Schindler, Franz vs. Kohse, Frederick 1856 St. Louis 378/1

587/20

no opinion in file (only transcript + writ of error)

debt for wages

K did carpenter work for S

judmt for K

The State of Missouri, ss.

The State of Missouri, *To the Honorable the* St Louis Law Commissioner —— *in said State, GREETING:*

WHEREAS, In the record and proceedings in a certain cause lately pending in the Law Commissioners' Court, held in and for the County of St. Louis, wherein Frederick Kobse was plaintiff and Frances N. Schneider was defendant.

in an action of manifest error hath intervened, to the great damage of said defendant 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 in the City of Saint Louis, in the County of Saint Louis, in said State, on the third Monday in October instant ~~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 S. GLANVILLE, Clerk of our said Supreme Court, at office, in the City of Saint Louis, the ninth day of October in the year of our Lord one thousand eight hundred and fifty six.

Wm S. Glanville,

CLERK.

$1.50 paid by C. Knobben.

State of Missouri } Ss
County of Saint Louis } I Matthew Williams
Clerk of the Law Commissioners Court, within
and for said County, in obedience to the
Command of the within writ, herewith
transmit a full true and complete transcript
of the Record and proceedings in the case
of Frederick Rohre Plaintiff and
Franz Schindler Defendant as fully as
the same remains in the office of said Court

Intestimony whereof I hereto
set my hand and affix the seal
of said Court at office in Saint
Louis this 9th October 1856
Matthew Williams Clk

State of Missouri } Ss
County of Saint Louis }

Be it Remembered,
that on the Fourth day of August 1856,
there was filed, in the office of the Law
Commissioners Court within and for the
County aforesaid, a certain affidavit from
Liberty Waiba Esquire, a Justice of the Peace,
within and for the Township and County
of Saint Louis, between Frederick Kohre
plaintiff and Franz Schindler defendant.
The following is a true transcript
of the papers of said affidavit as filed in said
Court, towit!

Cause of Action } " Franz Schindler
1856. To Frederick Kohre Dr
July 9th To 12. days Carpenter work at
$2.00 per day as follows, viz!

5½ days	@ 2.00	$11.00
4½ "	Jacob Leber 2.00	9.00
2 "	C. Zimmermann 2.00	4.00
		$24.00 "

Summons } " The State of Missouri,
To any Constable of St Louis Township, in
St Louis County Greeting!
We Command you to Summon Franz
Schindler, to appear before the undersigned,
one of the Justices of the peace, of St Louis
Township, in St Louis County, on the 26th day
of July 1856, at 12 O'Clock in the forenoon of
at this office, in the said Township, to answer
the Complaint of Frederick Kohre for $24.00

(2) and Subpoena defendant as witness for pltff. Given under my hand, this 11th day of July 1856
Liberty Waite Justice."

Return } "Executed this writ by reading to the within named defendant done in St Louis Township July 17th 1856, a Summons the deft as witness S Micheau Constable
By J D Mount D.C. "

Docket Entries } "Action on account for $24.00 Summons issued to Constable Micheau July 11th 1856, returnable on the 26th of July 1856. at 3 O' Clock. P. M. the parties appeared and not being ready for trial Case Continued to 31st of July A.D. 1856, On this day towit: July the 31st 1856. Plaintiff appears, defendant being solemnly called Came not but made default. Whereupon the Justice after hearing the evidence ordered and adjudged that the plaintiff have Judgment against the defendant for the sum of $24.00 for his debt also for the Costs in this behalf expended and that he have hereof execution according to law, Now on the same day Comes the defendant and prays an appeal to the Law Commissioners Court of Saint Louis County, and enters into recognizance in the sum of $48.00 with William Maack on appeal Bond filed. Appeal allowed."

