

12338

No. _____

Supreme Court of Illinois

McAllister

vs.

Ely

75

Archibald McAllister

vs

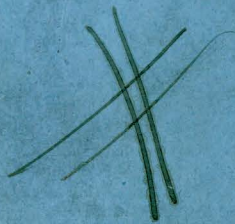
Zebulon S. Ely

Open

1857

Part 1712

12338



State of Illinois } S.S.
County of Cook }

Plas before the Honorable
John Mc. Wilson Judge of the Cook County
Court of Common Pleas within and for the County
Cook and State of Illinois at a regular term
of the Cook County Court of Common Pleas
begun and holden at the Court House in
the City of Chicago in said County & State
on the second Monday being the eight day
of September in the year of our Lord one thousand
and eight hundred fifty six and of the Inde-
pendence of the United States the Eighty first

Present the Hon. John Mc. Wilson Judge
Daniel Mc. Troy Esq. Attorney
James S. Beach Coroner and acting
Sheriff of Cook County
Walter Kimball Clerk

Attest

Be it remembered that heretofore to wit on
the twentieth day of June in the year of our
Lord one thousand Eight Hundred and fifty
six came Zebulon S. Ely Sumner &c. Plaintiff
by his attorneys Shumway Waite & Torne, and
filed in the office of the Clerk of the Cook
County Court of Common Pleas his precise for
a summons against Archibald McAllister
Sumner &c in a plea of Assumpsit and also
a bond for costs which said precise and bond
for costs are in words and figures as follows to wit

The State of Illinois }
Cook County S.S }

Coms Pleas
Damages \$1000

Zebulon S. Ely Sumner of Enoch D. Ely
Partners in trade under the name of
Ely & Bros

vs
Archibald McAllister Sumner &c of
Jacob R. De Troy

Issue a summons in
this case returnable to next term directed to
Sheriff of Will Co-

Shumway Waite & Torne
Plaintiffs Attorneys

Jehon S. Ely Sumner &c
Archibald McAllister Sumner &c } Cook County Court
of Common Pleas.

I do hereby enter myself security for costs in this cause, and acknowledge myself bound to pay or cause to be paid all costs which may accrue in this action, either to the opposite party or to any of the officers of this Court in pursuance of the laws of this State -

Dated this 20 day of
June A.D. 1856 } Sumnerway Waite & Sumner,

And therefore on the same day and year last aforesaid, there issued out of the office of the Clerk of the Cook County Court of Common Pleas, a writ of summons, which said writ is in the words and figures as follows to wit:

State of Illinois } S. S. The People of the State of Illinois
County of Cook }

To the Sheriff of Will County - Greeting.

We command you that you summon Archibald McAllister Sumner of Jacob R. Dy. Ind. if he shall be found in your County personally

To be and appear before the Cook County Court
of Common Pleas of said County, on the first day
of the next term thereof to be holden at the Court
House in the City of Chicago, in said County
on the first Monday of July next to answer
unto Zebulon S. Ely Esq. of Enoch D. Ely
in a plea of Trespass on the case on promises
to the damage of the said plaintiff as he says
in the sum of One Thousand Dollars -

And have you then and there this
Writ with and endorsement thereon
in what manner you shall have exe-
cuted the same -

"Seal"

Witness, Walter Kimball Clerk of my
said Court and the seal thereof at the
City of Chicago in said County this
20 day of June A.D. 1856 -

Walter Kimball Clerk

I have executed this Writ by reading
the same to and in the hearing of the within
named Archibald McAllister this 23rd day
of June A.D. 1856 -

J. J. Searrith.
Shff Will Leo

And thereupon on the same day and
year last aforesaid came the said Plaintiff
by his said Attorney, and filed in the office
of the Clerk of the Cook County Court of Com-
mon Pleas his Declaration which said Decla-
ration is in the words and signs as follow to wit:

State of Illinois } Of the July Term A.D. 1856, of
Cook County ss } Cook County Court of Common Pleas

Zebulon S. Ely survivor of Enoch D. Ely deceased
late partner in trade under the name & style
of Ely & Brother Plaintiff in this suit by
Shumway Waite & Sonne Attorneys, complain
of Archibald McAllister Junior of Jacob R
De Juy Defendant who was summoned & c in a
plea of trespass on the case on promises; For that
whereas the said Defendant together with Jacob
De Juy then in life but since deceased heretofore
to wit; on the tenth day of July in the year of
our Lord one thousand eight hundred and fifty
two at Chicago to wit; at Chicago in said County
of Cook made his certain promissory Note, in
writing, bearing date the day and year aforesaid
and then and there delivered the same to plain-
tiffs said Enoch D. Ely then being in life but since
deceased in and by which said note, & c id. defendant
by the name and style and description of - - -

A. McAllister together with Jacob R. De. Ing.
under the name and style of Jacob R. De. Ing.
promised to pay the order of the said Plaintiff
Zebulon S. Ely together with Enoch D. Ely then
in life but since deceased under their former name
& style of Ely & Brother Ninety days after the date
thereof which period has now elapsed the sum
of Four Hundred & forty Dollars Sixty Nine
cents for value received at the office of Messrs
S. M. Burch & Co.

