The Canal Boat City of Joliet vs. Sala, Franz 1856 St. Louis 368/11

583/21

debt $225
jdmt r + r
Scatl
LC does not have jurisdiction to affirm
JOP for Sala
Bt appeal to LC - never prosecutes

State of Missouri } In Term held before the
County of St Louis } Law Commissioners Court of St Louis County.

Be it remembered, that on the Second day of October A. D. 1855, there was filed in the office of said Law Commissioners Court, a certain appeal from John C. Vogel Esquire, a Justice of the Peace, within and for the Township and County of Saint Louis, between Franz Lala Plaintiff and The Canal Boat City of Joliet, defendant.

(1) The following is a true transcript of the papers of said appeal as filed in said Court, to wit:

Complaint } "The State of Missouri } Before John
County of Saint Louis } C. Vogel, a Justice of the Peace of St Louis County:

Franz Lala Complains that he has a demand against the Canal Boat City of Joliet, a boat used in navigating the waters of this State, amounting to Two dollars and twenty five Cents, which demand accrued against said boat on account of the master thereof, for services on board said Boat as labor within the thirty days next preceeding the Commencement of this Suit, and is in all its particulars as follows, to wit:

Canal Bt City of Joliet

1855.		To Franz Lala	Dr
Apl 25.	3	hours labor on board said Boat @ 15 ct per hour	$ — 45
" 26	12	" " " 15¢ pr hour	— 80

And the said Franz Lala further states that he has now no other demand against the said Canal boat City of Joliet which is a lien thereon, H

Franz Lala being sworn on his oath says that the facts set forth in the above Complaint are true.

Franz Lala

Sworn to and subscribed before me this 27th day of April 1855, John Vogel Justice &c

Bond { "Know all men by these presents, That we Franz Lala as principal, and Henry Tanger as security acknowledge ourselves to be indebted unto the State of Missouri, in the sum of Ten dollars, for the payment whereof we bind ourselves, our heirs, executors and administrators firmly by these presents. Sealed with our seals and dated this twenty seventh day of April in the year eighteen hundred and fifty five, The Condition of this obligation is such, That whereas Franz Lala, as plaintiff is about to bring a suit by warrant, before John Vogel a Justice of the Peace, within and for the Township of Saint Louis against the Canal Boat City of Joliet, defendant returnable forthwith wherein the sum sworn to is Two 25/100 dollars. Now if the said plaintiff shall prosecute the said suit with effect, and shall pay all damages which may accrue to the said Canal Boat City of Joliet, or the owners or officers thereof, by reason of the said warrant, or any proces

as proceeding in said suit then this bond shall be void Otherwise it shall be in full force.

Franz Lala L S

H Langer L S

attest John C Vogel Justice of the Peace. "

Warrant { "The State of Illinois

To any Constable of Iroquois Township in Saint Louis County Greeting;

(3)

Whereas Franz Lala has this day made to the undersigned, a Justice of the Peace within and for said County his Complaint according to the provisions of an act entitled, "An act Concerning boats and vessels," Approved March 2Ech 1845, setting forth that he has a demand against the said Canal Boat City of Joliet amounting to Two dollars and 25 Cents. which demand accrued against the said boat on account of the master thereof for services as labarer onboard said boat, and is said Complaint hereunto annexed, is set forth in all its particulars, There are therefore to direct and authorize you forthwith to seize the said Canal boat City of Joliet and detain her in your Custody, with her tackle, Apparel and furniture, or so much thereof as shall be sufficient to satisfy said debt and Costs, until discharged from your Custody by due Course of law. You are further directed to make return of this warrant forthwith

Given under my hand this 27th day of April 1855 John C. Vogel Justice, "

Return { "Executed the within writ by going onboard

4 of the Canal boat City of Joliet, and seizing, attaching and taking into my custody said boat, with her tackle & apparel and by acquainting V. Crandall master of said boat with the contents of this writ. Done in Saint Louis Township April 27, 1855.

