PLOGSTART, HENRY V ROTHENBUCHER, JACOB 1866 ST. LOUIS COUNTY 563/8

OLD 463/5

AFFIRMED

PERTAINED:
- SUIT FOR $5.00 (FIVE DOLLARS)
- WAS APPEALED AS DEFENDANT PAID UP
- REQUEST FOR DISMISSAL OF APPEAL

State of Missouri
County of St. Louis }

Be it remembered that on the 1st day of the month of June, in the year of our Lord One thousand eight hundred & sixty three was filed in the Office of the Clerk of the Law Commissioners Court of St. Louis County, a transcript from the Court of Justice Frederick W. Engel, in a certain cause between Henry Plogstart, plaintiff & Jacob Rothenbücher defendant in the words & figures following, to wit:

Cause of Action

St. Louis, March 20th 1863.
Jacob Rothenbücher
To Henry Plogstart
1863. To Cash Five Dollars $5,00

On said 20th day of March, 1863, a summons was issued for said Jacob Rothenbücher in the words & figures following, to wit:

Summons

The State of Missouri
To any Constable of St. Louis Township in St. Louis County — Greeting:
We command you to summon Jacob Rothenbücher to appear before the undersigned one of the Justices of the Peace of St. Louis township

2 in St. Louis County, on the 4th day of April, 1863, at 7, 10 o'clock A.M. at his office in the same township, to answer the complaint of Henry Plogstart for $5.00 on acct and subpoena defendant as witness for the plaintiff. Given under my hand this 20th day of March 1863.

Fred W. Engel. Justice.

Which summons was returned by the Constable endorsed as follows, to wit:

Const Return Served the within summons by reading the same to the within named defendant, Done in St Louis Township 24th March, 1863.

H. H. Helmkamp
Constable
By J. E. Triplett, Dep.

Henry Plogstart
vs
Jacob Rothenbucher

Docket Entries 1863.
Suit on account.
Demand $5.00
Account filed and summons issued to Constable Helmkamp this 20th day of March 1863, returnable 4th day of April 1863. Summons returned duly served. And now on the day & year last named, case being called, parties

3 appearing and ready for trial, the evidence being duly heard, it is considered and adjudged by the Justice that the Deff have judgment for $5.00 and the costs of this suit, Before issuing execution the defendant satisfied said debt & costs & the summons returned satisfied by the Constable, And now on this 9th day of April, 1863, comes the defendant & files his affidavit & bond for an appeal to the Law Commissioners Court of St Louis County with J. G. Woerner as security, which is granted by the Justice.

Judgment of Justice

State of Missouri
County of St Louis }

I, Fredk W. Engel, a Justice of the Peace within & for the County aforesaid do certify the foregoing to be a full true & complete transcript of the entries and proceedings in the case of Henry Klogstaut v Jacob Rothenbucher as the same are of record in my docket & that the papers thereto attached are all the original papers on file in my Office, Witness my hand this 10th day of April, 1863.

Fred W Engel
Justice of the Peace

Said affidavit for appeal & appeal bond are

4 in the words and figures following, viz:

Affdt. for Appeal

Henry Plogstart
" plaintiff
Jacob Rothenbucher
defendant

Before Justice
Fred K. V. Engel

This day personally appeared before the undersigned a Justice of the Peace in & for the County of St. Louis, in the State of Missouri, Jacob Rothenbucher, 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

Jacob Rothenbucher

Sworn to & subscribed before me this 9th day of April, 1863. Fred K. V. Engel
Justice of the Peace

Bond

We, the undersigned, Jacob Rothenbucher & J. G. Stoerner, acknowledge ourselves indebted to Henry Plogstart in the sum of twenty five dollars to be void upon this condition, Whereas, Jacob Rothenbucher has appealed from the judgment of Fred K. V. Engel, a Justice of the Peace in a certain action between Henry Plogstart, plaintiff & Jacob

5 Rothenbucher defendant; now if, on such appeal, the judgment of the Justice be affirmed, or if, on the trial anew in the Law Commissioners Court of St Louis County judgment be given against the appellant & he shall satisfy such judgment or if this appeal shall be dismissed & he shall pay the judgment of the Justice together with the costs of appeal the recognizance shall be void Jacob Rothenbucher (seal)
J. G. Woerner (seal)
Attest & affirmed this 9th day of April 1863. Fred^k W. Engel, Justice

Proceedings in the Law Commissioners Court of St. Louis County.