By means whereof and by force of the Statute
in such case made and provided the said defen-
dant survivor as aforesaid became liable to pay
said Plaintiff survivor as aforesaid said sum of
money mentioned in said Note and being so
liable in consideration thereof then and there
undertook and promised to pay the same to the
said Plaintiff survivor as aforesaid according to
the tenor and effect true intent and meaning of
the said Note at the place aforesaid: And the
Plaintiffs, now & say that Messrs S. M. Burch & Co
office where said Note by its tenor & effect is made
payable is in the County of Cook and State of
Illinois aforesaid, yet the said Archibald McAl-
lister and the said Jacob R. De. Ing. during
the life time of said Jacob R. De. Ing. or the
said Archibald McAllister since the death of
said Jacob R. De. Ing. or any one else for them

or either of them has paid said note to the said
Zebulon S. Ely & Enoch D. Ely deceased during
the life time of said Enoch D. Ely or the said
Zebulon S. Ely since the decease of said Enoch
D. Ely or any part thereof, although often re-
quested so to do. In the damage of the plaintiff
Zebulon S. Ely survivor of Enoch D. Ely deceased
of One thousand Dollars and therefore he
brings suit &c

Jy. Shumway Harte & Towne
Plaintiffs Attys

'Copy of Note sued on'

\$440 ⁶⁹/₁₀₀

Chicago July 10th 1852

Ninety days after date we the
subscribers of Manifested County of Will
State of Illinois promise to pay to the order
of Ely & Co Four Hundred Forty & ⁶⁹/₁₀₀
Dollars at the office of Messrs J. W. Church & Co
Value Received -

Jacob W. DeLong
H. McAllister

And there after to wit: on the Seventh day
of July in the year of our Lord one thousand
Eight Hundred and fifty six, came the Defen-
dants Archibald McAllister. summoned by his
attorney A. H. McAllister, and filed the Affi-
davit of A. H. McAllister in the Office of the
Clerk of the Cook County Court of Common
Pleas for production of time to Plead which
said affidavit is in the words and figures as
follows to wit:

Archibald McAllister summoned
ad ^{Cook County Court}
Zebulon S. City summoned & of Common Pleas

Cook County } S.S. A. H. McAllister of Chicago
being duly sworn deposes & says that he is one of
the attorneys for the above named deft in this
syst that the said defendant does not reside in
the County of Cook but lives at the Farm of Ham-
field County of Will a distance of over forty
miles from the City of Chicago.

That this deponent prepared pleas for said
defendant early last week - That on the third
day of July inst he sent an affidavit of
Merits in said cause to said deft to be sworn
to by him - That the same was sworn to as

deponent truly believe but the Notary before
whom the Oath was taken omitted to add the
proper Jurat to the same to authorize the
filing thereof. Wherefore deponent was obliged
to return the same for a proper Jurat which
he did by depositing the same in the Post
Office for the next returning mail but as the
next mail was on this day (Monday) and
as some time may be required for getting the
said Jurat made correctly; he fears that the
same may not be returned by Wednesday of
this week and therefore asks for an Extension
of time to plead in this cause till Friday
Morning of this week.

W. H. McAllister

Sworn this 4th day of
July A. D. 1856 before me }
N. Kimball Clerk }

And thereupon on the same day and before
last aforesaid the following proceedings were had
in said cause and entered of Record to wit:

Zebulon S. Ely, Sumner
of Enoch D. Ely

Archibald McAllister
of Jacob R. DeSoy

Apt

This day comes the

defendant by Anderson & McAllister his attorneys
and on his motion it is Ordered that the Rule
to plead in this cause be extended to Friday
morning next.

And afterwards to wit: on the tenth day of
July in the year last aforesaid comes the said
Defendant, Archibald McAllister Juror, by his
attorneys Anderson & McAllister & Smith, and filed
in the office of the Clerk of the Cook County
Court of Common Pleas his Plea which said
Plea is in the words and figures as follows to wit:

Archibald McAllister Juror	}	Cook County Court of Common Pleas
ad Zebulon S. Ely Juror		

And the said defendant Archibald McAllister by Anderson & McAllister & Smith his attorneys comes and defends the wrong and injury whereof and says that he did not undertake or promise in manner or form as the said plaintiff hath above thereof complained against him and of this the said defendant puts himself upon the Country.

