouri, then any advance by the boat to plaintiff, previous to this trip, must be applied to the boat's debt to plaintiff, ~~which~~

Which declarations were made by the Court & to which defendant duly excepted —

The defendant then asked the following:

1 If it appear from the evidence that Plaintiff consented to receive his wages, for the trip in question, of the steamboat Andrew Jackson; that he was

paid in part by the clerk of said boat and that, being indebted to said boat in a sum equal to or exceeding the balance, he consented to settle his account with said boat at some other time the defendant is entitled to a verdict. –

Which was given by the court.

2 If it appear that plaintiff received from defendant a verbal order on the steamboat Andrew Jackson for the amount due him from defendant & that said order was in part paid by the clerk of said boat, plaintiff cannot recover the unpaid balance, unless it appear that within reasonable time thereafter he notified the defendant of such non payment. –

Which the court refused. To which refusal defendant duly excepted.

The court found for plaintiff the entire amount claimed – Defendant, on the same day, filed his motion ~~& reasons~~ for a new trial, on the usual grounds – Which motion was overruled & defendant excepted & brings the case to this court by appeal.

Harding
atty for appellant

102 ~~XX~~

Supreme Court

Benjamin Conner

vs

Elisha Fine

Statement

Filed November 12th 1851
Wm. J. Glanville
Clerk

Benjamin Conner, appellee
vs
Elisha Fine, appellant

In the Supreme Court
October Term 1851 —

Points made on behalf of appellant —

First — The Court below committed manifest error in declaring the law to be as set out in the 2d instruction asked by plaintiff below. —

This instruction was the only one given, upon which the court could have found for plaintiff. It was erroneous in the following respects viz:

1st because the hypothesis upon which said instruction was founded was not supported by any evidence whatever. — The only evidence offered by plaintiff to show the indebtedness of the boat to plaintiff was that on plaintiff had formerly acted as pilot on said boat at a specified rate per month; this fact is not inconsistent with, but, on the other hand, is pre-supposed by the fact proved by defendant, that plff had been over paid for ~~after~~ said services ~~were rendered, the plo~~ and that on balance struck, after said services were rendered, plaintiff was indebted to the boat. It is contended that the testimony offered by plaintiff in rebuttal, could not invalidate or throw doubt upon defendant's testimony & was not, in its nature competent or sufficient for that purpose, and consequently, that there was no evidence in the case showing or tending to show the indebtedness mentioned in said instruction. —

2d — because said instruction declares that if such indebtedness existed, the ~~apf~~ advances spoken of must be applied in discharge thereof; thus, necessarily excluding from consideration the evidence introduced by defendant to show plaintiff's consent

or agreement to the application of said advances in discharge or payment of the balance of wages due him from defendant —

Second: The Court below erred in finding for plaintiff because there was no evidence to support that finding.
1st Plaintiff's prima facie case was met by positive & uncontradicted proof of the following facts viz:
1st ~~that plaintiff was~~ the clerk of the boat was instructed by defendant to pay plaintiff & that plaintiff did receive a part of his wages, from said clerk.
2d that plaintiff was indebted to said boat in a sum exceeding the unpaid balance of said wages.
3d that plaintiff, by his silence, acquiesced in the arrangement proposed to him by the clerk, viz: to account together & settle the balance due him for wages & the balance due by him to the boat at some future time.
2d It is evident from the granting of plaintiff's 2d & defendant's 1st instruction, that the court found for plaintiff upon the grounds ~~the~~ stated hypothetically in said 2d instruction on behalf of plaintiff, and that the court below did not believe from the evidence, ~~that~~ as stated hypothetically in defendant's 1st instruction that plaintiff was indebted to the boat in a sum equal to or exceeding the unpaid balance of said wages. — ~~The Court was not warranted in~~
In regard to these points, it is contended, the finding of the Court was without evidence & against all the evidence in the case — Defendant proved, by reading the deposition of a competent & unimpeached witness the fact that plaintiff was indebted to the boat, at the time of

of the payment to him of part of the wages, free him from defendant, in a sum larger than the unpaid balance of said wages. To meet this evidence there is only testimony, which, at best, proved a fact presupposed by the testimony of deft's witness when stating how plaintiff became indebted to said boat. — There was no fact or circumstance in proof authorizing the court to believe that the boat was indebted to plaintiff or to disbelieve that plaintiff was indebted to the boat.