Charles W Woodworth Constable
By Henry H King deputy, "

Justices docket Entries } "Suit for $2.25 Pond & affidavit filed and warrant issued to Court Woodworth 27th April 1855. returned same day executed parties. appear, and cause continued to the 28th inst on part of deft. and further continued to 30th April 1855, at which time the parties again appear, defendant calls for a jury, summ issued jury sum'd & sworn who after hearing the evidence retire and return with the following verdict, "We the jury find for the plaintiff in the sum of Two 25/100 dollars, and costs of suit. J. C. Mensfeld. Foreman," Whereupon it is adjudged by the Justice that the plaintiff recover of the defendant Two 25/100 dollars for his debt and also for costs of suit, and that the same belongs to the first class of liens against Boats and vessels, according to the statute Same day Volney Crandall for defndt. files his bond and affidavit for an appeal Whereupon the same is allowed to the Law Commissioners Court of St Louis, "

Affidavit } "Franz Lala Plaintiff } Before Justice
Canal Bt City of Joliet Defendant John C. Vogel

(5) This day, personally appeared before John Vogel, a Justice of the Peace, in and for the County of Saint Louis in the State of Missouri Valney Crandall, who being duly sworn upon his oath says, that the application for an appeal in the above entitled case, is not made for vexation or delay, but because he believes the appellant is injured by the Judgment of the Justice, V. Crandall

Sworn to and subscribed before me this 30th day of April 1855

John C. Vogel Justice. "

Recognizance "We, the undersigned Valney Crandell, and Augustus D Pomeroy, acknowledge ourselves indebted to Franz Lala, in the sum of Twenty dollars, to be void upon this Condition; Whereas Valney Crandall, has appealed from the Judgment of John C. Vogel, a Justice of the Peace, in a Certain action between Franz Lala, plaintiff & Canal Boat City of Joliet, defendant, Now if upon such appeal, the Judgment ~~be affirmed~~ of the Justice be affirmed and on the trial anew, in the Law Commissioners Court of St Louis County, 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 appeal, the recognizance shall be void,

V. Crandall L S

A D Pomeroy L S.

Attest this 30th day of April 1855.

John Vogel

Justice. "

1 "State of Missouri County of St Louis

Certificate { I John C. Vogel a Justice of the Peace within and for the County aforesaid do hereby Certify the foregoing writing to be a full and true transcript from my docket of the entries therein made in a certain case wherein Franz Lala is plaintiff and Canal Boat City of Joliet is defendant, and that the papers hereto attached are all the Original papers filed in said suit.

Given under my hand this 2nd October 1855. John C. Vogel.

Justice of the Peace."

And afterwards at the October Term 1855 and on the respective days hereinafter named the following further proceedings were had in this Cause in the Law Commissioners Court.

Tuesday October 2nd 1855.

Judgment { "Appeal from Justice Vogel

Now at this day Comes the said plaintiff the appelle herein by his attorney and presents to the Court the said appeal, and moves the Court to Cause the same to be filed, and to affirm the Judgment of the Justice therein because the said defendant appellant has failed to prosecute the said appeal according to law. Whereupon it appearing to the Court that the said defendant appellant has failed and still neglects to prosecute the said appeal according to law. It is ordered by the

7 Court that the said appeal be filed and that the Judgment therein as rendered by the Justice be affirmed and that the said plaintiff recover against the said defendant and Volney Randall and Augustus D Pomeroy, the principal and security in the recognizance of appeal the sum of Two dollars and twenty five Cents being the amount of the Judgment of the Justice, also his Costs and charges in this behalf expended and that execution issue therefor.

"Thursday October 25th 1855.

Motion to set aside affirm filed

"Now at this day Comes defendant by attorney and moves the court to set aside the Judgment of affirmance herein rendered and files reasons therefor, as also the affidavit of Augustus D Pomeroy in support thereof."