At a term of the Law Commissioners Court of St. Louis County begun & held at the City of St. Louis in & for the County of St. Louis on the first Monday of June A.D. 1863, the following proceedings took place in said cause on the 6th day of June, ~~said day~~ in said last mentioned year, to wit;

Mo. to dis, appeal sustained

Henry Slogstart
" Jacob Rothenbucher

The parties by attorneys come & the plaintiff moves to dismiss the

appeal herein for the reason that the debt and costs had been paid before the appeal was taken, And the Court being fully advised of said motion doth sustain the same, The Court doth therefore adjudge that the appeal herein be dismissed at the costs of the defendant, the appellant, & S. G. Woerner, his security & that execution issue therefor, And the Court doth further order that a transcript of this judgment of dismissal be certified to Justice Engel. Motion to set aside judgment of dismissal filed

Mo. to set dis. filed

And at the same term of said Court begun & held as aforesaid the following further proceedings took place in said cause, on Tuesday, the 9th day of June, in said last mentioned year, viz:

Mo. to set aside order dismissal submitted & dist.

Henry Plogstart
" Jacob Rothenbucher } The parties by attorneys come & submit to the Court the motion to set aside the order of dismissal herein; and the Court not being fully advised of the premises takes time to consider.

7 And at the same term of said Court begun & held as aforesaid the following further proceedings took place in said cause, on Thursday, the 11th day of June in said last mentioned year, to wit;

Mo, to set aside order dismissal overruled
B/E filed

Henry Plogstart
vs
Jacob Rothenbucher

The Court having heard and duly considered the motion to set aside the order of dismissal herein and being thereof fully advised doth overrule the same, Bill of Exceptions filed.

Said Bill of Exceptions filed on said 11th day of June in said last named year is in the words & figures following, to wit;

Bill of Exceptions

Henry Plogstart
pltf
vs
Jacob Rothenbucher
deft

In the St Louis Law Commissioners Court June term, 1863.

Be it remembered that on the sixth day of June A.D 1863, this cause being called for trial, the plaintiff by his attorney moves the Court to dismiss the

8 appeal in this cause for the reason that the judgment before the Justice was satisfied before the appeal was granted, which motion is sustained by the Court, to which defendant at the moment excepted.
Afterwards, to wit on the said Sixth day of June 1863, defendant moves the Court to set aside the order dismissing the appeal in this cause in the following words and figures:

Mo. to set aside order of dismissal

Henry Plogstart pef
Jacob Rothenbrecher, defdt

In the St Louis Law Commissioners Court
June T. 1863.

Defendant moves the Court to set aside the order dismissing the appeal in this cause for the following reasons, to wit:
Because said cause was properly brought to this Court,
Because the Court has full jurisdiction of this cause,
Because the Court erred in dismissing the appeal in this cause,

By his Attorney
J. G. Woerner

Afterward, to wit, on the Eleventh day of

9 June, A.D. 1863. said motion is overruled by the Court, to which defendant at the moment excepted & prays the Court to sign this his bill of Exceptions,

N. L. Fusenbury,
Law Commissioner

And at the same term of said Court begun & held as aforesaid, the following further proceedings took place in said cause, on Tuesday, the 16th day of June, in said last mentioned year, to wit:

affdt & Bond filed — Henry Plogstart, Jacob Rothenbucher — affidavit for appeal filed bond filed and appeal to Supreme Court granted

Said affidavit for appeal filed as aforesaid is in the words and figures following, to wit:

affdt for appeal — Henry Plogstart, Jacob Rothenbucher — Law Comm. Court, June term, 1863,

Jacob Rothenbucher makes oath & saith that his application for appeal

10 in this cause is not made for vexation or delay but because he believes himself aggrieved by the judgment in the cause

Jacob Rothenbucher

Sworn to & subscribed before me this 16th June, 1863. W. C. Huffman. Clk.