And for a further plea in this behalf the said defendant says that the said plaintiff ought not to have or maintain his aforesaid

action thereof against him because he says that the said Jacob R. De Dey in said declaration mentioned as to the making of the said promissory note therein mentioned was the principal debtor and this Defendant signed the same without consideration and as the mere security for the said De Dey which was to wit: at the time of making said note, well known to said Plaintiff and to said Enoch Ely then living to wit: at Chicago aforesaid - That after the said note became due and payable by the terms thereof the said De Dey then residing at the Town of Hanfield in the County of Will to wit on the first day of January A.D. 1853 & the said defendant being then & there apprehensive that the said De Dey would become insolvent without previously discharging said indebtedness so that it would be extremely difficult for this defendant after paying said note to receive back the same of said De Dey the principal debtor as aforesaid did to wit: on the day & year last aforesaid to wit: at the City of Chicago aforesaid by letter in writing notifying and require the said plaintiff and said Enoch (then living) to forthwith put the said note in suit.

And this defendant further in fact says that although the said plaintiff and said Enoch in his life time well knew then & there

that this defendant was such security for said De Juy, as aforesaid and that this defendant was apprehensive that said De Juy would become insolvent, yet the said plaintiff and the said Engeh in his life time and the said plaintiff after the death of said Enoch did not put the said note in suit within any reasonable time nor prosecute the same with any diligence but wholly neglected so to do until the said De Juy became and was insolvent and this defendant is compelled to pay the money due on said note will be unable to collect the same or any part thereof out of the property of said De Juy and this the said defendant is ready to verify -

Wherefore he prays judgment if the said plaintiff his action aforesaid ought to have or maintain against him.

And for a further Plea in this behalf the said deft says "Actio. non" because he says that in the making of the said promissory note mentioned in said Declaration the said Jacob R. De Juy was the principal debtor and this defendant the security for said principal debtor which was to wit; at the time of the making thereof to wit; at Chicago aforesaid well known to said plaintiff.

That after the said note became due and payable by the terms thereof to wit;

on the first day of May A.D. 1853 and the said
De Juy being then alive to wit; at Plainfield
in the County of Will as aforesaid where he might
have been served with process this defendant
then and there became apprehensive that
the said De Juy would become insolvent with-
out discharging said note or so much so that
it would be extremely difficult to recover back
the amount of said note of ~~the~~ said De Juy if
compelled to pay the same and this defendant
by reason of the premises on to wit; the day &
year last mentioned to wit; at the City of Chicago
aforesaid did notify and require in writing
of the said plaintiff that he forthwith put the
said note in suit but the said plaintiff
well knowing the premises did not within any
reasonable time put the said note in suit
or use any diligence to collect the same
by discourse of law and the said Jacob
R. De Juy afterwards to wit on the first day
of October 1853 to wit; at Plainfield aforesaid
became & was insolvent wherupon by reason
of the premises and by virtue of the Statute
in such case made and provided the said
Plaintiff is barred from recovering the same
of this defendant and thus he is ready to
verify. Wherefore he prays judgment if the
said plaintiff ought to have or maintain

his aforesaid action there against him,

Andrew McAllister & Smith

State of Illinois } S.S.
County of Cook }

Archibald McAllister
the Defendant in this suit being duly sworn
deposes and says that he believes he has
a good defence to said suit upon the
merits -

Given this 10th day of
July A.D. 1856, before me } A. McAllister
Walter Kimball Clerk }

And afterwards to wit; on the twelfth
day of September in the year of our Lord one
thousand Eight Hundred and fifty six -
comes the said Plaintiff, by his said attor-
neys, and filed in the office of the Clerk
of the Cook County Court of Common Pleas
his Similita and Demurer to 1st and 2d
alias which said Similita and demur-
er, are in the words and figures as
follows to wit;

The State of Illinois
Cook County S.S. }

Zebulon S. Ely Surron
Archibald McAlister Surron }

And now comes the Plaintiff
and as to the first count of said declaration
wherein the defendant put himself upon
the country the Plaintiff does the like &c

By Shumway Waitt & Payne

And now comes the Plaintiff and
as to the second plea by the defendant above
pleaded says that he ought not to be barred
from having & maintaining his said action
by any thing in said plea contained because
he says that said plea and the matters
& things contained as pleaded in manner
and form are insufficient in law to be
answered to &c and this he is ready to verify
wherefore he prays Judgment &c