Said motion and affidavit are in the words and figures following, to wit:

Motion

"And now Comes the said defendant in each and all of the above mentioned cases being numbered from 70 to 97 inclusive as returns to the October Term, 1855 of this Court by A. D. Pomeroy, her agent in this behalf and moves the Court to set aside the Judgment of affirmance heretofore rendered in each of the above mentioned causes, on to wit, the 2nd day of October 1855, and to set each and all of said cases for trial on the docket of this Court according to law, for the following reasons to wit;

1st Because the Judgment of affirmance in

8 each and all of said cases was illegal and irregular, 2nd Because this court had no power to affirm the Judgment ~~of the Justice~~ in any of said causes, 3, Because said cases and each of them, should have been docketed for trial, on the payment of the Jury fee by Charles W Woodworth, 4, Because there was no legal or valid Judgment in any one of said Cases, rendered by the Justice, below, which this Court could affirm, 5, Because no legal Cause of action is set forth in any one of said cases. 6, Because said defendant has a good, legal and meritorious defence to each and all of said cases. 7, Because of the affidavit of A. D Pomeroy hereto annexed, and made part of this motion in said affidavit stated.

A. D. Pomeroy agent by A L Gray for deft in each of said Cases. "

Affidavit "State of Missouri }
County of St Louis } ss

Augustus D Pomeroy being sworn on oath says that the owners Captain and officers of the Canal Boat City of Joliet, the defendant in the above mentioned causes. are non residents of the State of Missouri, and were such non residents at the time that said Suits were brought and have been since, and affiant is now and has been since said Suits were brought the agent of said Boat in the defence of each and all of said Suits Above mentioned against said boat The Captain of said boat at the

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time said suits were brought employed an attorney, as affiant believes, regularly licensed & recognized by Courts of this County, as authorized and competent to practice in the Courts of this State, and directed said Attorney to prosecute said Cases on appeal, according to the laws of this State, with due diligence and effect; and said Captain of said boat also arranged with affiant, as the agent of said boat to furnish to said attorney, all the funds necessary to pay for the transcripts in each and all of said cases and also to pay the fee of one dollars on each and all of said cases for the filing of the same, in the Law Commissioners Court; the said Captain having thus employed an attorney & made with affiant the above arrangements ~~with affiant~~ for the furnishing of the necessary funds for the due prosecution of said appeals in each and all of said cases then left with said boat for Illinois, the place of his residence; Afterward, the attorney so employed, called on affiant for 125/100 Dollars for paying for the transcript, and one dollar, to be paid the Law Commissioners Court for filing the appeal in all & each the above mentioned suits, amounting in all to Twenty three dollars, which sum for each of said cases affiant paid to said Attorney, for the purposes aforesaid, at the time the same was called for, to wit, the fourth day of June 1855, and at said time affiant had the assurance of said Attorney, that the sums should be so applied

in due time and supposed that the appeals in each and all of said cases would be properly attended to by said attorney as it was his business and the purpose for which he was employed and paid to attend to those matters. The Captain of said Boat having thus employed as he & affiant supposed a competent attorney as aforesaid, and affiant having furnished, when called for, to said attorney, the funds necessary to prosecute said appeals, relied upon the fidelity of said attorney, to prosecute & carry on the appeal, in each and all of said cases, and affiant was therefor greatly surprised to learn on or about the first day of October 1855, that the said attorney employed as above stated had absconded with said moneys, and that he ~~[illegible]~~ had wholly failed to pay for the transcripts in said cases or ~~failed to pay for~~ the fee for filing the appeals in this Court, and had altogether neglected the said cases, and that the judgment had been affirmed in each and all of said cases, affiant further says that he believes the said defendant in each and all of said cases has a good, legal and meritorious defence to the demand in each of said cases and is so advised by Counsel and that the same could and would be established if a hearing could be obtained therein, affiant also says that the owners and officers of said boat being Nonresidents were compelled

to rely on others to attend to and watch the interest of defendant in each and all of
11 said cases and that they had taken all reasonable precautions and measures to insure a vigorous prosecution of said appeals that a careful diligence could require and they submit, that neither law nor justice should exact of them severe penalties for the faithlessness and misconduct of an attorney, one of the sworn officers of the law, and of the Court, affiant therefore asks the Court to set aside the judgment of affirmance in each and all of the above cases and defendant will proceed to trial. at any time the Court may appoint asking only sufficient time to procure the witnesses

