Draher, John vs. Schrieber, John 1850 St. Louis Co. 311/5

560/13

Debt
Gamble
reversed + remanded

THE STATE OF MISSOURI, ss.

The State of Missouri, To the Judge of the Court of Common Pleas in said State, GREETING:

Whereas, In the record and proceedings in a certain cause lately pending in the said Court of Common Pleas for the County of St Louis wherein John Drake was Plaintiff & John Schreiber was defendant

in an action of Debt 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~~ St Louis, in the county of ~~Cole~~ St Louis, in said State, on the third Monday in October 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~~ William B. Stark, Clerk of our said Supreme Court, at office, in the ~~City of Jefferson~~ St Louis, the 11th day of October, in the year of our Lord one thousand eight hundred and ~~forty~~ fifty.

W. B. Stark Clerk

Fee $1.50 pd by Gibson Atty

State of Missouri } ss
County of St Louis }

In obedience to the Command of the within writ I herewith transmit a full true & Complete transcript of the record & proceedings of the Case therein mentioned as fully as the same remains in my Office

In testimony whereof I hereunto set my hand & affix the seal of said Court at Office in St Louis this 11th day of October ad 1850

Philip Dippell
Clerk St Louis Court Common Pleas

SEAL OF THE ST. LOUIS COURT OF COMMON PLEAS, MISSOURI.

(7)

State of Missouri } ss
County of St Louis } Be it remembered that heretofore to wit on the 17th day of May in the year AD 1849. there was filed in the Office of the Clerk of the St Louis Court of Common Pleas within and for said County a transcript in the words & figures following to wit

Transcript Mr Emanuel Volker can upon this my order at any time receive from my Kiln sixty three dollars in lime. St Louis 26th April 1848 John Schreiber
Mr J Schreiber have the goodness to let mr John Draher have said Lime Emanuel Volker

John Draher the plaintiff avers that he has demanded at defts Kiln the amount of lime due on said order after allowing all just credits from John Schreiber the deft and said Schreiber refused and still refuses to deliver the same or any part thereof to said plaintiff. to the damage of said plaintiff of seventy dollars.

Summons State of Missouri – County of St Louis
The State of Missouri: To any Constable of St Louis Township in St Louis County – Greeting
We Command you to summon John Schreiber to appear before the undersigned "The law Commissioner of saint Louis County" to answer the Complaint of John Draher on account for seventy dollars $70 and summon Defendant as a witness. Seal Given under my hand and seal of Office this 4th day of April AD 1849. John. H. Watson

Return Executed the within by reading it to the within named defendant & summoning him as witness at St Louis township April 5th 1849 E. G. Clark Const
By C Letraffied

Plea John Draher vs John Schreiber
before Law Commissioners Court April 9th 1849

2 (4)

And now comes John Schreiber and pleads and says that the order or paper or account filed in this Cause shows no legal interest in the plaintiff nor has the plaintiff any right to sue thereon the same from its nature & Character not being assignable the legal right to sue, if any Cause action exist being in Emanuel Volker, wherefore the said deft John Schreiber Prays Judgment &c

M Leslie Atty for Deft

Plaintiff joins in this demurrer C Gibson P.q.

Docket of the law Commissioner of St Louis County April issues 1849. John Draer vs. John Schreiber Assumpsit on account demand $70.00 Summons issued to E G Clark April 4th A D 1849 returnable April 23rd at 7 O clock A M. Summons returned executed April 23rd Continued on application of Plaintiff to April 26th at 3 O clock P.M. April 26th Continued on application of defendant to may 3rd at 3 O clock P.M. Now on this 3rd day of May 1849 the parties appear defendant files his motion to dismiss which motion is overruled, the parties being ready for trial and neither party demanding a Jury the evidence in the Case is heard by the Court, And it is therefore Considered and adjudged by the Court that the plaintiff recover of the defendant the sum of $53 00/100 for his damages, also that he recover the Costs of suit, and that he have execution therefor,

On the same third day of May 1849 the defendant appears & prays an appeal and enters into bond in the sum of $125 00/100 with Thomas J Meire surety

Damages	$53.00
Law Commr Costs sums	15
7 Sub $1.05 4 Oaths	20 } 1.15
Judgt	35
Const Clark	1.25
" Dowling	1.25
Costs of Appeal paid by deft	1.25

3 appeal allowed to the Court of Common Pleas September Term A D 1849.