Third, the Court erred in finding for plaintiff, because the defence, payment, was fully made out.

Defendant refers to the evidence preserved in the bill of exceptions for support of this point. —

Harding
for appellant

In the Supreme Court

Benjamin Conner
resp^t

vs

Elisha Fine
appt

Brief
Harding for appt

Filed (by request) November 19th 1857
Wm. S. Glanville
Clerk

Benjamin ~~Clifford~~ Conner
vs.
Elisha Fine

In the Supreme Court.

To the above named Benjamin ~~Clifford~~ Conner
or his attorney.

Take notice, that the defendant in the above cause has appealed from the judgment of the Law Commissioner, rendered in said cause & that the same is now pending in the Supreme Court.

C Harding Jr
Atty for Dft

102

In the Supreme Court
Benj Conner
~~Clerk~~ 493
Elisha Fine
notice of appeal

Filed 20th March 1852
W L Clemmer
Clk

Served the within notice on this 4th day of December A.D. 1851, by leaving a true copy thereof on the desk in a conspicuous place at the office of E.C. Blackburn Esq. attorney at law, who acted as attorney for said plaintiff in the Court below.

C Harding Jr

Sworn to and Subscribed before me
this 4th day of December 1851
Peter W Johnston
Jur 254 Sinking the Pear

Benjamin Connor

vs

Elisha Frim

The appellant comes & moves the Court for a judgment of reversal in this case on the ground that appellee has not joined in the Errors -

Harding
for appellant

31

Connor

as

Frier

Motion for
reversal of
Judgt. for non
joinder of Essex

Harding for
Appellant

Filed 20 March 1852
Wm S Glanville, Clerk

To Benjamin Conner.

Take notice that an appeal to the Supreme Court was taken by Elisha Fine, in his life time, from the judgment rendered by the Law Commissioners of St Louis County in your favor against him; that said appeal is now pending in said Supreme Court & will be liable to be called & heard at the next ~~term~~ March Term of said Court.

St Louis Jan 13. 1853

Joshua Fine
Executor of Elisha Fine
dec

John D. Mount being sworned says that he did deliver a true copy of this notice to Bengam Conner in the county of St Louis Jany 13th 1833

Sworn to and subscribed before me this 13th 1833

John D. Mount

~~[illegible]~~

Peter W. Johnston

Jus 254 Justice

Supreme Court

Benjamin Conner

vs

Elisha Fine

Notice of appeal

Served this notice by delivering a true copy of it to the within named Bengam Conner in the County of St Louis Jany 13th 1833

E. G. Clark
Contable

By John D. Mount
Jus 50 paid by defendant

Benjamin Connor
appellee
vs:
Elestia Fine's
Exr appellant

Appellant, by his attorney comes & moves the Court for a reversal of the judgment rendered by the Court below, because the appellee has not joined in ~~error~~, although he was served with notice of appeal served on him in January 1853.

C Harding Jr
Atty for appellant

No. 44

Sup 6

Conner respt

vs

Fine - applt

Motion for reversal for nonjoinder in error

Harding for applt

Filed 29th March 1854.

Wm. L. Glanville

Clk.

Benjamin Conner, respondent
vs.
Elisha Fine, appellant

Oct. Term. 1851 — Assignment of errors filed.
" " — Judgment reversed for want of joinder in error.
" " — Judgment set aside & cause continued.
March Term 1852 — Motion to reverse for want of joinder in error
" " — Motion to reverse overruled.
" " — Continued by consent of parties.
Oct. Term. 1852 — Death of Fine suggested, by ~~appelts.~~ his attorney
" " " — Continued by the Court till next term.
March 25th 1853 — Fine's attorney proves the death of Fine, & on his motion Joshua Fine, the Executor of Elisha Fine is made party in the cause, and also said attorney for Fine suggests the death of Conner, and the cause is continued.

Oct. T. 1853 Continued.
March T. 1854 Motion to reverse. Motion to dismiss. Appeal Dismissed & judgment

Benjamin Conner
vs.
Elisha Fine

Abstract of Records
in Sup. Court.