Canal boat City of Joliet vs Haut, Ludwig 1856 St. Louis Co. 568/12

583/22

Boat owndt for $.75 for wages & labor

Scott

Z & R

Gradomuck vs Atwell

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

Be it remembered, that on the second day of October, 1855, was filed in the office of the Law Commissioner, a certain appeal from John C. Vogel, Esqr. one of the Justices of the peace within and for the township and county of St. Louis, wherein Ludwig Haist is plaintiff and the "Canal Boat City of Joliet" is defendant. The following is a true transcript of the record of the said Justice, and the papers pertaining to said appeal as filed by the said Justice, to wit;

" The State of Missouri, }
" County of St. Louis. } ss. Before John C. Vogel, Justice of the peace for St. Louis County.
" Ludwig Haist 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
Complaint " Seventy five cents, which demand accrued against the said boat on account of
" the master and agent thereof, for services as Laborer on board said boat, within
" the thirty days next preceding the commencement of this suit; and is in all
" its particulars as follows, to wit; -
" Canal Boat City of Joliet,
" To Ludwig Haist Dr.
" 1855. April 26. To 5 hours Labor on board said boat @ 15c - " .75
" And the said Ludwig Haist, further states that he has now no other demand
" against the said Canal boat which is a lien thereon.
" Ludwig Haist being sworn, on his oath says that the facts set forth in the
" above complaint are true. Ludwig Haist
" Sworn to and subscribed before me this 27th day of April, 1855.
" John C. Vogel, Justice."

" The State of Missouri,
" To any Constable of St. Louis Township, in Saint Louis
" County, Greeting; Whereas, Ludwig Haist has this day made to the undersigned,
Warrant. " a Justice of the peace within and for said County his complaint according to
" the provisions of an act entitled "An Act concerning Boats & Vessels" approved
1 " March 26th 1845, setting forth that he has a demand against the Canal boat

2.

"City of Joliet, amounting to Seventy five cents, which demand accrued against the
"said boat on account of the agent and the master thereof for services as laborer
"on board said boat, and in said complaint hereunto annexed, is set forth in all
Warrant "its particulars. These 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."

"Executed the within writ by going on board of the Canal boat City of Joliet and
"seizing attaching and taking into my possession said boat, tackle & apparel, and by acquainting
Bonst. Return. "N. Crandell master of said boat with the contents of this writ. Done in St. Louis
"township, April 27th 1855. Charles N. Woodworth, Bonst. By Henry H. King
"Deputy"

"Know all men by these presents, that we, Ludwig Haist as principal, and Henry
"Zanger, 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
Bond. "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, Ludwig Haist as plaintiff
"is about to bring a suit by warrant ~~against~~, before John C. Vogel a Justice of the peace
"within and for the township of St. Louis, against the Canal boat City of Joliet, defend-
"-ant, returnable forthwith, wherein the sum sworn to is seventy five cents.
"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 own-
"-ers or officers thereof, by reason of the said warrant, or any process or proceeding
"in said suit, then this bond shall be void - otherwise it shall be in full force.
"Attest. Ludwig Haist (Seal) H. Zanger (Seal)
"John C. Vogel, Justice of the peace"

"Ludwig Haist

" Canal Boat City of Joliet.) Suit on account for 75¢ Bond & affidvt. filed
" and warrant issued, to Const. Woodsmith 27th April 1855, returned same day
Justice's docket entries. " executed, the parties appear and case continued to 28th April 1855. for defendant
" and again continued to 30th April 1855 for defendant, at which time the par-
" ties again appear and the matter being heard it is adjudged by the Justice that
" the plaintiff recover of the defendant seventy five cents for his debt and also for
" costs of suit, and that the same belongs to the first class of liens against boats &
" vessels according to the Statute, Same day Volney Brandell for defendant, files
" his bond and affidavit for an appeal, whereupon, the same is allowed to the Law
" Commissioner's Court of St. Louis County."

" Ludwig Waist, Plaintiff. }
" Canal Boat City of Joliet, Defendant. } Before Justice John C. Vogel,

" This day personally appeared before John C. Vogel a Justice of the peace, in & for the
affidavit of Appeal. " County of St. Louis in the State of Missouri, Volney Brandall, 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. Brandall."
" Sworn to and subscribed, before me this 30th day of April 1855.
John C. Vogel Justice."

" We the undersigned Volney Brandall and Augustus D. Pomeroy, acknowledge our-
" selves indebted to Ludwig Waist, in the sum of twenty dollars, to be void upon
" this condition: Whereas, Volney Brandall has appealed from the Judgment of John
Recognizance of Appeal. " C. Vogel a Justice of the Peace in a certain action between Ludwig Waist plaintiff
" and Canal boat City of Joliet 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 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. Brandall (L.S.) A. D. Pomeroy, (L.S.)
" Attest this 30th day of April, 1855. John C. Vogel, Justice."