Affidavit } "This day, personally appeared, before

Liberty Waiko, a Justice of the Peace, in and for the County of St Louis, in the State of Missouri Franz Schindler who being duly sworn, upon his oath, says that the application for an appeal, in the above entitled case, is not made for vexation or delay, but because he believes the appellant is injured by the Judgment of the Justice "

Franz Schindler

Sworn to and Subscribed before me, this 31st day of July 1856

Liberty Waiko Justice, "

Recognizance "We the undersigned Franz Schindler and William Mack acknowledge ourselves indebted to Frederick Kohse in the sum of Forty eight dollars. To be void upon this Condition: Whereas Franz Schindler has appealed from the Judgment of Liberty Waiko a Justice of the Peace, in a certain action between Frederick Kohse as plff. and Franz Schindler as defendant, Now if, on such appeal, the Judgment of the Justice be affirmed, or if, on the trial anew in the Law Commissioners Court of St Louis County, Judgment be given against the appellant, and he shall satisfy such Judgment, or if the appeal shall be dismissed and he shall pay the Judgment of the Justice, together with the Costs of appeal, the recognizance shall be void

Attest, this 31st day of July 1856 Franz Schindler L S
Wm Mack L S
Liberty Waiko Justice, "

D

Certificate

"State of Missouri } ss
County of St Louis }

Liberty Waite Justice of the Peace in and for the County aforesaid do hereby Certify that the foregoing is a true full and Complete transcript of the docket entries in the above entitled Cause together with all the papers now on file in my office in said Cause Given and Certified this 1st day of August 1856. Liberty Waite Justice of the Peace."

And afterwards, in the Law Commissioners Court, at the August Term 1856 and on the respective day hereinafter Named the following further proceedings were had in this Cause, towit:

In August Term 1856,

Tuesday August 12th 1856,

Order on Justice

"The Plaintiff by his attorney Comes, and files a petition, and prays the Court to grant a rule on Liberty Waite Esquire, the Justice before whom this Cause was originally tried, to Show Cause why he has not permitted the said defendant to perfect his appeal in said Cause, to this Court, Whereupon the Court being duly advised of and Concerning the premises, doth order that the said Liberty Waite Esquire do Show Cause on or before the 16th instant at Nine O'Clock A.M.

why he has not permitted the said defendant to perfect his appeal,"

"To the Hon the Law Commissioners Court for St Louis County.

(5) Petition } Your petitioner respectfully represents that on the 26th of July 1856, he had a trial before Justice L. Waite of St Louis County in a suit wherein Frederick Koser is plaintiff and your petitioner defendant on said day said cause was continued at the instance of the Justice, to the great prejudice of your petitioner, defendant to the 31st of July, the ~~[illegible]~~ Justice himself fixing said day against the remonstrance of petitioner, that on that day he could not appear, In the afternoon of said 31st of July some three hours after the time of trial as set your petitioner in the absence of his counsel went before said Justice and found that Judgment by default had been rendered in said cause against him and took and perfected an appeal in the cause to this Court, without however moving to set aside said default, the Justice permitting said appeal and affiant being unadvised respecting the law of the case On the Ninth of August 1856, within ten days after the rendition of said Judgment affiant was informed of the defect in said proceedings for an appeal, and through his Counsel filed a motion to set aside said Judgment by default preparatory to perfecting an appeal. Your petitioner having a meritorious

(6) defence to said suit, when he was informed by the Justice that the appeal was already sent up. Now for the purpose of Justice and to perfect said appeal legally your petitioner prays that the papers in said cause be sent back to said Justice, that the Justice be ordered to pass on said motion for setting aside said Judgment by default, and that in case Judgment be not set aside an appeal be allowed to your petitioner according to law, and that your petitioners rights pending this application not be prejudiced.

Kribben his atty.

Franz Schindler makes oath and says the foregoing petition and the statements therein contained are true

Franz Schindler

Sworn to and subscribed before me this 12th day of August 1856.

Bertram Kribben

(L.S.) Notary Public

Saturday August 16th 1856

Discharge { Petition for Mandamus

Liberty Waite Esquire, by his attorney comes and all and singular the premises touching the application of the said defendant for a rule on the said defendant Liberty Waite Esquire to show cause why he has not permitted the said defendant to perfect his appeal in this cause

being by the Court seen heard and fully understood, It is ordered by the Court that the Rule be and the same is discharged, and that the said defendant pay the Costs of the application, "

(7)

Tuesday August 19th 1856

Coats { "By order of the Court this Cause is Continued to the next term, "

Saturday September 6th 1856

Bill of Ex filed { "Bill of exceptions filed by the defendants attorney, "

Said bill of exceptions is in the words and figures following to wit:

