Rochol, Charles H. vs. Clendenin, James M. 1855 St. Louis 357/a1

578/27

motion to affirm
assumpsit
180[00] owed - gold chain left w/ watch to be repaired
jdgmt for deft.
motion to set aside jdgmt. sustained
appealed - P did not file transcript

State of Missouri, }
County of St. Louis, } In Pleas held before the Law Commissioner's Court of St. Louis County.

James M. Clendenin, Plaintiff. }
vs } Appeal from Justice of the peace.
Charles M. Rochol, Defendant. }

Be it remembered, that on the second day of august. 1854. was filed in the office of the Law Commissioner's Court, a certain appeal, as above entitled from Mann Butler, Esquire, one of the Justices of the peace within and for the said County of St. Louis. The papers composing the record of said appeal, is in the words and figures following, to wit: —

" 1854. C. M. Rokohl
" To James M. Clendennin Dr.
cause of action " May 20th. To one gold chain left at your shop with a watch
" (which was to be repaired) and refused to be returned $18.00 "

" The State of Missouri, To any Constable of St. Louis Township, in St. Louis
" County — Greeting: We command you to summon Chas. M. Rockoll to
" appear before the undersigned, one of the Justices of the Peace of St. Louis Township,
Summons " in St. Louis County, on the 6th day of June 1854 at 6 of the Clock in the
" forenoon, at his office in the same Township, to answer the complaint of
" James M. Clendenin, on a/c. for $. 18.00, and the defendant is hereby summoned
" as a witness for Plff. at same time & place.
" Given under my hand, this 22nd day of May 1854. Mann Butler, Justice"

" Executed this summons by reading the same to the within named defendant
Constables return, " and by summoning the same as witness for Plaf.. Done in St. Louis Town-
" ship. May 23d. 54. L. M. Dwyer. Constable, By A. Howard Deputy. 6."

" State of Missouri, }
" County of St. Louis, } Before Justice Mann Butler, May Term 1854. In assumpsit.
Justices Docket Entries " James M. Clendenin } Be it remembered, that on the 22d day of May 1854.
1 " Charles M. Rochol } came the plaintiff and sued out of the office of the

2 „ said Justice, a writ of summons on act. for $18.00, which is issued to a Constable „ of the township of St. Louis and returned executed, and now to wit: on the „ 6th day of June 1854, came the parties before the Justice, and the testimony being „ submitted to him it is by the Justice considered and adjudged, that the plaintiff „ recover of defendant, the sum of eighteen dollars, together with the costs in „ this behalf expended, whereof he have execution, which is on the same „ day issued to Constable Moyer. And now to wit: on the 12th day of June 1854 „ came the defendant before the justice, and having filed his affidavit and „ recognizance with security approved by the Justice, prayed an appeal from the „ Judgment aforesaid to the Law Commissioner for the County aforesaid, which „ is accordingly granted.

Docket Entry of Justice

„ Judgment for the plaintiff, 6th June 1854. $18.00. Costs endorsed hereon „

„ James M. Clendenin, Plaintiff.
„ vs
„ Charles H. Rochol, Defendant.
} Before Justice Mann Butler.

„ This day personally appeared before Mann Butler a Justice of the peace, in and for the County of St. Louis, in the State of Missouri, Charles H. Rochol, who being „ duly sworn on his oath says, that the application for an appeal, in the above „ entitled cause is not made for vexation or delay, but because he believes „ the appellant is injured by the judgment of the Justice.

Affidavit of appeal

„ Sworn to and subscribed before me,
„ this 12th day of June, 1854.
„ Mann Butler, Justice.
} C. H. Rochol. "

„ We the undersigned, Charles H. Rochol and Richard Arnold, (security) acknowledge „ ourselves indebted to James M. Clendenin, in the sum of fifty dollars, to be void „ upon this condition: Whereas, Charles H. Rochol has appealed from the Judg- „ ment of Mann Butler, a Justice of the peace, in a certain action between Jas. „ M. Clendenin plaintiff, and Chas. H. Rochol defendant: Now if, on such „ appeal, the judgment of the Justice be affirmed, or if, on the trial anew, in the „ Law Commissioner's Court for the County of St. Louis, Judgment be given „ against the appellant, and he shall satisfy such Judgment, or if his appeal

Recognizance of Appeal,

" shall be dismissed, and he shall pay the judgment of the Justice, together with
" the costs of appeal, the recognizance shall be void.
" attest this 12th day of June 1854. C. M. Rochol, (Ss.)
" Mann Butler, Justice. Richard Arnold, (Ss.)

Justice's certificate.

" I Mann Butler a Justice of the peace within and for the County aforesaid
" do hereby certify that the foregoing is a true and exact transcript of the pro-
" ceedings in the above entitled case; and the papers hereto attached are all the
" originals that have been filed in my office, appertaining to said case.
" Witness my hand this 12th day of June, 1854. Mann Butler Justice of the peace

Afterwards, to wit: on the respective days hereinafter mentioned, the following proceedings were had in said cause, as follows.

" September 7th 1854. August Term.
" By consent continued to next term."

" October 5th 1854. October Term.
" By consent, continued to the 9th day of October 1854."

" October 24th 1854.
" Now at this day come the parties by their attorneys, and on motion of defendant
" supported by his affidavit, this cause is continued to next term at his costs."

