Blanchard, Mary v. Hatch, Sarah & Hatch, Henry 480/5

620/11 32/241

Blanchard (R)

✓

Hatch (A)

George Marshall (A)

Goodlett & Mantz (R)

Appealed case but
was denied because
& 10 day rule
— cont affirmed that
it must be in 10 days

St. Louis
March 1842
March '60

Affirmed
Bay

1.

State of Missouri
County of St. Louis } ss.

Be it Remembered that on the 30 day of October 1859, there was filed in the Clerk's office of Law Commissioners Court of St. Louis County & State aforesaid a Transcript from Justice Smith's Office, which said Transcript is in words and figures following, to wit:

Mary A. Blanchard
vs
Sarah M. Hatch &
Henry H. Hatch

} Suit on a Note for one hundred and fifty Dollars. Summons issued to Constable August 17th 1859, Returned executed August 18th 1859 on Henry H. Hatch. And on this 2d day of September 1859, the day of trial for this cause comes the plaintiff, the defendant altho called comes not but makes default, and this suit being upon a Note signed by Defendants the Justice doth order and adjudge that the plaintiff recover of the Defendant Henry H. Hatch the sum of One hundred and fifty eight dollars and seventy five cents, the amount due with the Interest included, with her cost in this behalf sustained. And on this 14th day of September 1859, comes the Defendant by his attorney and moves the Justice to set aside said Judgment by default, and grant a new trial, which

2

is overruled and not granted. And on this 15th day of September 1859, comes the said Defendant and files his affidavit and bond for appeal with George Hughes and George Mathews as Securities, which is granted by the Justice.

Judgment	$158.75
Justice	1.60
Constable	.50

Transcript 1.50 paid

State of Missouri
County of St. Louis } I, Alpheus Smith, a Justice of the peace within and for the County and State aforesaid do certify the foregoing to be a full, true and complete transcript of the entries and proceedings in the cause of Mary A. Blanchard vs Sarah M. Hatch & Henry H. Hatch as the same are of record on my docket and the papers thereto attached are all the original papers on file in my office.

Given under my hand, this 19th day of September 1859.

Alpheus Smith
Justice of the Peace.

The Note on which said Suit was brought is as follows:

Saint Louis January 24. 1859

On the first day of July next, value received we jointly and severally promise to pay to the

3. Order of Mary A. Blanchard the sum of Two hundred Dollars negotiable and payable without defalcation at the rate of ten per cent interest per annum

Sarah M. Hatch
Henry H. Hatch

The following endorsement is on the note:

By a Voluntary Credit of $50.00
Mary A. Blanchard.

The Summons issued is as follows:

The State of Missouri
To any Constable of St. Louis Township, in St. Louis County,
Greeting:

We Command you to summon Sarah M. Hatch & Henry H. Hatch, to appear before the undersigned, one of the Justices of the Peace of St. Louis Township in St. Louis County, on the 2d day of September 1859, at 9 to ten of the clock in the forenoon, at his office in the same Township, to answer the complaint of Mary A. Blanchard on account of a Note for $150.00.

Given under my hand this 17th day of August 1859.

Alpheus Smith, Justice

On said writ is indorsed the following authority;

"At the request and risk of the plaintiff I authorize H. D. Shattuck to execute return this writ. Alpheus Smith Justice Peace"

4 The return of Special Constable endorsed on said writ is as follows:

Executed the within writ by reading the same and also by leaving a copy with Henry H. Hatch on the 18th day of Aug.st 1859 in St. Louis Township H. D. Shattuck

Deputy

Defendant files his motion to set aside the judgment by default before the Justice, as follows:

No. 32. August 1859. Before Justice Smith.

Mary A. Blanchard
vs
Sarah M. Hatch &
Henry H. Hatch

The Defendant Henry H. Hatch this day comes & moves the Court to set aside the Judgment by default in this case & also to dismiss the said cause because.

1st Because the Judgment was illegally rendered.

2° Because the suit was wrongfully brought.

3° Because the whole proceedings in the cause are irregular, illegal & void

Geo Marshall
Atty for H. M. Hatch

Among the papers with the transcript is the following ~~unfinished~~ affidavit

No 32. August 1859. Before Justice Smith

5 Henry H. Hatch being duly sworn says on his oath he has not been a resident of this State for the last six months, before me this 15th day of September 1859. Alpheus Smith
Justice of the Peace.

