State of MO ex rel John A. Reeves v. Breckenridge, Samuel M. Judge of St. Louis Circuit Court 1862 St. Louis 454/4

Old Box 613/10

debt by attach. for 123.07 for coal

garnishee - Academy of Visitation of St. Louis

court won't render judg. b/c case is going to SC on appeal

make judge render judg. in garnishment proceedings

Refused
F 62
M 62

mandamus

To the Supreme Court of the State of Missouri —

The Petition of John A. Reeves states, and shows, that, on the 24th day of September A.D. 1861 he commenced an action in the St. Louis Circuit Court against one Jacques Chapsiot, by attachment, for the recovery of the sum of one hundred & seventy three 07/100 dollars, for coal sold and delivered by him to said Chapsiot, to be paid for upon delivery; that on the 26th day of August A.D. 1861, the Sheriff of St. Louis County, under and by virtue of such Attachment Summoned "The Academy of Visitation of St. Louis", as Garnishee in said action, by Summoning said corporation to appear at the return term of said writ of Attachment, and answer such interrogatories as might be exhibited by the Plaintiff, touching the indebtedness of said Corporation to the said Defendant, and attached in the hands of such corporation any goods, chattels, moneys, or evidences of debt which it might have in its hands belonging to the defendant, and also attached in its hands, all debts due from it to said Defendant, or so much as would be sufficient to satisfy the debt, interest and costs in such action; that such writ of Attachment was duly served upon the said Chapsiot, on or about the 14th day of September 1861, all of which appears by the return of the Sheriff, endorsed upon said writ;

that such Writ of Attachment was returnable on the last Monday of September 1861; that such proceedings were afterwards had in such action that within the proper period of time the said Plaintiff filed in said cause the usual and ordinary interrogatories, to be answered by said Garnishee, "The Academy of Visitation of St Louis", but said corporation never appeared, or filed any answer thereto; that afterwards, and on or about the 28th day of March A.D. 1862 the said Plaintiff, (this Petitioner) recovered a final Judgment in his favor against the said Defendant Jacques Chapich, in said action, in said Circuit Court for the said sum of One hundred & Seventy three 07/100 Dollars, upon a trial upon the merits, and did also, on or about the same day, and prior to the 3rd day of April A.D. 1862 prove upon a call for Judgment in his favor against said Garnishee, "The Academy of Visitation of St Louis", by showing that such corporation was indebted to the said Chapich, at the time of such service of Garnishment as aforesaid, as also afterwards, in a sum of money much more than sufficient to satisfy the amount of the Plaintiffs Judgment, interest & costs, and had, since the Garnishment, paid a large amount of money to said Defendant Chapich, and that such indebtedness was due directly from said Corporation to said Chapich,

and asked the Court to render Judgment in his favor against said Garnishee, for the amount of his said Judgment, which the Court then declined to do, upon the sole ground, that the Defendant in said Attachment suit intended and expected to take an Appeal from the said Judgment so recovered against him to the Supreme Court, the Court stating, that if said Defendant should take such appeal, Judgment would not be given against said Garnishee, but if such appeal should not be taken, that such Judgment would be rendered against said Garnishee, it being conceded, that the evidence was sufficient to authorize and require the rendition of such judgment in case there should be no appeal taken to this Court; that afterwards, and on the 5th day of April A.D. 1862, the said Defendant Jacques Chauvin perfected his appeal to this Court, by the giving of a Bond in a sufficient amount, which was approved by said Circuit Court, and thereupon & after the granting of such appeal, your Petitioner again requested said Circuit Court to render judgment in his favor against said Garnishee "he standing of visitation of St Louis", which the Court refused to render or grant, and refused to act in the premises, upon the alleged ground that the taking of such appeal, suspended his

authority to render such judgment, I placed the refusal to act, upon such ground alone, & upon none other whatever; that said Plaintiff upon the suing out of such attachment, gave a Bond as required by Statute, which was duly approved; that the Circuit Court of St Louis County refuses to take any action in the premises, and will continue to so refuse, until the determination of such appeal in the Supreme Court, unless such Court shall be directed and commanded by a Writ issuing out of this Court, to proceed & render judgment or take action in the premises.

Wherefore your Petitioner prays this Honorable Court to issue to the Circuit Court of St Louis County, a Writ, out of and under the Seal of this Court, Commanding and directing said Circuit Court to proceed and render judgment in said Garnishment proceedings in said action, and for such other and further rule, order, judgment and relief as to the Court shall seem proper in the premises.

And as in duty bound he will ever pray &c.

C. D. Coleman

Atty for Petitioner

State of Missouri }
County of St Louis } ss:

Charles D. Coleman, being duly sworn, deposes and says, that he is the Attorney of John A. Reeves, the Petitioner in the foregoing Petition, and that the foregoing Petition and the Matters therein as stated and set forth are true, according to the best knowledge information & belief of affiant, and that affiant was also the Attorney of said Plaintiff in the proceedings set forth in such Petition and makes this affidavit, at the instance of said Petitioner, for the reason that affiant is more familiar with the facts transpiring, than said Petitioner —

Subscribed & sworn to before me this 14 day of May A.D. 1862 } C. D. Coleman

A. W. Mead

147. (1)

The State ex rel
John A. Reeves
vs
Samuel M. Breckinridge
Judge of the St. Louis
Circuit Court

Petition for Mandamus

March 5. 1862.

C. D. Colman
Atty for Relator

Mandamus refused

Filed May 13. 1862
A. W. Mead
Clerk

Filed May 14. 1862 Motion for mandamus overruled

Costs $1.00 paid in Office May 15. 1862
A. W. Mead