Smith, Peter H et al vs. Swartz, James T; 1857 Jackson Co. #6 Cir. 224/14
Emmons, Ira Lea, William P

78/11

. Affirmed, no bill of exceptions

. Debt, payment for hire of buggies for 45 days

State of Missouri
County of Jackson } ss Pleas in the Kansas City court of common Pleas begun and held at the City of Kansas for the Township of Kaw in Jackson County State of Missouri on the second monday of April in the year of our Lord one thousand Eight Hundred and fifty seven before the Honorable Lot Ceffman Judge of said court

Be it Remembered that heretofore To wit on the Sixteenth day of February AD 1857 Thomas J. Goforth an acting Justice of the Peace within and for said Township of Kaw filed in the office of the clerk of said Court of common Pleas his transcr=ipt and proceedings in an appeal wherein Peter H Smith and Ira Emmons are plaintiffs and James T Suartz is defen=dant

which said Transcript and proceedings before said Justice is in words and figures following to wit

Peter H Smith & Ira Emmons attorneys for Pfff Pate & McCowen
vs
James T. Suartz attorney for Defendant W. P. Lea

action filed January 19th 1857

and made returnable on the 4th day of February 1857 action Brot for hire of Buggy amt sued for ninety dollars Summons Issued and given to Sela Hudson Constr Subpoenas Issued for Witnesses for Plaintiffs John Eans T. D. Pearson Feb 4th/57 Cause adjourned over untill next day February 5th 1857 Cause taken up witnesses Sworn and Examined and on the evidence of John Eans Judgment was entered in favor of Plaintiffs for Forty five Days Hire of Buggie at Seventy five cents pr day making thirty three dollars and Seventy five cent, and costs. an appeal was applied for and was granted same day

Justice Costs Issueing summons		25
Two subpoenas	25	50
Entering judgment		35
swearing two witnesses		10
		120
Transcript		25
constables costs serving summons & subp		75

affidavit & Bond approved February 11th 1857

The above is a true copy from my Docket

Thomas J. Goforth

Justice of the peace in and for Lawd Township Jackson County State of

Missouri. This Transcript 25 cents all The Papers in the accompanying this Transcript

Thos J Goforth J.P.

1855 James T Suartz

To Peter H Smith & Ira Emmons Dr

To one one Horse Buggy	75.00
Interest on same one year	7.50
	82.50

I James B Davenport do certify that the above account is a true copy filed in my office and also a suit has been brought on the above account and is now pending before me and to be determined at my next Law Day

James B Davenport Justice

filed for Justice Goforth Law day Febuary Term AD 1857 but beleiving it to have nothing to do with the cause on my docket

Thomas J Goforth J.P.

Peter H Smith & Ira Emmons
v
James T Suartz

Before Thomas J Goforth Justice of the Peace

This affiant states that the application for an appeal by James

T Swartz defendant in the above entitled cause is not made for vixation or delay but because this affiant believes that the appellant is injured by the judgment of the Justice

Subscribed and sworn to before me this 11 day of February A.D. 1853

James T. Swartz

Thomas J Goforth
Justice of the Peace

Peter H Smith &
Wm Emmons
vs
James T Swartz
} An appeal Bond

We the undersigned James T Swartz and William P Lea acknowledge ourselves indebted to the above named plaintiffs in the sum of Fifty Dollars to be void upon this condition whereas the said James T. Swartz has appealed from the judgment of Thomas J Goforth a Justice of the Peace for Raw Township in Jackson County Missouri in an action between Peter H. Smith & Wm Emmons (under the name and Style of Smith & Emmons Plaintiffs and James T Swartz defendant now if on such appeal the judgment of the

Justice be affirmed or if the trial arrives in the appellant court judgment be give against the appelant and he shall satisfy such Judgment or if this appeal shall be dismissed and he shall pay the judgment of the Justice together with the costs of the appeal the recognisance shall be void James T Suartz

Approved February 11th 1857 William P. Lea

Thomas J Goforth
Justice of the Peace

And afterwards to wit on the third day of said Term of said court of Common Pleas being the Fifteenth day of April 1857 the following proceedings where had and made to wit

Peter H Smith &
Ira Emmons

vs

James T Suartz

Now this day comes the Defendant by his attorney and files herein his Plea in abatement in the above entitled cause

which said Plea is in words and figures following to wit

Smith & Emmons
vs
James F. Swartz

In the Kansas City Court of Common Pleas for Kaw Township in Jackson Co Mo April Term 1857

The said defendant says that he ought not to be compelled to answer the Plaintiffs aforesaid because he says tha the plaintiffs to wit before James B Davenport Esq an acting Justice of the Peace in and for the township & County aforesaid at his regular law day to wit on the day of A D 1857 impleaded the said Defendant and for the same cause as by the Docket or transcript thereof in the said court remaining appears and that the parties in the said former suit and in this suit are the same parties and that the said former suit is still pending in the said court last mentioned Wherefore he prays judgment if he ought to be compelled to answer to the action aforesaid and that the same may be quashed

