Mosier, T.W. & J.R. vs Woods, James / Christy, William et al 1856 McDonald Co 207/3

71/9

Affirm Sufficiency

Notice in person & newspaper to Mosier brothers on cir. hearing of promis. note

$762

State of Missouri
County of McDonald

Be it remembered that on the 10th day of July in the year of our Lord eighteen hundred, and fifty five, James Woods William T. Christy, Robert R. Woods William T. Gentry and Joseph Woods plaintiffs; Filed their petition, in the Clerks office of the McDonald Circuit Court, as partners trading under the name and style, of Woods Christy & Co. Against Thomas W. Moseir and Jermiah K Mosier defendants, (which said petition was filed in vacation) as follows to wit. The plaintiffs states that the defendants by their promissory note hereunto annexed date at St Louis, April 11th 1854, promised for valued received to pay plaintiffs the sum of seven hundred sixty two dollars & sixty six cents, six months after date, which and the interest are yet due plaintiffs and for which they ask Judgements

Signed J M Barker attr plfts

J. M. Barker attorney for plaintiffs makes oath & says, that he believes the above petition, and the matters therein stated are true, and that J. K Mosier, of the above defendants is not a resident of this state.

J. M. Barker

Sworn to & Subscribed before me this 10th tenth of July A.D. 1855,

Signed B. J. Ross, Clerk

On the back of the above and foregoing described petition is the following endorsement filed July 10th 1855, Benj Ross clerk

St Louis April 11th 1854

$ 762.66, Six months after date, the undersigned of Maryville County of McDonald State of Missouri promise to pay to the order of Woods Christy & Co a firm composed of James Woods, William T Christy, Robert K Woods, William T Gentry and Joseph Woods, Jr, Seven hundred and Sixty Two dollars & Sixty Six Cents for value received negotiable and payable without defalcation or discounty, (Signed) T. W. Mosier & Co

James Woods, William T Christy Robert R Woods
William T Gentry and Joseph Woods Jr pltfs
Trading under under the name & style of
Woods Christy & Co

Against

Thomas W Mosier & Jeremiah K Mosier defts

The State of Missouri County of McDonald The State of Missouri, To the Sheriff McDonald County Greeting you are hereby Commanded to Summon Thomas W Mosier that he be and appear before the Honorable Judge of our circuit Court, in the Court house, in the Town of Rutledge, County of McDonald & State of Missouri, on the first day of the November Term of said Court, in Course; which said Term will commence on the Second monday after the fourth in October 1855, and be holden in the Court house in the Town of Rutledge County & State aforesaid, then and there to answer the petition of Woods Christy & Co in a plea of Debt and damage and you then and this writ, and certify how you have executed service on the same, hereof fail not at your peril

In testimony I Benj Ross Clerk of the circuit Court of McDonald County in the State of Missouri I have hereunto set my name and affixed my private seal there being no seal office yet proved, done at office, in Rutledge this 10th day of July 1855

Benj Ross Clerk

on the back of which is the following endorsement

Woods Chirty & Co

Against Petition & Sums Clerks fee for writ $1.00
Certified Copy .50
Thomas W Mosier & Jermiah K Mosier Sheriff fee 1.00,

I Wm C Price Sheriff of McDonald County State of Missouri do hereby Certify that I Served the within up Thomas W Mosier one of the within defendants by leaving a Copy of the petition and writ said T W Mosier July 16th AD 1855

Wm C Price Sheriff by
R M Rogers Deputy

James Woods, William S Gentry Robert R Woods William S Cristy & Joseph Woods, trading under the name and style of Woods Chrty & C, plaintiffs

