85/10

Oct 1849, #7

Jared Thompson, use of
Luke T. Hayden
vs.
Stephen Black
Clark County

} Debt

Black owed Hayden $39 for land

State of Missouri
County of Clark ss

Be it remembered that on ~~Thursday~~ Friday the 14th day of ~~May~~ in the year of our Lord One thousand eight hundred and Sixty seven personally appeared the Hon. Addison Reese Judge of the 24th Judicial Circuit in said State and Judge of the Circuit Court of said County, at the Court House in the Town of Waterloo in said County the time and place appointed by law for holding the Circuit Court for Clark County and being the fourth day of the term of said Court

The following proceedings were had, to wit -

Parties

Isaac Thompson for the use & benefit of Luke F. Hayden } Plaintiff
vs } Appeal from Justices Peace
Stephen Black Defendant

Appeal dismissed & Judg.

Now at this day come the parties aforesaid by their Attorneys and the defendant files his motion to dismiss this Cause which motion being argued and afterwards Considered by the Court is Sustained and this Cause dismissed -

It is therefore Considered by the Court that the defendant do have and recover of the plaintiff his Costs & Charges in this behalf laid out and expended & have thereof his Execution

Thereupon the plaintiff files his Bill of Exceptions herein which is seen & examined by the Court is signed sealed & made a part of the record in this Cause

The said Bill of Exceptions are in the Words & figures following, to wit -

Isaac Thompson Plff
use of Luke F. Hayden
vs
Stephen Black Deft

Appeal from
Justice of the Peace

Bill of Exceptions

Be it remembered that on the 5th day of the May term of the Circuit Court for Clark County the said defendant moved the Court to dismiss this suit (Here insert the Motion) The plaintiff then introduced the Constable and offered to amend the return on the Summons as follows (Here insert the amended return) The plaintiff then read Summons and the transcript, the Note the affidavit and the appeal bond (Here insert them) Plaintiff then asked leave to amend the return as aforesaid which the Court refused to permit and dismissed the suit to the decision of the Court in refusing to permit the amendment and dismissing the suit plaintiff excepts And this being all the evidence given or offered in the cause by either of the parties the plaintiff excepts and prays that this his Bill of Exceptions may be signed sealed and made a part of the record

Which is done
Filed 14th May 1847
W Lund Clerk

A Reese Judge (Seal)
4th Judl Circt Mo.

The Motion mentioned in the foregoing Bill of Exceptions is in the words & figures following to wit -

Isaac Thompson Plff
use Luke F Hayden
vs
Stephen Black

Clark Cir. Ct. May term 1847
Appeal from Justice of the Peace

Motion

The defendant by his Counsel Wm B Taylor moves the Court to dismiss this cause for the following

reason. This Court has no jurisdiction:
Because there was no legal service of the Summons upon the defendant nor did the said defendt. appear before the Justice except for the purpose of making his Objection to the return of the Constable upon said Summons when he then and there did
2nd Justice had no jurisdiction
3d The Constable made no return
4th Justice Overruled the Objection of Dft to return & gave Judgt. without amending return.
Filed 14th May 1847
W Curd Clerk

The amended return named in said Bill of Exceptions is in the Words & figures following to Wit

Amended Return

I Executed this writ by leaving a true Copy thereof at the usual place of abode of said Stephen Black with a White person of his family over the age of fifteen years on the 2nd day of April 1847 at Washington township in Clark County

Thomas J Force Co.

The Summons return and the transcript, the note, the affidavit and the appeal bond mentioned in the foregoing Bill of Exceptions are in the Words & figures following, to Wit—

Summons

The State of Missouri - To the Constable of Washington Township in Clark County Greeting - We Command you to Summons Stephen Black to appear before the undersigned Justice of the Peace of Washington township in Clark County on the 17th day of April 1847 at ten of the Clock in the forenoon at my house in the same Township to answer the Complaint

of Isaac Thompson for the use and benefit of Luke F. Hayden in an action for debt Given under my hand this 29th day of March 1847

Francis Smith J.P.

Upon which Summons is the Constable's return as as follows

Return on Summons

This writ was served by leaving Copy at the House of Defendant April 2d 1847 Thomas L. Force Co.

Filed 3d May 1847

W. Cundiff Clerk

The Transcript is in the words & figures following to wit-

Transcript

Transcript from the docket of Francis Smith

Isaac Thompson plaintiff for the use and benefit of Luke F. Hayden Stephen Black defendant debt. Summons issued March 29th 1847 returned April 1st 1847. trial had April 17th 1847. by Justice on a Note of Hand for 39 dollars & 75 Cts Given April 21st 1846 due May 1st 1846. bearing interest at the rate of 10 per ct. Deft objected to the return on the Summons. Objection overuled and judgment rendered against defendant April 17th 1847 for 43 dollars and 61 Cts debt and damages and also for his costs 2 Dollars & 70 Cts On which an appeal was taken on the ground of illegality on Issuing the Summons and the lack of a Material Witness which was overuled 1st on the ground that Summons was legal 2d that there had been no exertion to procure Witness-

Bond taken April 24th 1847 for 100 dollars with Murdock Cooper as Security

I do Certify that the above is a Correct Copy taken from my docket this 29th day of April 1847.

Francis Smith J.P.