aff't John Schreiber being duly sworn says that this application for an appeal is not made for vexation or delay but because he believes but because he believes he is injured by the Law Commissioner of St Louis County John Schreiber

Sworn to & Subscribed before me this 3rd day of May A D 1849 Seal Witness my hand & official seal John A Watson the Law Commissioner of of St Louis County per Philip C. Mauro Dep't

Bond We the undersigned John Schreiber and Thomas J. Meier acknowledge ourselves indebted to John Draher in the sum of One hundred & twenty five dollars to be void on this Condition. Whereas John Schreiber has appealed from a judgment of John A Watson, The Law Commissioner of St Louis County in an action between John Draher plaintiff & John Schreiber defendant. Now if on such appeal the judgment of the Law Commissioner be affirmed, or if on trial in the Court of Common Pleas 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 Law Commissioner together with the costs of the appeal the recognizance shall be void

John Schreiber
Thomas J Meier

Approved May 3rd 1849 John A Watson
The Law Commissioner of St Louis County

State of Missouri, County of St Louis ss
I John A Watson the Law Commissioner of St Louis County do hereby Certify that the above & foregoing is a full & Correct transcript of the record & proceedings in the above entitled Cause lately pending before

me. Wherein John Draher was plaintiff & John Schreiber was defendant as fully as appears in my docket, and that the papers hereto attached are all the original papers in the cause. (seal) In witness whereof I have hereunto set my hand & official seal this 8th day of May A D 1849. John H. Watson

And afterwards to wit at the St Louis Court of Common Pleas at February Term thereof on the 1st day of 1850 the following proceedings were had, to wit, John Draher vs John Schreiber. Appeal

Now at this day come the parties by their Attornies and submit this Cause to the Court which being heard and the Court being fully advised of & Concerning the premises doth find for the defendant it is therefore Considered by the Court that said plaintiff take nothing by his suit in this behalf but that said defendant go thereof without day & recover of said plaintiff his Costs & charges herein expended and have thereof Execution

State of Missouri
County of St Louis } I Philip Tippett Clerk of the St Louis Court of Common Pleas in & for said County Certify the above to be a true & Complete transcript of the record & proceedings in the case of John Draher against John Schreiber as fully as the same remains of record in my office

In testimony whereof I hereunto set my hand and affix the seal of said Court at office in St Louis this 11th day of October A D 1849

P Tippett Clerk

(13) 23 ~~50~~ ~~1000~~ ~~110~~

March T. 1852

John Draher

vs

Transcript

John Schreiber

Filed 11 Octo. 1850

W. B. Stacks Clerk

$12.40 paid by atty Gibson

(8)

John Dreher } Supreme Court
vs. } Oct. Term 1850
John Schreiber } assignment of Error

The appellant says, the court below erred in granting defendants motion to dismiss said case.

C. Gibson
for appellant.

Supreme Court
Graber
vs
Schreiber
Writ of Error

Filed 28. Oct. 1850
W. B. Starks Clk

John Draher
vs
John Schreiber } Supreme Court
Oct. Term 1851

The plaintiff moves the Court to set aside the dismissal of the writ of Error in this case

Because, The record in this Court is false in this, that said case was not decided on the merits as appears by said record, but the same was dismissed by the Court of Common Pleas, on the motion of the defendant, & if this motion be sustained the plaintiff will then pray the Court to grant a certiorari to the Clerk of the Court of Common Pleas.

C. Gibson
p.q.

Draher
vs.
Schreiber

Mo. to set aside dismissal of writ of Error.

Filed November 14th 1851
Wm Glanville
Clerk

John Dreher plaintiff
vs.
John Schreiber defendant

Supreme Court
Oct. T. 1851

The plaintiff moves the Court to grant a certiorari to the Clerk of the St Louis Court of Common Pleas to ~~perfec~~ return to this Court a perfect record in this case; because the transcript on file in this Court omits to mention an entry on the records of the said Court of Common Pleas by which it appears, that judgment was given by said Court on the defendants motion to dismiss said case, & not upon the merits of said case, as appears by the said transcript.

C. Gibson

State of Missouri
County of St Louis } Charles Gibson being sworn says, that he knows of his own personal knowledge, that the records of the St Louis Court of Common Pleas contain an entry which shows, that the judgment entered on the merits in said case was entered by mistake, & that the case was really dismissed on the motion of the defendant

Sworn to and subscribed before me this 25th day of November 1851.
Wm G Glanville
Clerk

C. Gibson

50.