Bill of Except' { "Be it remembered, that the following proceedings were had in this Cause to wit: On the 16th of August 1856, defendant in open Court filed the following motion & petition for relief to the Court asking among other things for a rule on Justice L Waite, one of the Justices of the peace for said County,

(See pages 5 and 6)

Upon the hearing of which the Court granted a Rule Nisi as follows,

(See page 4)

On the 16th day of August the return day of said rule the respondent filed the following answer to

said rule, together with the motion han=
ded to Respondent to set aside default

Ans of Waite } And now at this day Comes Liberty Waite
the Justice before whom the above case
was originally tried and in discharge of the
Rule made by this Court Requiring him to
Show Cause why he has not permitted the
defendant to perfect an appeal in said
Case says that on the day when said Cause was
tried and about one hour after the trial
said defendant Came to Respondents office
and demanded an appeal in said Cause,
upon being asked why he had not appeared
at the hour fixed for the trial of said Cause
said deft made no excuse, except that he did
not desire to appear. Nor did defendant
ask plaintiff to set aside said Judgment at
defendants request your Respondent made
out defendants affidavit and appeal bond
And on the 4th day of August 1856, filed
the same in this Court together with the
Original papers in this cause. Your Respon=
dent States that said Cause was on the 26"
of July last, the day when said Cause was
Originally set for trial Continued on the
application of plaintiff on account of the
absence of witnesses until the said 31st day
of July 1856. And your Respondent denies
that on the 9th day of August said deft
by his Counsel filed a Motion to set
aside said Judgment, but says that on
said day some person to your Respondent,

unknown handed to your Respondent the annexed paper "Marked A" and that no other Motion to Set aside a default was Made to your Respondent, on said day. And your Respondent having fully answered prays that said rule may be discharged

Liberty Waite

Subscribed and sworn to before me this 16" day of August 1856

M Williams Clk "

Exhibit A { "(A)" Saint Louis County to wit
Fred K Roser plaintiff } Justice L Waite
Against
Franz Schindler defendant } Now at this day Comes defendant and moves the Justice to set aside the Judgment by default rendered in the above entitled cause for the reason that the Justice Continued the Cause to defendants prejudice

Thos Kribben his atty,

handed me on the 9 th of August 1856

Liberty Waite Justice, "

When the whole subject coming to be heard the Court discharged the said rule,

(See pages 6 & 7)

To the discharging of which and to which said decision the petitioner excepted and now prays that this his bill of exceptions be signed by the Court and enrolled as part of the Record of the Cause which is done

John M Colvin

Law Comr, "

State of Missouri } ss.
County of St Louis }

I, Matthew Williams Clerk of the Land Commissioners Court, within and for the County aforesaid Certify that the foregoing is a full and true transcript of the Record and proceedings in the Cases of Theodrick Kohne Plaintiff and Franz Schindler defendant as fully as the same remains in the office of said Court.

In testimony whereof I hereto subscribe my hand and affix the seal of said Court at office in the City of St Louis this Eleventh day of September 1856

Matthew Williams
Clk. L.C.

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(20)

March Term 1857

Frederick Kohse D.E.

4 § Transcript

Franz Schindler D.E.

Error to Law Commissioners Court

Saml H Gardner

Chr Kribben

Filed 9 October 1856

Wm S Glanville ck

$3.25 paid by Chr Kribben Eq 134

Frederick Kehse
vs
Francis Schindler

In the Supreme Court
of Missouri
March Term 1857

Petitioner Appellant assigns the following as errors in the proceedings had below.

1st The Law Commissioner's Court should have granted the writ prayed for against the Justice ordering him to allow petitioner's appeal —

Kibbee

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Supreme Court

Frederick Kohse

vs

Francis Schindler

Assignment of errors

Ribben

Filed 6th April 1837
Wm S Glanville
ck

F Kohse
Deft in Error
vs
Frances Schindler
Pltff in Error

In the Supreme Ct
of Missouri
March Term 1857

Deft in Error Comes & Says there is no error in the record proceedings & judgment of the Court below & prays the same may be in all things affirmed

J H Garden
for Deft in Error

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Kohse
Deft in Error
vs
Schindler Plff in Error

Joinder in Error

Saml H Gardner
for Deft in Error

Filed 10th April 1857
Wm S Glanville
Ck