Filed 3d May 1847

W. Cundiff Clerk

The note mentioned is in the words & figures following to wit - $39.75 April 21st 1846

Note

On or before the first of May 1846. I Stephen Black of the township of Washington in the County of Clark in the State of Missouri promise to pay Jared Thompson or bearer Thirty nine dollars and seventy five cents, for value received, negotiable and payable without defalcation or discount with interest at 10 per cent from date

Stephen Black (SB)

Filed May 3d 1847
W Cund Clerk

The affidavit mentioned is in the words and figures following to wit -

We the undersigned Stephen Black and Mendock Cooper acknowledge ourselves indebted to Jared Thompson for the use and benefit of Luke F Hayden in

Affidavit

I do solemnly swear that the above appeal is not for the purpose of vexation or delay but because I believe that I am injured by the Judgment of the Justice

Stephen Black

Subscribed and sworn to before me this 24th day of April 1847
Francis Smith J P

Filed 3d May 1847
W Cund Clerk

The appeal bond mentioned is in the words & figures following to wit

Appeal Bond

We the undersigned Stephen Black and Mendock Cooper acknowledge ourselves indebted to Jared Thompson for the use and benefit of Luke F Hayden in the sum of One Hundred dollars to be void upon this condition

Whereas Stephen Black has appealed from the Judgment of Francis Smith a Justice of the Peace in an Action between Daniel Thompson for Luke F. Hayden plaintiff and Stephen Black defendant Now if on such appeal the judgment of the Justice be affirmed or if on the trial anew in the Circuit Court 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 the appeal the recognizance shall be void

Stephen Black
Murdock Cooper

Subscribed to in the presence
of me this 24th day of April 1847
Francis Smith J. Peace

Filed 3rd May 1847
W. Cundell Clerk

THE STATE OF MISSOURI, ss.

The State of Missouri, To the Judge of the Fourth Judicial Circuit in said State, GREETING:

Whereas, In the record and proceedings in a certain cause lately pending in the Circuit Court of Clark County wherein Jarid Thompson whose surname is Lake F. Hayden was plaintiff and Stephen Black was defendant in an action of manifest error hath intervened, to the great damage of the said plaintiff as by his complaint, we are informed.

NOW, we being willing that the error, if any there be, should be corrected, and full and speedy justice done to the parties aforesaid, in that behalf, COMMAND YOU, that you send to us, certified under your seal, the record and proceedings in the cause aforesaid, as fully as the same remain of record before you in said Court, so that we may have them before us at our Supreme Court, to be begun and held at the City of Jefferson, in the county of Cole, in said State, on the First Monday in July next, so that our Judges of our Supreme Court, on inspecting the record and proceedings aforesaid, may cause to be further done therein, for correcting the error, what of right and according to law ought to be done.

Witness, HAMPTON L. BOON, Clerk of our said Supreme Court, at office, in the City of Jefferson, the Second day of April, in the year of our Lord one thousand eight hundred and forty-Eight

H. L. Boon

Clerk

State of Missouri } I Willis Curd Clerk of the Circuit Court Within
County of Clark } and for the County aforesaid do Certify that in
Obedience to the Within Writ I return herewith a true and perfect tran-
Script of the record and proceedings in the cause therein named as fully
as the same remains of record in my Office

In Witness whereof I hereto set my hand and
affix the Seal of said Court done at Office
at Waterloo in Clark County this 24th day of
April, A. D. 1848.

Willis Curd Clerk

October T. 1849 20.

Jared Thompson, use of
Luke F. Hayden.
vs } Error.
Stephen Black

7

Filed June 28. 1848.
H. L. Boon, clk.

I have executed this writ by making out a full
true and perfect transcript of the cause as the same
appears of record and return the same herewith
to the Supreme Court of the State of Missouri
Done at my office

Land Thompson use of Luke F Hayden }
vs }
Stephen Black Dft }

Statement of the Case

This action was commenced befor a Justice of the peace. The Constable executed the summons in the usual & proper manner by having a copy but did not set out a full return on the writ At the return day Defendant appeared, and wanted the cause continued for want of a witness, but shewed no deligence to get him & his application was refused, and the cause tried by Justice from whose Judgment Dft appealed On the appeal in the Circuit Court Defendant moved to dismiss the suit for the want of Jurisdiction in Justice because the return of the Constable was informal Plaintiff then introduced the constable and offered to amend his return (see amended return) according to the facts, and the Court refused to permit plaintiff to amend it & dismissed the suit to which ~~Dft~~ Plff excepted

For the reversal of this Judgment the Plaintiff relies upon the 13th Section in the 8th art Justices Courts page 670 of the Stat of 1845 as well as upon Common sense and Justice

James E Ellison
Atto for Plff

Land Thompson use
of Luke F Hayden
vs
Stephen Black

Statement of the
case & Apignment
of Error

Allison Atty

Filed Jany 12. 1849
H. L. Bowman Clk

Isaac Thompson who sues &c Plff
for use of Luke F Hayden
vs
Stephen Black Deft

In the Circuit
Court of Clark
County on
Appeal from Justice
of the Peace

To Stephen Black the above named Defendant

This, sir, is to notify you that on the 2nd day of April 1848 I sued out from the Clerk of the Supreme Court of the State of Miss a writ of Error in the cause as above entitled which writ is returnable on the 1st Monday in July next June 6th 1848

Yours &c

Isaac Thompson who sues
for use of Luke F Hayden

Jared Thompson who sues for use of Luke F. Hayden

vs Notice

Stephen Black

The Sheriff of Clark County will execute this notice on Black in the same manner as an original writ or summons

Ellison
Attd

Shff Fees — 100

Executed this Notice on Stephen Black the within named deft on the 6th day of June 1848 by reading the within to him at Clark County Missouri

Chas O Tanford Shff
of Clark County Mo

Thompson, use &c.

7 Black. 3 Error to Clark Circuit Court.

There being, in this case, no such bill of exceptions as will enable this Court to pass upon the errors assigned, the suit is dismissed.

Jas. A. Birch.

Concurred in

W. B. Napton

J. F. Ryland

Jared Thompson, use
of Luke F. Hayden.

vs

Stephen Black.

Birch, Judge.

Filed Nov. 3. 1849
H. L. Boon, Clk.