Furgerson, Davis admn. of Ross, John vs Barker, Jarvis 1857 Newton Co. 13th Cir 224/10

Old 78/36

Dismissed at request of Barker

Fowed B $150 + interest

THE STATE OF MISSOURI, ss.

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

WHEREAS, In the Record and Proceedings in a certain cause lately pending in the Circuit Court of Newton County in the Judicial Circuit aforesaid wherein Davis M Baker was plaintiff and the estate of John Ross, dec'd was defendant

---

in an action of manifest error hath intervened, to the great damage of the said as by 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, WILLIAM E. DUNSCOMB, Clerk of our said Supreme Court, at office, in the City of Jefferson, the twenty fifth day of May in the year of our Lord one thousand eight hundred and fifty seven

Wm E Dunscomb

Be it remembered that at at a circuit Court begun and held in the county of Newton in the State of Missouri and at the Courthouse in the town of Mosher in said County Commencing on the 4th day of May 1857. Present Wm Price Ct Judge A T Hamm et ally H Jennings Shff & Jno C Templeton clerk — And on the 2nd day of said Term among other proceedings the following appears of Record to wit,

Jarvis M Barker
Vs ☰ Appeal from Probate Court
Davis Furgerson Adm of the Estate of
Jno Ross Deceas

Now at this day came the appellee by atty and by leave of the court filed here in his motion to dismiss the appeal in this Cause, which said motion is in the words and figures following to wit

Jarvis M Barker
against ☰ Appeal from Court of Probate
Estate of John Ross Deceased,

The appellee Davis Furgerson Administrator of the estate of John Ross decd comes and moves the court to dismiss the appeal in this case & strike their same from the Docket

First Because no motion or application was made to the Probate Court to set aside its judgement before the appeal was taken

Second Because the appellant did not comply with the law in filing bond or recognizance & affidavit before taking the appeal.

third Because 2. no bond or recognizance with security as the law requires.

C. Hendrick Patty
for appellee

And on the 4th day of said Term appears the following among other proceeding

J M Barker
vs
Davis Furgerson adm of the Estate of John Ross Deceased

Now at this day the Plaintiff by leave of the Court filed herein his bond for security for costs, which was by the Court approved, which said bond is in the words and figures following to wit, ——

Know all men by these presents that we Jarvis M Barker as principal and Enter B Boone as his security acknowledge ourselves to owe and justly indebted unto Davis Furgerson Administrator of the Estate of John Ross decd in the full sum of one hundred dollars to be levied of our respective goods and chattels land and tenements, given under our hands and seals this 7th of May 1857.

The condition of the above obligation is such that whereas Jarvis M Barker has appealed from the judgment of the the probate of Newton County Missouri in a cause of action against the Estate of John Ross decd Now if the said Barker shall prosecute this appeal and pay all debt damages or costs

and pay all debt damages or costs that may be adjudged against him then this to be null and void remain in full force and virtue

J M Barker Seal
E B Boone Seal

To which the Plaintiffs Excepts and filed his bill of exceptions in words and figures following to wit,

Jarvis M Barker
vs appeal Probate Court the circuit Court of Mutual County
Estate of John Ross Dec'd

Be it remembered that at the May Term of this Court the deft filed his Motion to dismiss the appeal. which Motion is as follows [See page 1] The Court permitted the appellant to file a bond which is as follows (See page 2nd) and then overruled the Motion to dismiss the appeal to which decission of the Court permitting the appellant to file said Bond and in overruling the Motion to dismiss the appellee excepted and now prays the Court to sign seal and enrol this his bill of exception in this Court & it is accordingly done

Wm C Price Seal
Cert Judge

And on the same day appears the following thereof to wit.