Said appeal bond filed as aforesaid is in the words & figures following; viz:

Appeal Bond

Know all men by these presents that we, Jacob Rothenbucher as principal & Gotlieb Stoberg & H. J. Kappesser as sureties, are held & firmly bound unto Henry Plogstart in the sum of One hundred dollars, for the payment of which well & truly to be made we bind ourselves, our heirs, executors and administrators, jointly & severally firmly by these presents sealed with our seals and dated at St. Louis, this 16th day of June, A. D. 1863.

The condition of the above obligation is such that whereas Jacob Rothenbucher has appealed from the judgment rendered against him and in favor of Henry Plogstart in the Law Commissioners Court of St Louis County for the sum of five dollars together with costs

11 Now if the said appellant will pay all costs & damages that may be awarded against him occasioned by such appeal & 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 St Louis County, to give and if the judgment or any part thereof be affirmed that he will comply with & perform the same so far as it may be affirmed & 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,

Jacob Rothenbucher (seal)
Gottlieb Stosberg (seal)
H. J. Kappesser (seal)

Law Commissioners Court of St Louis County,
June term, 1863, June 16, 1863,

This day appeared Jacob Rothenbucher, the principal & Gottlieb Stosberg and H. J. Kappesser, the securities in the foregoing bond & acknowledged to have executed the same for the purposes therein expressed

In witness whereof I hereto

12 set my hand & affix the seal of said Court, at Office in St. Louis the day and year last aforesaid,

W. C. Huffman, Clerk

State of Missouri
County of St. Louis } ss

I, W. C. Huffman, Clerk of the Law Commissioners Court of St. Louis County, hereby certify the foregoing to be a true full and complete transcript of the record & proceedings in the above entitled cause as the same now remain on file and of Record in my Office,

Witness, my hand and the seal of said Court hereto affixed at Office in the City of St Louis, this 19th September, 1865,

W. C. Huffman, Clerk

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March Term, 1866.

Law Com. Court

Henry Plogstart
Respondent

vs. } Transcript

Jacob Rothenbücher
Appellant

Appeal to Supreme Court

Filed September 18. 1863
A. W. Mead
Clerk

Jecko and Hume
Attys. for Respondent

J. G. Woerner, Esq.
Atty. for Appellant

$10.00 paid by applt.
$3.50 paid by Jacob Rothenbücher

1866 March 21 Ap Statement & br & Res be filed
" " 23 Sub on brief
" Apr 2 Affirmed

Henry Plogstert
Respondent
vs
Jacob Rothenbuecher, App't.

IN SUPREME COURT,
October TERM, 1863

AND now comes the said Plaintiff in error and says that in the record and proceedings of the Court below, in the above entitled cause, there is manifest error, and for error said Appellant assigns the following, to wit:

1. That said Court admitted improper and illegal testimony offered by .....
2. That said Court rejected proper and legal testimony offered by .....
3. That the Court gave to the Jury improper and illegal instructions.
4. That the Court refused to give to the Jury proper and legal instructions offered by .....
5. That the verdict was against the evidence.
6. That the verdict was against law.
7. That the verdict was against both law and evidence, and against the law under the evidence.
8. That the verdict was against the weight of evidence.
9. That the judgment was rendered in favor of the Plaintiff below, defendant in error, when it should have been rendered for the Defendant below, plaintiff in error
10. That said Court overruled the motion ~~for a new trial, made by~~ to set aside the order dismissing the appeal from the Justice's Court, made by plaintiff in error

That said Court erred in dismissing ~~a case pen~~ the appeal, which was properly and lawfully brought to the same

J G Woerner
for Appellant

And now come the Twenty first day of March 1866 Jerko & Clover attys for Respdt and for joinder in error say, that there is no error in the record and proceedings of said Law Commissioner's Court in said cause, as assigned by said Appellant.

