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THE KNOXVILLE WHIG.

Knoxville, Tenn., Nov. 28, 1866.

Supreme Court Opinion.

KNOXVILLE, TENNESSEE, SEPTEMBER TERM, 1866.

THOMAS H. COLDWELL, Attorney General and Reporter.

S. M. CROCKETT, et al., vs. JAMES PARKISON, Chairman of the County Court.

This is a writ of error prosecuted to reverse a judgment by default, rendered in the Circuit Court of McMinn county, against the plaintiffs in error and their sureties, on a bond for $1,000. The motion is predicated on section 4311, and sub-section 1, of the Code. The judgment is for the penalty assessed by the statute against county trustees, who refuse to settle or pay over money in their hands according to law.

By the Code, section 3270, sub-section 4, it is provided that: "The Judge or Chairman of the County Court shall have power to call the Trustee to a settlement when required by law, or by the court. The Trustee is bound by bond of, and his sureties are liable for, the faithful discharge of office by the obligation, conditionally, with the Revenue Commissioners, and pay over the balance of funds in his hands to his successor, taking duplicate receipts. This is an imperative obligation, fixed by law. But he may be required by the court to make settlement any some time.

The motion in this case, as it appears to the record, is "for refusing to settle or pay according to law." And the judgment recited, that "it appearing to the court, that S. M. Crockett, as Trustee of McMinn county, made and executed a bond with Thos. A. Gaut, Wm. Rickey and Stephen Fentress, as his securities, in the county court of McMinn county, on the 7th day of April, 1862, which bond was approved in open court; and it appearing to the court, that the plaintiff in error, Crockett, is indebted to the said S. M. Crockett, Trustee of McMinn county, as aforesaid, has failed or refused to make settlement according to law. It is therefore considered by the court that judgment, &c.

This is a summary proceeding and highly penal in its character; and by the well settled construction of the statute, the judgment, in such cases, must show upon the face everything necessary to sustain the jurisdiction of the court. All that was done or said in the proceeding, must appear from the face of the judgment to sustain it. It does not show the time for which the Trustee held his office, and for which he was liable to settle, nor does it show that his default was for refusing to settle as required by law, or going out of office, or under any order of court requiring him to make settlement. The judgment simply settlement in the alternative, that he "failed or refused to make settlement according to law." A failure to pay is not equivalent, subject the Trustee to the forfeiture imposed by this section. He must, by the terms of the statute, be able, or pay according to law. The findings of the court, for these reasons, as well as others, perhaps equally apparent on the face of the judgment, we think it not sufficient. Other exceptions are taken to the proceedings, which we have not deemed it necessary to notice. We do not deem it necessary to decide.

The judgment of the Circuit Court will be reversed, and the cause remanded.

MILLIGAN, Judge.

A true copy. Test: M. L. PATTERSON, Clerk.

SUPREME COURT OPINION.

KNOXVILLE, TENNESSEE, SEPTEMBER TERM, 1866.

THOMAS H. COLDWELL, Attorney General.

MEMPHIS FREIGHT COMPANY vs. THE MAYOR AND ALDERMEN OF MEMPHIS.

The only question presented for our consideration at this time is, Did this court take jurisdiction of this cause?

It appears from this record, the plaintiff in error, organized under a charter granted by the legislature in 1854, with certain rights and privileges were given the Company, including a railroad, shed, &c., for transferring freight from the cars to the river; for which it built buildings, &c.

It became necessary for their operations to have the use of a portion of the land owned by the city of Memphis. Application was made to the Board of Mayor and Aldermen for the land, which was refused. A petition was filed in the Circuit Court for the county of Shelby to have the land condemned for the purposes of operating their business condemned. A demurrer to facts was argued upon by the parties, and at the September term, 1860, of the court was adjudged for the defendants in error, and the petition dismissed at the costs of the petitioners. The Judge was of opinion the petitioners were not entitled to relief, and decided the cause against the petitioners.

The record recites the proceeding, the petitioners file their bill of exceptions, and by consent of the parties, and upon the prayer of the petitioners, it was ordered and adjudged that the petitioners have an appeal to the present term of the Supreme Court, sitting at Knoxville, to which end motions and things in this petition are adjourned for hearing and decision. The usual bond granted and bond and security given, &c., &c.

For the determination of this question it become necessary to examine the provisions of the Code relative to appeals and writs of Error from the Inferior Courts to this court. Article 10, sub-section 2, of the Constitution provides: "The Supreme Court shall be composed of three Judges, one of whom shall reside in each grand division of the State, and the courts shall be held at one place in each division." Section 2505-506 divides the State into three grand divisions and apportions the counties to the several divisions in which the courts are held. The court for the Eastern Division to be held at Knoxville, for the Middle Division at Nashville, and for the Western at Jackson.