3. " State of Missouri, County of St. Louis. ss.

4. " 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
Justice's " the entries therein made in a certain case wherein Ludwig Waist is pltff. &
Certificate " Canal Boat City of Joliet, Defd. 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."

Afterwards, at the October term, 1855, of said Court, and on the second day of October 1855, the following proceedings were had in said cause, before the Law Commissioner's Court, to wit:—

" Ludwig Waist, } Appeal from Justice Vogel,
" Canal Boat City of Joliet, } Now at this day comes the said plaintiff appellee
" herein, by his attorney and presents to the Court here the said appeal and moves
Judgment of " the court to cause the same to be filed and to affirm the Judgment of the Justice
Justice affirmed. " therein, because the said defendant appellant has failed to prosecute his said
" appeal according to law. Whereupon, it appearing to the Court that the said de-
" fendant, appellant has failed and still neglects to prosecute his appeal according
" to law. It is ordered by the 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 Crandall and
" Augustus D. Pomeroy, the principal and security in the recognizance of appeal
" the sum of seventy 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."

And on the 25th October 1855, the following further proceedings were had in this cause, to wit:

moves to set aside affirmance " 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."

" The Court having duly heard the motion of said defendant to set aside the judg-
mo. to set aside " ment of Affirmance herein and being thereof fully advised, doth order that
Overruled, " the said motion be overruled,

" Bill of exceptions filed by defendants. attorney."

Said Bill of Exceptions is in the words and figures following to wit;

" Be it remembered, that on the 25th " day of October 1855, came the defendant in
Bill Exceptions " each and all of the above entitled cases and filed the following motions to set aside
" the Judgment of affirmance and reasons & also the affidavit of Augustus D. Pomeroy
" attached to said motion in each and all of said cases. Said motion is in the
" words and figures following, to wit;

" 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
motion to set " cases on to wit: the 2nd " day of October 1855, and to set each and all of said cases
aside affirmance " for trial on the docket of this Court according to law, for the following reasons, to wit;

" 1st Because the Judgment of affirmance in each and all of said cases was illegal
" and irregular.

" 2. Because this Court had now power to affirm the judgment in any one of
" said cases,

" 3. Because said cases and each of them should have been docketed for trial
" on the payment of the Jury fee by Charles M. 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 & meritorious defence to each
" and all of said cases

" 7. Because of the affidavit of A. D. Pomeroy hereto annexed & made part of
" this motion in each and all of said cases & the matters in said affidavit stated;

" A. D. Pomeroy, agent. By M. L. Gray for defr. in each & all of said cases."

" Said affidavit of ed. D. Pomeroy is in the words & figures, following to wit;

affy Pomeroy " State of Missouri, }
" County of St. Louis, } ss. Augustus D. Pomeroy being duly sworn on oath says that the
" owners, Captain and officers of the Canal boat City of Joliet, the defendant in the

" above mentioned cases are now residents of the State of Missouri, and were such
" non residents at the time that said suits were brought & have been since, &
" 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 time said suits were brought employed an attorney
" as affiant believes regularly licensed and recognized by the 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 dollar
" on each and all of said cases for the filing of the same in the Law Commissioner's
" Court; the said Captain having thus employed an attorney and made with
Pomeroy's affidavit " affiant the above arrangement for the furnishing of the necessary funds for the
" due prosecution of the said appeals in each and all of said cases, then left with
" said boat for Illinois, the place of his residence. Afterwards, the attorney so employed
" called on affiant for $1\frac{25}{100}$ dollars for paying for the transcripts and one dollar
" to be paid to the Law Commissioner's Court for filing the appeal in each & all of
" the above ~~cases~~ mentioned ~~cases~~, amounting in all to Sixty three dollars, which
" sums 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 & 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 and carry on the appeal in each & all of
" said cases; and affiant was therefore greatly surprised to learn on or about the
" first day of October 1855, that the said attorney employed as above stated had ab-
" -sconded with said moneys & that he had wholly failed to pay for the transcripts
" in said cases or the fee for filing the appeals in this court & had altogether

" neglected the said cases and that the Judgments had been affirmed in each &
" all of said cases. Affiant further says that he beleives the said defendant
" in each & all of said cases has a good, legal & meritorious defence to the de-
" -mand in each of said cases & is so advised by Counsel & 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 non-residents were
Pomeroy's " compelled to rely on others to attend to & watch the interests of defendant in
affidavit " each & all of said cases & that they had taken all reasonable precautions and
" measures to inaure 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 & misconduct of an attorney one of
" the sworn officers of the law & of this Court; Affiant therefore asks the Court to set
" aside the Judgments of affirmance in each and all of the above cases & de-
" -fendant will proceed to trial at any time the Court may appoint, asking
" only sufficient time to procure the witnesses. Augustus L. Pomeroy,
" Sworn to & subscribed before me this 25th day of October A. D. 1855,
(Ls.) Charles K. Tillow, Notary Public, St Louis
County Missouri,
" Which motion the court afterwards overruled in each and all of the above en-
Bill Excepts " -titled cases, to which action in overruling said motions, in each and all of said
" cases, the defendant then & there at the time excepted in each & all of said cases
" and became 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 & prays the court to
" sign & seal the same in each & all of said cases which is accordingly this 30th
" October, 1855. John M. Wolvin (Seal). "