The Affidavit and Appeal bond are as follows
Mary A. Blanchard, Plaintiff
vs
Sarah M. Hatch & Henry H Hatch Defendent
} Before Justice A. Smith

This day personally appeared before Alpheus Smith a Justice of the peace in and for the County of St. Louis, in the State of Missouri Henry H. Hatch, 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. Henry H. Hatch
Sworn to and subscribed before me this 15th day of September 1859.
Alpheus Smith Justice of the peace

We the undersigned Henry H. Hatch and George Hughes & George Mathews acknowledge ourselves indebted to Mary A. Blanchard in the sum of three hundred dollars, to be void upon this

6 Condition: Whereas Henry H. Hatch has appealed from the Judgment of Alpheus Smith a Justice of the peace, in a certain action between Mary A. Blanchard plaintiff and Henry H Hatch 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, judgment be given against the appellant and he shall satisfy such Judgment or if 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 15th day of September 1859. Alpheus Smith Justice } Henry H. Hatch (Seal) Geo. Hughes (Seal) George Mathews (Seal)

And afterwards to wit: on the 3° day of October 1859, plaintiff moves to dismiss the appeal in this case and files the following reasons:

Mary A. Blanchard
vs
Henry H. Hatch & Sarah M. Hatch } Appeal to Law Com. Court. From Justice Smith

Motion to dismiss Appeal.

Now comes the plaintiff in this cause and moves the Court to dismiss the appeal for the

7 following reasons.

1st Because the Defendant failed to make application to the Justice to set aside the Judgment by default within ten days from the rendition of the same.

2d Because it does not sufficiently appear that the Defendant is a non resident of St. Louis County to entitle him to more than ten days for taking said appeal.

I. N. Shaw
Atty for Plaintiff.

And afterwards to wit: on the 8th day of October 1859 the following proceedings were had:

Mary A. Blanchard
vs
Sarah M. Hatch and Henry H. Hatch, George Hughes & George Mathews securities

This day comes the plaintiff by her Attorney and submits her motion to dismiss the appeal to the Court and the Court having heard the said motion and being fully advised thereof doth sustain the same and doth order that the appeal herein be dismissed at the costs of Henry H. Hatch & George Hughes and George Mathews his securities in the recognizance of appeal and that execution issue therefor.

And afterwards, to wit: on the 14th day of October 1859

8. Defendant makes a motion to set aside the dismissal of the appeal in this case, as follows:

Mary A. Blanchard, plaintiff
vs
Sarah M. Hatch & Henry H. Hatch. Defendant.

} In the Law Commission Court, To October Term 1859.

And now comes Defendants by their Attorney Geo Marshall and move the Court to set aside the dismissal of the Appeal in this cause, because.

1st. The said Defendants have a right to amend the appeal papers of the Justice, for which amendment they now ask leave.

2dly because the Justice erred in not taking the signature and jurat to the affidavit of Defendants when offered.

3d. That Plaintiff being a married woman could not and cannot sue in her own name.

Geo. Marshall
Deft's Atty

And afterwards, to wit: on the 22d day of October 1859 said motion and held under advisement of the Court, as follows:

Mary A. Blanchard, plaintiff
vs
Sarah M. Hatch & Henry H. Hatch. Defendant.

} This day come the Defendants by their Attorny

and having argued submit this motion to set

9. aside the order of dismissal and to have the Transcript of the Justice amended to the Court and the Court not being fully advised of the motion takes time to consider thereof.

And afterwards to wit: on the 29th day of October 1859 said motion was overruled, as follows:

Mary A. Blanchard
vs
Sarah M. Hatch and Henry H. Hatch

The Court having considered the motion to set aside the order of dismissal herein and being fully advised of the said motion overrules the same.

And afterwards, to wit: on the 2d day of November 1859 comes the Defendant Henry H. Hatch and files his affidavit praying an appeal to the Supreme Court and also his appeal Bond with himself as principal and George Hughes and Andrew Hochmuth as Sureties which bond being approved by the Court said appeal is granted.

Said affidavit and appeal bond, are as follows:

Mary A. Blanchard
vs
Sarah M. Hatch & Henry H. Hatch

In the St. Law commissioners Court

October Term 1859

10. Henry H. Hatch, one of the Defendants for himself and his Co-Defendant in the above entitled cause makes oath and states, that this appeal in said cause is not made for vexation or delay, but because the affiant believes that the appellants are aggrieved by the Judgment of the Court.

Henry H. Hatch

Sworn to and subscribed before me this 2d. day of November 1859. H. Dusenbury

Law Commr.

Know all men by these Presents, That we Henry H. Hatch as principal, and George Hughes and Andrew Hochmuth as sureties are held and firmly bound unto Mary A. Blanchard in the sum of Three Hundred and twenty 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 2nd day of November A.D. 1859.