Augustus D Pomeroy

Sworn to and subscribed before me this 25th day of October AD 1855.

Charles H Tillson
L.S. Notary Public Stoniscounty Mo.

Tuesday October 30th 1855.

Mo Ord { "The Court having duly heard the motion of the said defendant to set aside the judgment of affirmance herein and being thereof fully advised doth overrule the said motion,

Bill Ex filed { "Bill of exceptions filed by the defendants attorney, "

which is in the words and figures following to wit,

Bill of Ex { "Be it remembered that on the 25th day of

12 October 1855. Came the defendant in each and all of the above entitled cases and filed the following motion to set aside the Judgment of affirmance and reasons and also the affidavit of Augustus D Pomeroy attached to said motion in each and all of said cases (See pages 7, 8, 9, 10 & 11) which motion the Court afterwards overruled, in each and all of the above entitled cases to which action in overruling said motion in each and all of said cases the defendant then and there at the time excepted in each and all of said cases and because said matters do not appear of record in said cases, the said defendant presents this bill of exceptions, in each and all of said cases and prays the Court to sign & seal the same in each and all of said cases which is accordingly done this 30th day of October 1855.

John W Colvin Sen Com Seal

Tuesday November 13th 1855

Application for appeal In Vacation

H. L. Gray Esquire attorney for the defendant in the above styled suits comes and applies for an appeal in each of the above entitled causes from the Judgment herein to the Supreme Court.

H L Gray

Attorney for defts.

Upon the foregoing application an appeal is granted the defendant in each of the above styled causes. Bond filed and approved

Nov 13th 1855

John W Colvin
Law Comr

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Bond { "Know all men by these presents, that we, Augustus D Pomeroy, as principal and Rollin Clark as Surety are held and firmly bound unto Franz Lala 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 Stonis this 13th day of Nov A D 1855,

The Condition of the above obligation is such, that whereas Augustus D Pomeroy, has appealed from the Judgment rendered against The Canal Boat City of Joliet and in favor of Franze Lala in the Law Commissioners Court of Stonis County for the sum of Two dollars and twenty five Cents together with Costs, Now if the said Appellant 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 Commissioners Court of Stonis 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

(14) to remain in full force and effect,

A. D. Pomeroy Seal

Rollin Clark Seal

Law Commissioners Court of Phoenix County,

Vacation Nov 13th 1855.

This day appeared Augustus D Pomeroy the principal and Rollin Clark the security in the foregoing bond and acknowledge to have executed the same for the purposes therein expressed. In witness whereof I hereto set my hand and affix the seal of said Court at office in Phoenix, the day and year last aforesaid

Jno W Goldin

Law Commissioner

State of Illinois }
County of St. Louis }

I, John W. Colom
The Law Commissioner of Saint Louis County
Certify that the above and foregoing is a
full and true transcript of the record
and proceedings in the case of Franz Lata
plaintiff and The Canal Board City of
Joliet defendant, actually as the same
remain in my office

In testimony whereof
I hereto set my hand and
affix the seal of said Court
at office in Saint Louis this
fifth day of March 1856

John W. Colom,
The Law Commissioner of
Saint Louis County,
Illinois

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94 ~~176~~

(21)

Oct. Term. 1856

Franz Lala respondt

vs Transcript

The Canal Boat

City of Joliet appet.