Jerko & Clover
for Repdt.

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Henry Plogstert
Respondent
vs
Jacob Rothenbrecher
Appellant.

Assignment of error

Filed Oct 19. 1863
A.W. Mead
Clerk
J. G. Woerner
for Appl't.

Henry Plogstart
vs Respts
Jacob Rothenbencher
Applt.

In the Supreme Court

Sr Lowrie.

The appellee in this cause respectfully submits to this Hon. Court:

That from the Record in this cause it appears that after the rendition of the Judgment of the Justice and before the appeal was prayed for the appellant in this Court, voluntarily paid the amount of the judgment and costs, (before the issuing of the Execution even) thereby admitting the Correctness of appellee's claim. — And it is furthermore submitted that after the payment of the judgment as above stated, there remained nothing to appeal from, and therefore the appeal was properly dismissed by the Law Commissioner

Jerko & Clover
for Respt.

Supreme Court

No. 24

Henry Plogstart
vs Respt

Jacob Rothenbucher
applt.

Respdt's Brief

Jenko & Clover

Filed, Mch. 21, 1866
C. T. Fisleback
Clk

Henry Plogstert, resp.,
vs.
Jacob Rothenbucher,
appellant

In the Supreme Court

Appellant's statement of the case.

The plaintiff brought suit before a Justice, and obtained judgment, which defendant paid; within the time prescribed by law, he made affidavit and filed his appeal bond, which was approved and the appeal granted. In the Law Commissioner's Court, plaintiff moved the court to dismiss the appeal, for the reason, that the judgment had been satisfied, which motion was sustained by the court, and defendant excepted. A motion to set aside the dismissal of the appeal was made and overruled, and the case is brought here by appeal.

J G Werner
Atty for appellant.

Supreme Court
No

Henry Plagstert
resp.
vs.
Jacob Rothenbucher
appellant

Appellant's statement of
Case.

J. G. Werner
Atty.

Filed Mch. 21, 1866
O. F. Filibach
Clk

Henry Plogstert, resp.
vs
Jacob Rothenbucher
Appellant

In the Supreme Court

I. The Law Commissioner erred in dismissing the appeal. "Any person aggrieved by any judgment rendered by a justice of the peace, except a judgment by confession, may, in person or by his agent, make his appeal therefrom" &c (Rev. St., p. 971. All the provisions of law were complied with. The payment of the judgment is no bar to the appeal. Richter vs. Spear, 3 Green's Rep., p. 169; Hancock vs. Holmes, 3 Alab. Rep., p. 9.

J. G. Woerner
Atty for appellant

Supreme Court
No

Henry Plagstert
Resp.
vs.
Jacob Rothenbuecher
Appellant

Appellants Brief

J. G. Woerner
Atty for app't.

Filed Mch. 21. 1866
O. T. Fitliback
Clk.

Henry Ploysbart
vs
Jacob Rothenbricker

Opinion of court

The plaintiff brought suit before a justice of the peace for five dollars and at the trial the justice rendered judgement against the defendant for the amount claimed and costs, which the defendant imediately paid up. Afterwards the defendant prosecuted an appeal to the Lord Commissioners Court of St Louis County and the plaintiff then moved the court to dismiss the appeal because the defendant had paid & satisfied the judgement rendered against him by the justice and this motion was sustained by the court, and the case comes here by appeal.

We would not like to lay it down as a rule that the payment of a judgement so far

cancels it that it cannot
afterwards be appealed from; but
the peculiar circumstances of this
payment may well be regarded
as a confession of the correctness
of the judgement of the justice
and the appeal was therefore
properly dismissed,

Judgement affirmed
The other judges concur

W L Lovelace

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Plogstat

v

Rothenbrucker

Opinion of Court

judgement affirmed

Lovelace

Filed April 2d 1866

O. F. Fishback

CCR