Against November Term 1855.
Petition in Debt

Thomas W Mosier and Jeremiah K Mosier defts

Now at this day comes the plaintiffs by their attorney J M Barker, and filed his petition and affidavit, stating that one of the above defendants, is a non resident of the state of Missouri, and it appearing to the satisfaction of the said Court, in vacation, that Jeremiah K Mosier is a non resident of this state, The general of plaintiffs petition is such, that defendants are indebted to the said plaintiffs in the sum of seven hundred and sixty two dollars & sixty six cents, debt with interest thereon it is therefore Ordered by the clerk in vacation, that said defendant J. K. Mosier be notified in the Springfield Advertiser, a news paper published, in this state, publishing said notice eight weeks successively, and last insertion to be at least four weeks before the first day of the November Term of the said Court, to be and appear at Court house in the Town of Rutledge, on the second monday after the fourth monday 1855, which said monday will be the first day of the November Term of the ~~said Court~~ McDonald Circuit Court in Course, then and there to answer the said petition, or said petition will be taken as Confessed, July 24 1855

(Signed) Benjamin Ross clerk

To which the following affidavit was attached to wit State of of Missouri, County of Green SS

Be it remembered that Warren H Graves this day personally appeared before the undersigned Clerk of the Green Circuit Court, who after being by me duly sworn deposes and says, that he is one of the publishers of the weekly Springfield Advertiser

over

a news paper published weekly in the city of Springfield in the County of Green, and the state of Missouri, and further testifies that the attach notice of petition in in debt wherein Woods Christy & Co are plaintiffs and Thomas W and J K Mosier are defendants has been published in said paper for eight weeks successively in in papers numbered and dated as as follows in Number one dated July 24 1855 in Number 2 dated July 31 1855, in No 3 dated August 7 1855 in No 4 dated August 14th 1855, in No 5 dated August 21 1855, in No 6 dated August 28 1855, in No 7 dated Sept 4 1855 No 8 dated Sept 11 1855 in all the 12 volume of said paper

Sign'd by Warren H Graves

Sworn & subscribed before this 31st day October A D 1855

A S. McCracken Clerk
by J. W. D. L. F. Mack, D.C.

On the back of which are the following endorsement

to wit Woods Christy & Co
vs
Thos W Mosier & J K Mosier

Certificate of Publication

Printers fee $10.00 filed the 7th day of November 1855

A A Hensley Clerk

James Woods, William T Christy
Robert R Woods William T Gentry plaintiffs
and Joseph Woods

against Civil action November Term McDonald Circuit Court 4 day A.D. 1855
Thomas W Mosier & J K Mosier defts

Among the records and proceedings, of the said Court, was the following, to wit:

James Woods William T Christy
Robert R Woods William T Gentry
and Joseph Woods

Civil action in the McDonald County Circuit Court November Term A.D. 1855

Now at this day comes the plaintiffs by their attorney, and this cause comes on to be heard and plaintiffs being ready for trial, and the said defendants being thrice solemnly comes not, but makes default; It is therefore considered and ordered by the Court, that the plaintiffs have, and recover Judgement by default against said defendants for the sum of seven hundred and sixty two dollars & sixty six cents their debts, and also the sum of fifty two dollars and thirty seven and one half their damages as also their costs in this behalf laid out and expended and that they have hereof their execution

State of Missouri
County of McDonald

J A Hensley Clerk of the circuit court within and for the County & State aforesaid Do certify that within & foregoing is A true ~~and~~ complete & perfect copy from the records Now in my office To gether with the original papers in the cause of Woods Christy & Co against T W & J K Mosier In testimony whereof J A A Hensley clerk of said court have hereunto set my name and affixed my private seal there being No official seal of said court Yet provided Done at office this 17 day of December 1855 A A Hensley Clerk

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Jas. Woods, Wm T Christy,
Robt. R. Woods, Wm T Gentry
& Jas. Woods

v.

Thomas W. Mosier &
Jeremiah K Mosier - p. E.

filed Jan. 3 1856
Wm E Dunscomb
Clerk
Writ issued but not retd
W E D

McDonald
13th

Woods Christy & Co. Plffs } Civil action in
vs } The McDonald Cir.
J. W. & L. K. Magier Defts } Cuit Court

The Plaintiffs & their atty J. M. Bayless will please take notice that the Defts have sued out of the Supreme Court a writ of Error in this case returnable to the next Jan. Term thereof Nov. 18th 1885.