Appeal from Law

Commissioners Court

A W Lewis

W. L. Gray

Filed March 7, 1856

Wm. S. Glanville

Ck

Fee $4.00 paid by

W L Gray Esq

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Franz Sala Respondent
vs
Canal Boat City of Joliet
appellant

In Supreme Court
of Illinois
March Term 1856

Now comes said appellant and says there is manifest error in the said Record & proceedings in this, there was error, in the law Commissioner's Court's action, in affirming the judgment of the Justices Court, on the filing of the appeal in said Law Commissioner's Court,

And in this that said Court erred, in overruling appellant's motion to set aside said judgment of affirmance,

~~And for the above & other manifest~~

And ~~for this~~ for the above & other manifest errors apparent in said record & procedings appellant prays that said judgment may be reversed & for nought held & that she may restored to all things she has lost by said judgment &c

M. L. Gray for
Appellant

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Franz Sala Rep't

vs

Canal Boat City of Joliet

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assignment of Errors
by Appelt

M. L. Gray
for Appelt

Filed 27 March 1856
W S Glannin
Cl

P. Grassmuck
vs
J. Atwell & I. Prencer

Appeal from the Law Commissioners Court.

It is an error to suppose, that the proceedings on an appeal from a justices Court to the Court of the Law commissioner are the same, as on an Appeal from ~~a ju~~ one of the Superior Courts to the Supreme Court. When an appeal is granted to the Supreme Court, it is the duty of the appellant to obtain a transcript of the proceedings & file it, within the time prescribed by law, otherwise the appellee may take a copy of the record, present it to the Supreme Court & have the judgment affirmed. All this is by statute law. Nothing like these are the proceedings on an appeal from a justices court to the Law Commissioner: The appellant has nothing to do with the transcript in such cases. It is made the duty of the justice within six days after the appeal is perfected to deliver the transcript & other papers to the Commissioner, who is required to set the appeal for trial on a certain day which shall not be less than fifteen, nor more than thirty days from the day of delivering the transcript. Now it appears from the record that this was never done, but the appellee presented to the court the appeal & prayed that it might be filed & the judgment affirmed, because the appellants had failed to prosecute their appeal according to law. This motion was sustained. Now where is there any authority for this? After an appeal is set for trial on the docket and it is regularly called, if the appellant fails to prosecute it, then the judgment may be affirmed. Where did the appellee get any authority to take a transcript & move to have it filed and the

judgment affirmed?

We adhere to the ~~ca~~ cases of Hunt vs Hernandez 16 Mo 170. & Boyle vs Skinner 17 Mo 246 ~~which hold~~ which hold that the law commissioner cannot file the papers in a case appealed from a justice & affirm the judgment for the non payment of his fee.

Judgment rev^d & remanded the other judges concur

Wm Scott

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Grass much vs Atwell & Poincer

Opinion

Filed 7 June 1856
Wm S. Glanville clk

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Franz Sala appellee
vs
Canal Boat City of Joliet appellant

In Supreme Court
October Term 1856

Suit commenced before a justice of the Peace for $2.25 for the complaint stating that complainant has a demand against the Canal Boat City of Joliet - a boat used in navigating the waters of this State for $2.25/100 which demand accrued against said Boat on account of the master or agent thereof for services as labor on board said Boat within 30 days next preceding the commencement of this suit & is in all its particulars as follows to wit

Canal Boat City of Joliet
To Franz Sala

			Dr
1855 April	To 3 hours labor on said Boat	a 15¢	.45
"	To 12 " " " "		1 80
			$2,25

There was judgment for Plaintiff & Defendant appealed to the Law Commissioner's Court according to law. & the appellant failing to pay the one Dollar to the Law Commissioner, the Constable Woodworth paid for Plaintiff appellee the Commissioner's fee of one Dollar & on motion of Plaintiff's attorney the judgment of the justice was affirmed. on account of the non-payment of said Dollar by Appellant.