" M. L. Gray, Esqire attorney for the defendant in the above styled suits, comes
appeal granted " and applies for an appeal in each of the above entitled cases from the judgment
in vacation. " herein rendered to the Supreme Court. M. L. Gray, Attorney for defendant.
" Upon the foregoing application an appeal is granted the defendant in each
" of the above styled causes. Bond filed & approved (in vacation) 13 November 1855.
John M. Wolvin, Law Court "

7. The said Bond is in the words & figures following to wit: —

6.

" Know all men by these presents, that we, Augustus D. Pomeroy as principal
" and Rollin Clark as surety are held and firmly bound unto Ludwig Haist 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
" 13th day of November 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
" in favour of Ludwig Haist in the Law Commissioner's Court of St. Louis County
appeal bond. " for the sum of Seventy 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 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 & effect.

" A. D. Pomeroy (Seal) Rollin Clark (Seal)

" Law Commissioner's Court of St. Louis County.
" In Vacation, Nov. 13th 1855.

" This day appeared Augustus D. Pomeroy, the principal and Rollin Clark
" the security in the foregoing bond, and acknowledged to have executed the same
" for the purposes therein expressed.

" (L.S.) In witness whereof, I hereto set my hand and affix the seal
" of said Court at office in St. Louis, the day & year last aforesaid.

" John M. Robins, Law Commissioner."

State of Missouri, }
County of St. Louis. } I, John M. Colvin, the Law Commissioner of St. Louis County, do hereby certify, that the above and foregoing is a true transcript of the record and proceedings in a certain cause lately depending in the Law Commissioner's Court of St. Louis County between Ludwig Waist plaintiff and the Canal Boat City of Joliet, defendant, as fully and wholly as the same remain of record in my office.

In witness whereof, I have hereto set my hand and affixed the seal of said Court, at office in the City of St. Louis, this 5th day of March, A.D. 1845.

John M. Colvin,
Law Commissioner.

Index.

Proceedings before the Justice.	Complaint	1.
	Warrant.	1. 2
	Const. return & plaintiff's bond.	2
	Justice's docket Entries,	3,
	affidavit & recognizance of appeal.	3
	Justice's certificate	4.
" In Law Comrs Court.	Judgment of Justice affirmed	4
	Moves to set aside affirmance.	4.
	motion overruled.	5.
Bill Exceptions		5. 6, 7.
	Motion to set aside affirmance	5,
	affidavit of Pomeroy,	5. 6. 7.
	Appeal granted in vacation	7.
	Appeal bond.	8.

95

22

Oct. Term. 1856

Ludwig Haist Res

vs

Canal Boat City of Joliet applt

Appeal.

Lewis Deft
Gray Deft

Filed March 7, 1856
Wm S Glanville clk.

Fee $ 4.00 paid by
M. L. Gray Esq

95

Ludwig Haist Respondent
vs
Canal Boat City of Joliet
Appt

In Supreme Court
of Illinois
March Term 1856

Now comes appellant & for error in said Record & proceedings, alleges that said Law Commissioners Court erred in affirming the justices judgment on filing the said case on Appeal
& said Law Commissioner's Court also erred in over-ruling Appellant's Motion to set aside said judgment of Affirmance.
& for said & other manifest errors apparent in said record, 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

177

Ludwig & Carl Resp

vs

Canal Boat City of Joliet

Appellt

Assignment of errors by

Appellt

M. L. Gray

for Appellt

Filed 27 March 1856

W. S. Glanville

Clk.

P. Grassmuck
vs
J. Atwell & J. 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 ~~d~~ 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

128

Grass much vs Atwell & Poincer

Opinion

Filed 7 June 1856
Wm S. Glanville
Clk

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Luding Haist Respdt
vs
Canal Boat City of
Joliet Applt

Appeal from the Law Commissioners Court

This case is in all respects like that of Grasmuck vs Atwell 23 Md Rep. 63. The judgment will be reversed & the cause remanded

The other judges concur

Wm Scott

6.20
30
4.00

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Ludwig Haist
vs
Canal Boat Cty of
Joliet

Opinion

Filed 25 Dec. 1856.
W. S. Glanville
Ch.

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