L Hendrick Atty
for Defts.

Copy

Woods Christy & Co

vs Ex notice

filed Jan. 24 1856

Wm E Duncan
Clerk

Mazer & Mozer

I Return the within Notice by Delivering J M Barker a copy of the within Notice on the 5th day of January 1856

J. N. Fly Shff

In the Supreme Court
January Term AD 1856

James Woods Wm S Christy } respondts
Robert R Woods William } ~~pltff~~.
T Gentry & Joseph Woods }
vs } Error to McDonald

Thos W Mosier & Jeremiah K Mosier } pltff in error

Plaintiffs brought their action against defendants on a promissory note for seven hundred & sixty ~~two~~ dollars and sixty six cents.

Thomas W Mosier was served with process, and a publication was regularly had as to Jeremiah K Mosier —

They failed to appear and judgment was rendered against them for want of an answer,

No further proceedings were had

There is no bill of exceptions

defendants bring the case here by writ of error -

F. P. Wright for plaintiff —

There is nothing apparent to authorize this court to disturb the judgment below. ~~The motion~~ The service & publication were sufficient — If there had been any irregularity defendants should have filed a motion to set aside the judgment, and excepted & saved the exceptions 15 Mo 207 & 208 10 Mo R. 257. Ms vs Gamble & Bates

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Woods Christy &c
vs
Moseer & Moseer

Plaintiffs
Brief

filed Jany. 25th 1856
Wm E. Dunscomb
Clerk

F. P. Wright

Woods, Christy & Co vs Mosier & another.

The plaintiffs brought their suit upon a promissory note against the defendants in the Circuit Court of McDonald County.

The summons and petition were personally served on one of the defendants Thomas W. Mosier; and there was constructive service on the other defendant by order of publication in a Newspaper.

The Circuit Court rendered judgment by default against the defendants; and they bring the case by writ of Error to this Court; and rely upon the insufficiency of the published notice — In looking into the record it seems, that no motion has been made to set aside the proceedings in the Circuit Court; and until that is done this Court does not interfere to correct the supposed error. Alexander vs Hayden, 2 Mo. Rep. 211. side paging 10. Mo. Rep. 457 — 15. Mo. Rep. 207 — 208 —

The judgment must be affirmed — Judge Leonard concurring —

(Judge Scott absent)

John F. Ryland

48.

Woods, Christy & Co

vs

Mosier & an other

Opinion

Ryland J

filed Feby. 16 1856

Wm E Dunscomb

Clerk

Woods Christy & Co.
vs
Thos. W. Magier &
Jeremiah K. Magier
} civil action in the McDonald circuit court.

The clerk of the Supreme court will please issue a writ of Error to the McDonald circuit court in this cause on behalf of the Defts. King returnable to the Gen. Term of the Supreme court
Nov. 18th 1853

L Hendricks Atty for King.

Woods Christy & Co.

vs Application for writ of Error

Mazier & Mazier

filed Nov. 22 '55 –

Wm E Dunnavant

Clerk

Hendrick

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THE STATE OF MISSOURI, SCT.

THE STATE OF MISSOURI TO THE SHERIFF OF THE COUNTY OF McDonald IN SAID STATE, **Greeting:**

Whereas, Jas Woods & others on the sixteenth day of February in the year eighteen hundred and fifty six at our Supreme Court for the State of Missouri aforesaid, before our Judges of said Court, recovered against Thos W. & Jeremiah K Mosier the sum of six $\frac{30}{100}$ dollars for their costs and charges by them expended in a certain suit wherein the said Woods & others were defendants in error and the said Mosiers were plaintiffs in error which to the said defendants in error were adjudged, as appears to us of record. Therefore, We command you, that of the goods and chattels, lands and tenements of the said Thos W. Mosier & Jeremiah K Mosier in your bailiwick, you cause to be made the aforesaid costs, and that you have the same before the Judges of our said Supreme Court, on the second Monday in January next, to render unto the said Woods & others the costs aforesaid, and that you certify to our said Judges how you execute this writ, and have you then there this writ.