The appellant afterwards moved to set aside said judgment of affirmance, for the following reasons to wit

1st Because said judgment of affirmance was illegal & irregular

2. Because the Law Commissioner had no power to affirm.
3 Because said cause should have been set for trial on the payment of the Commissioner's fee by Chas W. Woodworth.
4 Because there was no valid judgment before the justice that the Court could affirm.
5 Because no legal cause of action is set out.
6 Because deft has a good & meritorious defence.
7 Because of matters set out in A D Pomeroy's affidavit.

The Transcript was made out by the justice on 2nd day of October 1855 & it was filed in the Law Commissioner's Court & judgment affirmed the same day and 2nd Oct 1855

The affidavit of A. D. Pomeroy security on the appeal bond stated that the owner & officers of said Boat were non-residents of the State of Missouri & resided in the State of Illinois - that at the time the said appeal was taken said officers had employed an attorney to prosecute the appeal in this, & some 28 or 29 other cases of precisely the same character, & had arranged with said Pomeroy to pay to said attorney, when necessary any costs ~~necessary~~ that were required to prosecute the said appeals, that on the demand of said attorney said Pomeroy had paid 63 Dollars to pay for the Transcripts & filing fees in this & said other cases but that said attorney had failed to pay the same & has absconded with the money. Which neither said Pomeroy, nor the owner or officers of said Boat knew till after this & said other cases had been affirmed by the Law Commissioner as above stated.

The Law Commissioner overruled said motion & set aside the judgment of affirmance & Defendant excepted & has brought the case here by appeal

M. L. Gray
for appellant

No 94.

Supreme Court
October Term 1856

Franz Sala
Appellee

vs

Canal Boat City of
Joliet appellant

Statement of case
by appellant

Filed 8 November 1856
Wm L. Gleaning
Cl.

Franz Sala appellee
vs
Canal Boat City of Joliet
appellant

In Supreme Court
October Term 1856

Appellant's Brief

I The Law Commissioner had no power, right or authority to affirm the justices judgment, for the non-payment of his fee of one Dollar by appellant.
On the payment of the fee by appellee, the cause should have been docketed for trial.

This has been three times decided by this Court & must be considered as too well settled, to admit now of doubt
Hunt vs Hernandez 16 Mo R page 170
Boyle vs Skinner 17 Mo R p 246
Grossmuck vs & Poinier, decided at the March Term 1856 & not yet published.

These cases are decisive of this & render a reversal necessary.

II II No cause of action was shown by the complaint, against the Defendant, under the Boat & vessel act, because
1st It is not averred that the ~~having~~ contract of hiring was made, or the services were rendered in this State. This must appear affirmatively to show a lien.
10 Mo R 383. 12 Mo R 261. 412. 19 Mo R 577

It must appear from the Complaint that the demand is a lien 19 Mo R p 476.

The Complaint should have averred that the contract was made or the services were rendered in this State.

2. It is not alleged on whose account in behalf of the Boat the services were rendered.

The Complaint should have named the master or agent, who employed Plaintiff

In 4th Section of the Boat & vessel act of 1845.

M. L. Gray for appellant.

No 94
Sup Court
Oct Term 1856

Frans Sala
appellee
vs
Canal Boat City of Joliet.
appellant

Appellant's Brief

M. L. Gray

Filed 8 November 1856
Wm H Hammond
Clk

Frans Lala Respdt.
vs.
Canal Boat City of Joliet Applts

} Appeal from the Law Commissioner's Court.

This case is in all respects like that of Grapsmeck vs Atwell 23 Ill Rep. 63. The judgment will be reversed & the cause remanded: The other Judges concur

Wm Scott

Frans Lala
vs
Canal Boat City of
Joliet

Opinion

Francis Lala
v.
Canal Boat City
of Joliet.

Opinion

Filed 23d Decr. 1856.
W S Glanville
Ct.

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