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Case No. 2,347a.

CAMP v. PRICE.

[Hempst. 174.]¹

Superior Court, D. Arkansas.

Jan., 1832.

FAILURE OF JUSTICE TO RENDER JUDGMENT.

Where a justice renders no judgment, his proceedings are a nullity, and may be set aside on certiorari.

Error to Monroe circuit court.

[The defendant in error, Christopher H. Price, sued out a writ of certiorari to reverse the action of a justice of the peace in proceedings brought against him before the justice by the plaintiff in error, Tapley A. Camp, as agent of Ashburn Early. The circuit court reversed the proceedings, and Camp brings error.]

Before JOHNSON, ESKRIDGE, and CROSS, Judges.

JOHNSON, Judge, delivered the opinion of the court.

The proceedings in this case appear to have had their origin before John R. Dye, a justice of the peace for Phillips county. The transcript of his record is in the following words: "Territory of Arkansas, County of Phillips, Cache Township, October 29, 1828. T. Camp ordered summons against C. H. Price, for twenty bushels of corn. Summons issued against Christopher H. Price, to

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appear before me on the 8th day of November, 1828. The constable of Cache township returned the within named summons, executed by leaving a copy of the original at the house of Benjamin Pyburn. This being the 8th day of November, 1828. The plaintiff, T. Camp, acting agent of Ashburn Early, and judgment entered against C. H. Price for \$11.07 cents by default. Given under my hand and seal this eighth day of November, 1828. J. R. Dye, a Justice of the Peace."

The money not having been collected, subsequent proceedings were had in the following words: "Territory of Arkansas, County of Monroe. A transcript of judgment being placed

in my hands from the docket of John R. Dye for collection, and it appearing that said judgment was not satisfied, T. A. Camp ordered a summons for C. H. Price, to appear before me, a justice of the peace, to show cause, if any he had, why execution should not be issued against him, ordering him to appear before me on the 29th day of May, 1830. No cause being shown why execution should not issue against him, execution issued 29th day of May, 1830, for \$10.11 cents and \$7.77 cents costs on the revival of the judgment. John C. Montgomery, J. P.”

To reverse these proceedings, the defendant Price, on the 16th of June, 1830, sued out a writ of certiorari from the circuit court of Monroe, and on the trial of the certiorari at the May term, 1831, the proceedings of the justice were set aside, and the case dismissed, with costs; and to reverse the judgment of the circuit court this writ of error is prosecuted. The only error assigned is that the court below erred in not quashing and dismissing the writ of certiorari on the motion of Camp, for the reasons stated in the bill of exceptions. In looking into the transcript of Mr. Justice Dye, it is manifest that it contains nothing in the shape or form of a judgment. It contains the assertion or affirmation that he gave a judgment against the defendant by default for a specific sum, but does not give a copy of that judgment. He fails also to give a copy of the process by which the defendant was summoned to appear before him, or a copy of the return or the officer serving the process, and from the statement which he does give it does not appear that the summons was legally served. This record, when placed in the hands of Mr. Justice Montgomery, was not sufficient to authorize him to award execution against the defendant Price, and in making that award, and in issuing execution, he unquestionably erred. The certiorari from the circuit court issued within thirty days from the trial before Justice Montgomery, and as we regard the previous proceedings as a nullity, there never having been a judgment rendered, we think the defendant had a right to sue out a certiorari to reverse the revival of the judgment and the award of execution made by Justice Montgomery. Judgment affirmed.

¹ [Reported by Samuel H. Hempstead, Esq].

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