" December 11th 1854. December Term.
" This day come the parties by their attorneys, and on motion of plaintiff supported
" by his affidavit, this cause is continued to next term at his costs."

" February 7th 1855. February Term.
" This day come the parties by their attorneys and by consent submit this cause
" to the Court, and the Court after hearing the evidence, and being fully advised
Judgment for Defendant 3. " of and concerning the premises, doth find for the defendant. Therefore it is
" considered by the Court that said plaintiff take nothing by his suit, but
" that said defendant go hence without day and recover of said plaintiff

„his costs and charges in this behalf expended, and that execution issue therefor"

„ February 9th 1855.

„The plaintiff by his attorney moves the Court to set aside the Judgment „herein and to grant a new trial, and files an affidavit in support of the „same."

„ February 23d 1855.

„This day comes plaintiff by his attorney, and the motion of plaintiff to set „aside the verdict & Judgment herein, comes on to be heard. Whereupon the „Court after hearing the argument of counsel, and not being sufficiently ad„-vised thereof, takes time to advise."

„ February 28th 1855.

„The Court being fully advised of and concerning the plaintiff's motion to set „aside the verdict and Judgment and to grant a new trial, doth consider „that said motion be and the same is sustained, and the Court doth „further order that said plaintiff pay the costs of this term."

Judgt. for deft. set aside.

„ April 12th 1855. April Term.

„This day comes plaintiff by his attorney, but defendant, although solemnly called „comes not. Whereupon, on motion of said plaintiff it is ordered that the judgment „herein as rendered by the justice be affirmed, and that said plaintiff recover „of said defendant and Richard Arnold, the security in the recognizance „of appeal, the sum of eighteen dollars, being the amount of the Judgment „of the Justice, also the sum of ninety cents interest thereon, also his costs „and charges in this behalf expended and that execution issue therefor."

Judgment of Justice affirmed.

Afterwards, to wit: in vacation, the plaintiff comes and applies to the Law Commissioner for an appeal in this case to the supreme court & tenders his bond with security, which was approved by the Law Commissioner, and an appeal granted to the Supreme Court. said Bond is in the words & figures following to wit: —

application for appeal.

„ Know all men by these presents, that we Charles H. Rochol, as principal, and
„ Richard Arnold as security, are held and firmly bound unto James M. Clendenin
„ in the sum of one hundred dollars, for the payment of which well and truly to
„ be made, we bind ourselves, our heirs, executors and administrators, jointly
„ and severally, firmly by these presents, sealed with our seals and dated at St.
„ Louis, this 11th day of May, A. D. 1855. The conditions of the above obligation is
„ such, that whereas Charles H. Rochol, has appealed from the Judgment ren-
„ dered against him, and in favour of James M. Clendenin, in the Law Commis-
Appeal Bond. „ sioner's Court of St. Louis County, for the sum of eighteen dollars and ninety
„ cents together with costs.
„ Now if the said appellant will pay all costs and damages that may be a-
„ warded 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's
„ Court of St. Louis County to give, and if the judgment or any part thereof
„ be affirmed, that he will comply with 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.
„ C. H. Rochol. (Seal) R. Arnold (Seal)
„ Law Commissioner's Court of St. Louis County. In vacation,
„ May 11th 1855. This day appeared. Charles H. Rochol the principal
„ and Richard Arnold the security, in the foregoing bond and acknowledge
„ to have executed the same for the purposes therein expressed.
„ (Seal). In witness whereof, I hereto set my hand and affix the seal of ~~the~~
„ said court, at office, in St. Louis, the day and year last aforesaid,
„ John W. Cohrin,
„ Law Commissioner —

State of Missouri. }
County of St. Louis. } ss I. John W. Cohrin, the Law Commissioner of St. Louis
5. County, do hereby certify that the above and foregoing, is a true transcript

of the Record & proceedings, in a certain action, lately depending in the Law Commissioner's Court of St. Louis County, between James M. Clendenin plaintiff and Charles M. Rochol, defendant, as fully and wholly as the same remains of record in my office.

In witness whereof, I have hereto subscribed my name and affixed the seal of the Law Commissioner's Court at office in the City of St. Louis, this 13th day of July, eighteen hundred and fifty five.

John M. Colvin,
Law Commissioner.

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Oct. T. 1855

James M. Blendenin, resp't.

vs

Charles H. Rochol. apt.

Transcript.

Judgt. affirmed Oct. 23d 1855.

Transcript for Respondent.
Filed 19th October 1855.
Wm. S. Glanville
Clk.

Fee $2.25 paid by
Atty Hitchcock

James M. Clendenin, Respondent
vs.
Charles H. Kochol, Appellant

In the Supreme Court of Missouri
October Term 1855

Now comes the above named Respondent by his attorney of record and files in this court the transcript in the above entitled cause, and moves the court that the judgment recovered by said respondent in the Law Commissioner's Court of St. Louis County be affirmed

— Because the said appellant hath wholly failed to prosecute his said appeal

By Henry Hitchcock
Atty for Respondent

No

In the Supreme Court
Oct. Term 1855

Clendenin, Resp't
vs
Rochol, Appell't

Motion to affirm
judg't below

Hitchcock
Resp't's atty

Filed 19th October 1855
Wm. S. Glanville
Clk