The Condition of the above obligation is such, that whereas Sarah M. Hatch and Henry H. Hatch have appealed from the Judgment rendered against them and in favor of Mary A. Blanchard in the Law Commissioner's Court of St. Louis County for the dismissal of the appeal taken from the Justice of the peace in this case. together with Costs.

11. Now if the said Appellants will pay all costs and damages that may be awarded against them occasioned by such appeal, and shall prosecute their 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 St. Louis County, to give, and if the judgment or any part thereof be affirmed, that they 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 them by the Supreme Court then this obligation to be void, otherwise to remain in full force and effect.

Sworn & approved before me Nov. 2°. 1859
H Duxenbury
Law Commr.

Henry H. Hatch (Seal)
Geo. Hughes (Seal)
Andrew Hochmuth (Seal)

Law Commissioners Court of St. Louis County,
October Term 1859 November 2°. 1859.

This day appeared Henry H. Hatch the principal and George Hughes & Andrew Hochmuth the securities in the foregoing bond and acknowledge to have executed the same for the purposes therein expressed

In Witness whereof, I hereto set my hand & affixed the seal of said Court, at Office, in St. Louis, the day & year last aforesaid

H Duxenbury Law Commissioner

And afterwards to wit: on the 21st day of November 1859, Defendant files the following bill of Exceptions.

Mary A. Blanchard
vs
Sarah M. Hatch and
Henry N. Hatch

In the St. Louis Law Commissioner's Court

Be it remembered that on the 3d day of October 1859, there was filed in the Office of the Law Commissioners Court certain papers of appeal in this cause
— (For said papers see page 1 —)
And afterwards, to wit: on the said 3d day of October 1859, plaintiff by her attorney filed his motion to dismiss said appeal for reasons stated
— For said motion see page 6. —
which said motion was sustained upon the ground that defendant failed to make application to the Justice to set aside the judgment by default within ten days from the rendition of same to which the Defendant Hatch then and there excepted. And afterwards, to wit: on Oct. 14th. 1859 the said Defendant Hatch filed the following Motion.
— For said Motion see page 8 —
which said motion coming up to be heard defendant Hatch offered to prove to the Court the fact of his being a Non-resident of this State

13. by evidence additional to his own affidavit before Justice Smith, whereupon the Court overruled said motion of Defendant and decided that, that fact was sufficiently shown and that he did not decide the point upon that fact but solely because said non resident had not within ten days made application to the Justice to set aside the Judgment by default as above stated. To all of which the Defendant Hatch then and there excepted, and prays this to be taken and signed as his bill of exceptions which is accordingly done

H. Dusenbury
Law Commissioner

Seal

State of Missouri
County of St. Louis

I, John M. Fulton, Clerk of the Law Commissioners Court of St. Louis County, State aforesaid, hereby certify, that the foregoing is a true and correct Transcript of the records, proceedings and pleadings in the case in which Mary A. Blanchard is Plaintiff and Sarah M. Hatch & Henry H. Hatch are Defendants so full and entire as the same remain of record and on file in my office

In witness whereof I hereto set my hand and affix the seal of said Court, at office, in

St. Louis this 3d day of March 1860
John M Sutton Clerk

Index

For Transcript from Justice see page 1
" Note on which suit was brought " 2
" Summons " 3
" Return " 4
" Motion to set aside default & dismiss " 4
" affidavit of non residence " 5
" Affidavit & appeal Bond " 5
" Motion of Plff to dismiss appeal " 6
" Appeal dismissed " 7
" Motion to set aside dismissal " 8
" " overruled " 9
" Affidavit and appeal Bond " 9
Bill of exceptions " 12

123. (11)

~~[illegible]~~

March Term 1862

Mary A. Blanchard
respondent

vs

Sarah M. Hatch
Henry H. Hatch
appellants

Appeal Transcript
Law Commissioners
Court

M. E. –

Filed March 3d 1860.
Wm S. Glanville.
Clk.

Fee Four 75/100 Dollars

150

$10.00 pd. by George Marshall atty. assgt. of errors

1862 May 29 Submitted entirely
1862 June 5 Affirmed Dr filed Dr to

Mary A Blanchard
Respondent

vs

Sarah M Hatch &
Henry N Hatch
Appellants

In Supreme
Court
October Term 1860

And now come the said appellants and say that in the record and proceedings in the above entitled cause there is manifest error and for error they assign the following

1st the court below erred in dismissing the cause upon plaintiffs motion

2d that the verdict was against the evidence

3d that the verdict & judgement was against the law

4th that the judgement rendered in favor of respondent should have been for appellants

5th that the court erred in overruling the motion of appellants for new trial

Geo Marshall
Appellants Attorney

And now come the Respondent and for Joinder in error say there is no error in the record & proceedings of said Court in said Cause as assigned by the said Appellant

Goodlett & Mantz
Attorneys for
Respondent

No 253

In Supreme Court
October Term 1860

Mary A Blanchard
vs Respondent

Sarah M Walch &
Henry A Walch
Appellants

Assignment of Errors

Filed Oct. 16. 1860.
Wm S. Glanville
Clk.