Witness, William E. Dunscomb, Clerk of said Supreme Court, at office, in the City of Jefferson, the twentieth day of August in the year of our Lord one thousand eight hundred and fifty six

Wm E Dunscomb

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January Term 1857

Jas. Woods et al

v. Exeon

Thos. W. Jeremiah K Mosier

Costs

Mr D Davis 30

Mr E Dunscomb 6.00

this unit 1.00

$7.30

Not satisfied

Alias Mad 23/57

Mr Donald

Mr W. E. Dunscomb Sir after I come from Jefferson City I Caled on Mr Wm C Price for those Exicutions & they Never was handed over to me til a short time ago If you will Sind me an Exicution I think there will be a good chance to collect the money for you yours &c

D. T. Lauderdale
Shiriff

THE STATE OF MISSOURI, SCT.

THE STATE OF MISSOURI TO THE SHERIFF OF THE COUNTY OF McDonald IN SAID STATE, **Greeting:**

Whereas, Jas Woods & others

on the sixteenth day of February in the year eighteen hundred and fifty six at our Supreme Court for the State of Missouri aforesaid, before our Judges of said Court, recovered against Thomas W and Jeremiah K Mosier the sum of six 30/100 for their costs and charges by them expended in a certain suit wherein the said Woods & others were defendants in error and the said Mosiers were plaintiffs in error which to the said defendants in error were adjudged, as appears to us of record. Therefore, We command you, as we have before commanded, that of the goods and chattels, lands and tenements of the said Thomas W Mosier and Jeremiah K Mosier in your bailiwick, you cause to be made the aforesaid costs, and that you have the same before the Judges of our said Supreme Court, on the second Monday in January next, to render unto the said Woods and others the costs aforesaid, and that you certify to our said Judges how you execute this writ, and have you then there this writ.

Witness, William E. Dunscomb, Clerk of said Supreme Court, at office, in the City of Jefferson, the twenty third day of March in the year of our Lord one thousand eight hundred and fifty eight

Wm E Dunscomb

Com to hand this 5 day of Ahrier AD 1858
Satisfied in full. Jan 2 to D. J. Landerer
Sheriff
Dr J. Landerer
Cr
3.00
3
10.80
9.00
3.40
1.50
1.00
5.00

alias to [illegible] 35
Jan. 7 1857

January Term 1859

Jas Woods et al

v. Exec.

Mrs W. & J. K. Mosier

Costs

Mr D Dorries	30
Wm E Dunscomb	6.00
Mo units	2.00
	$8.30
	1.19
	9.49

Mr Donald

Woods Christie & Co. } In the Supreme court
in } Error to McDonald
Magier & Magier } circuit court.

The Deft. J. K. Magier comes & says there is manifest error in the proceedings & judgment of the circuit court in this case - as follows.

The court erred in rendering judgment against J. K. Magier in this case by default there being no sufficient service of the writ. nor sufficient publication as the law required. The judgment is therefore irregular as against J. K. Magier & void.

Hendrick
for plf mover

Sounder in error
& Wright
for rehearts

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Woods Christie & Co

in } Apt. of Errors

Magier & Magier

Woods Christie & Co. } In the Supreme court
vs } Error to McDonald
Mazier & Mazier } circuit court.

This was a civil action & there being no service of process on J. K. Mazier an order of publication was made.

At the return Term of the circuit court Judgment was rendered against both Defendants. one of whom had been served with process & the other (J. K. Mazier) was not. But it appear that a publication was made to him. But the same was not such as the law required. Thereupon the Defts being called came & not. & Judgment was rendered

The Dept. J. K. Mazier relies on these points to revese the Judgment

The statute requires either a service of process or an order of publication notifying Dept. of the commencement of the suit & stating the general nature & object of the suit in the publication. This not being done as by reference thereto manifestly appear - The Judgment is irregular & ought to be set aside & vacated

Hendrick
for plf in error

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Wood Christen &c

m ℥ Brief

Mayer & Mayer