Draher
vs.
Schreiber

Sug. dim. &
motion for Certiorari

Filed November 25th 1851
Wm. L. Glanville
Clerks

awarded

St Louis Court of Common Pleas
September Term 1851. November 7th 1851
John Draher
vs
John Schreiber

It appearing to the Court that the Clerk committed an error in the form of the judgment rendered herein on the 7th day of May 1850, by consent of parties It is now ordered by the Court that said judgment be vacated and the following entered therefor as of that day nunc pro tunc.

Now at this day come the parties by their respective attornies and thereupon the defendants motion to dismiss this suit is by them submitted to the Court, which being heard and the Court being fully advised of and concerning the premises, it is ordered that said motion be sustained, wherefore it is considered by the Court that the plaintiff take nothing by his suit in this behalf but that said defendant go thereof without day and recover of the plaintiff his costs and charges herein expended, and that he have thereof execution.

State of Missouri
County of St Louis } ss. I Philip Tippett Clerk of the St Louis Court of Common Pleas within and for the County aforesaid certify the above to be a correct Copy of the judgment in the case of John Draher against John Schreiber as the same remains of record in my office

In Testimony Whereof I hereto

Set my hand and affix the Seal of Said Court at office in St. Louis this 7th November A. D 1851.
P. Tippett clerk

SEAL OF THE ST. LOUIS COURT OF COMMON PLEAS, MISSOURI.

23

John Draher
vs
John Schreiber.

Filed 15th March 1852
Wm. Glanville, Clerk.

John Raher plaintiff in error } In the Supreme Court
vs } of the State of Missouri
John Schreiber defendant in error } March Term 1852.

And now comes John Schreiber the said defendant in error and says that in the acts, opinions, and judgments of the St. Louis Court of Common Pleas there is no error and therefore prays that the same may be in all things affirmed and held in full force.

Hugh N Hall
for Deft in error

23

Supreme Court

March Term 1852.

John Draher

plaintiff in error

vs

John Schreiber defendant in error

Joinder of errors

Filed 17 March 1852
Wm Glenville Clk

H N Hart
atty for deft

Drake
vs }
Schreiber Copy statement annexed to appellants brief —

The instrument upon which this suit is founded is a promissory note "for property" within the meaning of the 2d Section of the act concerning bonds and notes Revised Code 190 and is assignable under that section so that the assignee may maintain an action thereon in his own name

The Court below erred in sustaining the motion to dismiss the suit and its judgment is reversed and the cause remanded

W K Bellville

23

Draher
v
Schreiber

Opinion
HRG

Filed 26th April 1852
Wm. L. Glanville
Clerk.

John Dreher vs John Schreiber } Supreme Court
March Term 1851
Statement of case

The plaintiff (Dreher) sued the defendant in the Law Commissioner's Court on the following instrument "Mr Emanuel Folker can upon this my "order at any time receive from my kiln sixty three Dollars "in lime St Louis 26th April 1848 (signed) John Schreiber" On which was the following assignment "Mr "J Schreiber have the good to let Mr John Dreher have "said lime Emanuel Folker" The plaintiff averred that he had demanded at defts. kiln the amount of lime due on said order, after allowing all just credits from John Schreiber the deft. & said Schreiber refused to deliver the same, or any part thereof, to the plaintiffs damage of 70 Dollars

The defendant made the following motion in the Law Commissioner's Court, which was there overruled "And now comes John Schreiber & pleads, & says that the order, or paper or account filed in this cause shows no legal interest in the plaintiff, nor has the plaintiff any right to sue thereon the same from its nature & character not being assignable the legal right to sue if any cause of action exists being in Emanuel Folker, wherefore the defendant John Schreiber prays judgment &c

Judgment was given in the Law Commissioner's Court for plaintiff Defendant appealed to the St Louis Court of Common Pleas where he renewed the above motion, which was sustained by the Court, & the case dismissed to which plaintiff then & there excepted & brings the case to this Court on writ of error

Supreme Court
John Dreher
vs
John Schreiber

I agree to within date
ment. [illegible]
P.q.

John Oreher
vs
John Schreiber

Supreme Court
March Term 1851

The only point in this case is whether the suit was properly brought in the name of [redacted] the assignee.

See Rev. Code 1845. p. 190 & the uniform decisions of this Court, that the assignee is the legal owner of the instrument & that it is erroneous to sue in the name of the assignor

Gibson
for appellant

Supreme Court

Dreher

vs

Schreiber

Brief of appellant