Mary A. Blanchard
vs
Henry H Hatch et al

In Supreme Court
March Term 1862

This was a suit commenced before a Justice of the Peace, on a note for a balance due thereon.
At the time set for the trial of the cause, the appellant not appearing Judgement by default was rendered against him.
After more than ten days had elapsed from the rendering of such Judgement by default, the appellant appeared & moved the Justice to set the same aside, which motion being overruled an appeal was asked & granted by the Justice to the Law Commissioners Court.
In the Law Commissioners Court the appeal, on motion of the Respondent, was dismissed on the ground the same had been improperly granted. & from such Judgement of dismissal an appeal has been taken to this Court

Goodlett & Manty
for Respondent

No 145

Supreme Court
March Z/62

Mary A. Blanchard
vs
Henry Hatch &
others

Statement of
Respondent

Filed April 15. 1862
A W Mead
Clk

Mary A Blanchard
vs
Henry Hatch et al

In Supreme Court
March Term 1862

An appeal will not lie from a Justice of the Peace, where Judgement by default has been rendered, unless within ten days after the rendition of such Judgement by default, Application shall have been made to the Justice of the Peace, to set the same aside.

See act Establishing & regulating proceedings of Justices courts R. C. vol 2 ch 14 Sec 2

Goodlett & Mantz
for Respondent

No 145

Supreme Court
March 2/62

Mary A. Blanchard
vs
Henry H Hatchet
al

Brief of
Respondent

Submitted

Filed April 15, 1862
A.M. McCad
Clk

Mary A. Blanchard
v
Sarah M. Hatch et al

In the Supreme Court

The only points in this case are whether or not the defendants had the right to appeal at the time the appeal was taken from the decision of the justice & whether that appeal was properly taken -

1st The defendants being non-residents and that fact being shown by sufficient proof before the justice they were entitled to twenty days in which to appeal
See exception to first subdivision of Section 3 page 971 volume 2d R. S.

2d If the statute allowed a non-resident twenty days wherein to take his appeal the privilege thereby granted carried with it all means & powers necessary to carry out that privilege, the rule of law

being as I believe it "that when any thing is given or granted all the means necessary to that thing must also be granted or the original grant amounts to nothing".
I think therefore that the decision of the Law Commissioners Court should be reversed & the cause remanded

Geo. Marshall
Atty for
Defendants

No. 145

In the Supreme Court

Mary A Blancard

v

Sarah M. Hatch et al

Appellants Brief

Geo Marshall

p d

Submit on Brief

Geo M

Filed May 5, 1862

H. W. Mead

Clk

Blanchard
vs
Hatch

Plaintiff sued defendant before a justice, and got judgment by default. More than ten days thereafter defendant moved the justice to set aside the judgment by default, and showed that he was a non-resident of the County. The justice overruled the motion and the defendant took an appeal to the Law Commissioner's Court. The Law Commissioner on plaintiff's motion dismissed the appeal because the motion to set aside the judgment by default was not made in ten days after the judgment, & the defendant appealed to this Court.

The second section of the sixth article of the Act regulating proceedings in Justices Courts (2d Rev Stat 971) provides that no appeal ~~from~~ shall be taken from a judgment by default unless within ten days after the rendering of such judgment, application shall have been made to the justice to set it aside & he shall have refused.

The third section provides that no appeal shall be allowed unless it be made within ten days after the judgment rendered, or when judgment is

by default within ten days after the refusal of the justice to set it aside; "but if a non-resident of the County where the suit shall be instituted, the party shall in all cases of appeal allowed by this act have twenty days to make such appeal."

The extension of time to non-residents is of the time within which they may take appeals and not of the time within which they may apply to have judgments by default set aside which is an entirely distinct matter and provided for in a different section of the act.

If the defendant had within ten days from the judgment by default made application to have it set aside, he would have had twenty days from the time his application was refused within which to take his appeal, but he has not twenty days within which to apply to have the judgment set aside.

Judgment affirmed

Barton Bates

(145)

Blanchard
vs
Hatch

Affirmed
Opinion
Bates
J.

Filed June 5. 1862
A W McEad
Clk