William P Lea Attorney for Defendant

and afterwards to wit on the same day the the following proceedings were had & made to wit

Peter H Smith &
Ira Emmons
vs
James T Suartz } Appeal

Now at this day comes the Defendant by his attorney and files herein his motion to dismiss this cause

which said motion is in words & figures following to wit

Smith & Emmons
vs
James T Suartz } In the Kansas City court of Common Pleas for Law township in Jackson County Mo April Term 1857

Defendant moves the court to dismiss the above suit for the reason that another suit is pending in another court for the same cause of action

William P Lea Attorney for Defendant

and afterwards to wit on the day following the last aforesaid the following proceedings where had and made to wit

Peter H. Smith &
Ira Emmons
vs
James T Suartz } Appeal

Now at this day comes the parties aforesaid by their attorneys and the motion herein filed to Dismiss on yesterday taken up and and by the court sustained to which opinion of the court in sustaining said motion the Plaintiffs by their attorney Excepts

And afterwards to wit on the day last aforesaid the following proceedings where had and made to wit

P H Smith &
Ira Emmons } Appeal
vs
James T Swartz }

Now at this day comes the plaintiffs by their Attorney and files herein his affidavit for an appeal to the supreme court

Which said Affidavit is in words and figures following to wit

State of Missouri }
County of Jackson } This day the 16th of April 1857 personally came before me H Clay Pate a Justice of the Peace in & for the aforesaid County & State Ira Emmons who on oath says that in the case of Smith & Emmons vs James T Swartz wherein then have asked for an appeal to the supreme court of Missouri from the decision of the Judge of the court of Common Pleas at Kansas City sustaining motion of the defendant to Dismiss for that another suit was pending in another court for the same cause of action such appeal is not made for vexation or delay but because affiant acting for the plaintiffs believe that the appellant is aggrieved by the decision of the court

Ira Emmons

Peter H Smith & Ira Emmons of the firm of Smith & Emmons

Subscribed & sworn to before me this day & year above written

H Clay Pate JP

Costs

Justice Fees	145
Constables "	75
Clerk Fees	380
	5.50

State of Missouri
County of Jackson } ss John S Hough
Clerk of the Kansas City court of common Pleas in County & State aforesaid hereby certify the foregoing 8 Pages to be a full true & perfect copy of the record in the cause of Peter H Smith & Wm Emmons against James T. Swartz as the same remains of Record in said court

In testimony whereof I have hereunto set my hand & affixed the seal of said court at office in the City of Kansas this 15th day of June AD 1857

KANSAS CITY COURT OF COMMON PLEAS.
CITY OF
KANSAS,
JACKSON CO.,
MO.

John S Hough
Clerk

~~29~~ ~~34~~

~~46~~ 45

Peter H Smith and

Ira Emmons - appts

vs

James T Swartz

filed June 18th 1857

Wm E Dunscomb

Clerk

Kansas Com Pleas

6th

Smith & Emmons v. Swartz

There is no bill of exceptions in this case, by which alone the point of fact could have been presented upon which an opinion could be desired. The judgment must therefore be affirmed.

The other judges concur W. B. Napton.

29

Smith & Emmons

v.

Swartz

Opinion

Affd

Napton

filed Feby 12 1858

Wm E Dunscomb

Clerk

William P Lea, Executor of James W Mannion, deceased
vs.
Thomas Johnson

In the Kansas City Court of Common Pleas, for Kan township, in Jackson County, Missouri.

The Clerk of the Supreme Court, at Jefferson City, Missouri,

Will please forward a Writ of Error for Plaintiff in the above-entitled cause, to the Clerk of said Court, at Kansas City, Missouri

William P Lea, Plaintiff

Lea Ex^r of Munnin

vs } Precipe

Mos Johnson

filed May 13 1858

Wm E Dunscomb

Clerk

Kansas Com Pleas

Lea

Thomas Johnson
vs
Wm P. Lea Exr of Jas W Marmaduke } On the Supreme Court, in error to the Kansas Com Pleas

Fee bill of costs in the Supreme Court to be paid by the said Lea Exr as aforesaid.

Wm E Dunscomb's costs as clerk of said Supreme Court.

Writ of error 1.50 docket 50	2.00
Continuance 50 redocket 25	.75
2 orders 1.00 judgment 50 index 10	1.60
making up costs 25 filing paper 10 certified judgt. 75	1.10
this fee bill	.75
	6.20
Wm D Dorriss	.60
Geo L Hough	2.50
total	$ 9.30

Attest.

Wm E Dunscomb. Clerk

To The Sheriff of Jackson County, Mo.

SEAL OF THE SUPREME COURT OF MISSOURI

267

Johnson

v J Lee Bill.

Lea Exr of Mannum

Cost

Ono. S Hough	2.50
Wm D Doniss	.60
Wm E Dunscomb	6.20
	$9.30

Jackson

This Execution is Returned
Satisfied in full
J W Burrows Shff.
By [illegible] Dep