JAMES M. HORACE, Plaintiff in Error, vs. WILLIAM A. JOHNSON, Defendant in Error. Specific Performance.

LRSC 3; 1 LLR 516

[January Term, A. D. 1882.]

Before His Honor C. L. Parsons, Chief Justice, and the Honorable Associate Justices.

MOTION TO DISMISS APPEAL.

The defendant in error in the above entitled cause respectfully motions this honorable court to dismiss the said case and rule the plaintiff in error to pay all costs, because,—

First, the purported affidavit attached to the assignment of errors in said case is vague and uncertain in its terms and does not show to what cause it relates; second, and also because the said affidavit does not show that it was subscribed to before the Justice of the Peace before whom it was sworn; third, and also because the plaintiff in error has not paid to the said defendant in error the costs accruing in the court below in said case. All of which the said defendant in error is ready to prove. Wherefore he prays the dismissal of the case, with costs, as above stated.

WILLIAM A. JOHNSON, Defendant in Error,

By his Counsellors, H. W. JOHNSON, JR., and HY. W. GRIMES.

COURT'S RULING.

When this case was called for hearing, the defendant in error tendered this court a motion to dismiss the case. Upon a careful examination of the law we find no conflict as to what is an "affidavit." It being a statement or declaration reduced to writing, sworn or affirmed to before an officer authorized to administer such an oath, it must intelligibly refer to the cause in which it is made. The strict rule of the common law is that it must contain the exact title of the cause, and the place wherein the affidavit is taken must be stated, so as to show that it was taken within the officer's jurisdiction. The deponent must sign the affidavit at the end, and the jurat must be signed by the officer, with the addition of his official title. In general, an affidavit must describe the deponent sufficiently to show that he is a party, or an agent or attorney of the party, to the proceedings, and this matter must be stated, not by way of recital, or a mere description.

The opinion of this court is, that the affidavit of the plaintiff in error, in this action, ought to have stated therein the exact title of this cause, and the deponent should have signed the affidavit at the end. Our statute does not exempt the plaintiff in error from conforming to the rule, for it declares that a party may adapt the forms of affidavits to suit each particular case.

The affidavit under consideration, bearing on its face the words "and also that the facts contained in the writ are true," etc., is unintelligible and this court is not authorized to construe the meaning of the word "writ" contrary to what is generally understood by the term, especially as it is the solemn declaration of the deponent, the plaintiff in error in this case; and, more especially, as an assignment in error differs so materially from a writ of error.

Here it is proper to remark that any departure from the doctrine upon which affidavits must be founded, would defeat the very object of the affidavit itself; and, no doubt, that precedent thus set would plunge the court into inextricable difficulties.

Now, considering the nature and requisites of an affidavit, as above cited, this court is of the opinion, and must pronounce it so, that the affidavit attached to the assignment of errors in this case is insufficient to support it. The case is therefore dismissed, and the plaintiff in error is ruled to pay all costs therein. Supreme Court, January Term, 1882.

Key Description: Affidavits (Jurat or certificate of officer; signature and oath)