Section 4,497 provides, "This court shall have no original jurisdiction, but appeals and other proceedings for the correction of errors in law from the Inferior Courts of Law and Equity within each division, to the supreme court held in that division." Section 4,498 is as follows, for agreed cases in the Circuit and Chancery Courts: "Certain facts being agreed to by parties to a controversy and agreed cases are entitled to all the benefits and proceedings for the correction of error." Section 4,497 provides, agreed cases may be adjudicated by the Supreme Court for decision.

In whether the provisions of the last section the appeal was taken in this cause. The record recites, "upon the prayer of the petitioner, and by consent of parties, an appeal is granted to the present term of this court" &c., &c. &c.

We think this appeal is not warranted by the several sections of the Code referred to. It is expressly provided that appeals and writs of error and other proceedings in the nature of writs of error, lie from the Inferior to the Supreme Court of the property within each division of the Supreme Court of that division. The language used in section 4,497, does not by intent give an appeal in this court, it provides: "The agreed case may be adjudicated by the Supreme Court." This from the language used would seem to be an effort on the part of the Legislature to give this court original jurisdiction of an agreed case without the decision of an inferior court, but providing that construction on 4,497, which would give it legal effect, it does seem that agreed cases may be appealed from the decisions of the inferior court, as provided in section 4,498, which we think the only true construction that can be given to section 4,497.

The Circuit Court for the county of Shelby being held at Memphis, in the Western Division, it follows, therefore, that this court, sitting at Knoxville, cannot take jurisdiction of the case.

The appeal to be stricken from the Docket.

SHACKELFORD, Judge.

A true copy. Test: M. L. PATTERSON, Clerk.

SUPREME COURT OPINION.

KNOXVILLE, TENNESSEE, SEPTEMBER TERM, 1866.

THOMAS H. COLDWELL, Attorney General and Reporter.

JOHN BEELER, in error, vs. L. HUDDLESTON.

This suit was commenced in the Circuit Court of Union county, by the defendant in error, by an original attachment that issued against the plaintiff in error, as an absconding debtor.

The process was served by the Clerk of the Circuit Court, on the 20th of April, 1861, and the court was adjourned to Maynardville, to be held on the Monday after the 3d Monday of May, 1861, and until the 3d Monday of February of that year.

The property of the defendant was attached and recorded by the Sheriff on the 20th of April, 1861. On the 20th of April, 1861, the defendant in error, Huddleston, filed his bill on account, which is an unliquidated one for goods, wares and merchandise, was filed. At the October term, 1861, a judgment by default was taken, and final judgment rendered against the plaintiff in error, and a Venditioni Exponas issued, and the property levied on and sold. The record has been filed for error. The plaintiff in error moved the court to set aside the judgment, and to reverse the judgment, which was refused by the court, and he prays an appeal to this court, which was granted, and he has assigned for error, that the court had no jurisdiction of the cause, and that the judgment is void, and that the property should be restored to the defendant in error.

The record does not show any amendment was made, nor could it, under the Code authorize all material amendments to be made. These sections of the Code are substantially the provisions of the act of 1852, authorizing amendments to civil suits. This court in the construction of this act, "the general rule in respect to statutes of amendment and jeofails that amendment in point of fact proof and in law." The benefit of statutes is obtained by the courts declaring the exception to be considered in the construction of the statute. 1st Grand, 417, 24 Black. Com. 407, 1st Grand 340, Dyer.

No bill of exceptions was filed in this cause, we are therefore bound under the principle applied to regard the record as having been made. By section 4,416 of the Code, the judgment, decisions, or decrees of the inferior court shall be reversed by the Supreme Court, except for errors, which when the merits of the judgment complained of." This assignment of error falls within the principle provided for the exceptions aforesaid, and is not with error which this court can notice.

The judgment final rendered without the intervention of a jury upon the evidence filed was error. Section 4,500 of the Code provides: "A judgment in final if the amount of the plaintiff's claim can be ascertained from the papers. When the amount cannot be ascertained from readily, the damage shall be ascertained by a jury, impanelled at the same term for the purpose. This court has decided that the law for finding the court, the judgment is void, the plaintiff in error having no notice of the proceedings of the suit. Such is not the requisition of the law governing this case.

The day of the attachment and bond by publication is in lieu of of the personal service of process. The declaration of the defendant in error, was filed at the regular term after the serving of the attachment with the sheriff.

At the October term following, a judgment by default was taken. The judgment recites publication was duly made.

The record does not show any amendment was made, contrary to 2,505 and 2,507 of