Jarvis M Barker
vs appeal Probate Court
Davis Ferguson adm of the estate of J Ross Dec'd

And now at this day this cause coming on to be heard, which is submitted to the Court. Who from the evidence in the case do find that the defendant owes and is justly indebted to the plaintiff in the sum of fifty dollars for his debt and that interest has accrued thereon in the sum of Six dollars & fifty cents. It is therefore considered by the Court that the plaintiff have and recover of and from the said defendant the sum of fifty six dollars and fifty cents, for his debt and damages and also his costs in this behalf laid out and expended. And that clerk of the Circuit Court certify a transcript of the Record and proceedings & the original papers to the Court whence the appeal was taken. Who shall proceed according to the decision of the Circuit Court,

Same
vs Appeal from P. C.

Same,

The Defendant by attorney and by leave of the Court files his motion to set aside the judgement in this cause which said motion is by the Court overruled, to which opinion of the Court in overruling said motion defendant excepts and files here in his bill of Exceptions,

Exceptions,

which said motion is in the words and figures following to wit,

J M Barker

vs Appeal from Probate Court

Estate of Jno Noss Dec

The appellee comes & moves the court here to set aside the judgment in this cause, Because the circuit court had no jurisdiction, Because the appellant did perfect his appeal by filing a bond with security in the probate court as the law requires so as to give the circuit court jurisdiction (L Hendrick atty for appellee

And said bill of Exceptions is as follows to wit

J M Barker

vs Appeal from Probate Court to circuit court

Estate of Jno Noss Dec

Bet it remembered that after the rendition of the judgment in this cause the appellee filed his motion to set aside the judgment ~~in this cause~~ as follows (see page 4th) which motion the court overruled, to the decision of the court in overruling said motion the appellee excepted and prays that this his bill of Exceptions may be signed sealed and enroled & made a part of the record in this cause & it is accordingly done

W C Price
Ct judge

State of Missouri }
County of Newton } Sr. Jno. R. Templeton Clerk of the circuit court within and for said County do hereby certify that the foregoing is a full perfect and true transcript of the record and proceeding in the above entitled cause as fully as the same appears of Record now in my office.

Witness Jno. R. Templeton Clerk as aforesaid with the seal of the said Newton circuit court hereto affixed at office on the 16th day of June 1857

Jno. R. Templeton Clk
by Paul Ellendale

75, 76, 78, 81, 84 #75
Jno. R. 85, 86 Jan. 1857
vs. Transcript
Mass. Sturgeon & Jno. Ostrander Jno. Hop Nov. 1857
P.E.

Predict —
Notice to Sturgeon appeal page 1
Bond 2
1st Bill of Exceptions 3
Judgment 11
Motion to set aside 14
2nd Bill of Exceptions 5
~~Assignment over Transcript~~
~~Witness with Transcript~~
Filed June 22 1857
Wm. E. Drummond
Clerk
Newton
13th
1 to 6

Jervis M. Barker Plff } Appeal from
Against } the Probate court
The Estate of Johns Ross } to the Circuit court
} of Newton ct.
} & Judgement.

The Plff. will please take notice that the Deft. has sued out of the Supreme Court a writ of Error in the above entitled cause returnable to the next July Term of the Supreme Court. June 9th 1857

L Hendrick atty for Deft.

I Joseph G. Peevy Sheriff of Barry County do certify that I served the within notice by reading ~~the~~ the same in the hearing of J. M. Barker and delivering him a true copy of the same on the 20th day of June 1857

J. G. Peevy Shff
By W. G. Townsend Dep

J. M. Barker
Notice of
in ~~Wrt of~~
Error

Estate of John Ross

Shff fee 37
3
Postage 33

filed July 17 1857
Wm E Dunscomb
Clerk

In the supreme court
January Term 1858

Jarvis M Barker respt
vs
Davis Ferguson Admr
of the estate of John Rop dec

Error to Newton

Now at this day comes the said Jarvis M Barker, and moves the court to dismiss the writ of error in this cause because there is no assignment of Errors—

F P Wright
atty for pltff.

James M Barker
vs
Davis Ferguson
Adm

Motion to dismiss
Writ of Error

filed day 27. 1858
Wm E. Drinkwater
Clerk