By Shumway Waitt & Payne
his Attys

And now comes the plaintiff and
as to the third plea by the defendant
above pleaded said ^{the} same and the
manner and things therein contained, in
manner and form as the same are pleaded
and set forth, are not sufficient to bar
the plaintiff from having and maintaini-
ng his said action, and this he is ready
to verify - wherefore he prays Judgment

By Shumway, Waple & Stone
his attys

And afterwards to wit on the twenty
sixth day of September in the year last
aforesaid, comes the said Defendant by his
said attorney and filed in the office of
the Clerk of the said Cook County Court
of Common Pleas, his Joinder in Demur-
rer - which said Joinder in demurrer is
in the words and figures as follows to wit:

Archibald McAllister Sumner
ad { Cook County Court of
Zebulon S. Ely Esq. &c } Common Pleas -

And now comes the said defendant

and says that his said Plea by him secondly
and thirdly above pleaded and the matters
therein contained in manner and form as
the same are above pleaded are sufficient
in law to bar and preclude the said plain-
tiff from having or maintaining his
aforesaid action thereof against him the
said Defendant and the said deft is ready
to prove the same when &c

Wherefore inasmuch as the said
plaintiff has not answered said plea
nor hitherto in any manner barred the
same the said deft prays Judgment
and that the said plff may be barred
from having or maintaining his action
aforesaid thereof against him &c

Andrew McAllister
Deft. Atty

And afterwards to wit: on the twenty
seventh day of September in the year of
Our Lord One thousand eight hundred
and fifty six the following further
proceedings were had in this cause
and entered of Record to wit:

Zephulon B. Ely, Surron
 of Enoch D. Ely
 }
 Archibald McAllister
 Surron of Jacob R. DeLong

Mpt

This day comes the
 said plaintiff by Shumway Waite & Son
 his attorneys and the said defendant
 by Anderson & McAllister his attorneys also
 comes and the Court after hearing the argu-
 ment of counsel on said plaintiff's demurrer
 to said defendant's special plea by him
 pleaded herein being now fully advised
 in the premises with in said demurrer, and
 said defendant stands by his said plea

And therefore issue being joined
 by agreement of said parties this cause is
 submitted to the Court for trial without
 the intervention of a jury; and the Court
 after hearing the allegations & proofs on both the
 argument of counsel and being now fully
 advised in the premises finds the issue for
 the plaintiff and assess his damages to
 the sum of Five Hundred and forty four
 Dollars and twenty cents

Therefore it is considered that the

2770
said plaintiff do have and recover of the
said defendant his damages of Five Hun-
dred and forty four Dollars and twenty
cents in form aforesaid by the Court here
assessed and also his costs and charges
by him about his suit in this behalf
expended and have execution therefor

State of Illinois &
County of Cook & S. S.

I Walter Kimball, Clerk
of the Cook County Court of Common Pleas
within & for the County & State aforesaid
do hereby Certify that the foregoing and
full true and complete Transcript
of all the papers and Records now on
file in my office in the case of Ephraim
Hely Survivor of Enock Hely, Plaintiff
& Archibald McAllister Survivor of
Jacob R. DePuy, Defendant.

In Testimony whereof I have
hereunto set my hand & affixed
the seal of said Court at Chicago
this 27th day of December A.D. 1856
Walter Kimball, Clerk
B

Supreme Court
of the State of Illinois

Archibald M Allister
as Plff in Error
Zebulon S Ely Deft in Error

And now comes the said plain-
tiff in error by W H McAllister his
attorney and says that in the record
and proceedings aforesaid and in the
 rendition of the Judgment aforesaid in
this cause manifest error hath inter-
vened in this to wit.

The said Cook County Court of Common
Pleas erred in sustaining the ~~pleas~~
demurrers interposed in said Court by the
plaintiff therein, to the second and third
pleas of the defendant in said Court.

The Court erred in rendering judg-
ment for the plaintiff in said Court
of Common Pleas, because said pleas
constituted a good defence to said
action, and ~~for~~ for other errors
whereupon the above named plaintiff in
error prays that said Judgment may
be reversed &c.

W H McAllister
Atty for Plff in Error

Let a supersedeas issue in the above cause upon the

Plaintiff in Error filing this record with a
bond as by law required in the penal sum of
twelve hundred dollars with Edward
McAlister surety

Jan'y 29. 1857.

J. H. Caron

75
John W. C. by Sumner
W
Richard M. Olliston
Sumner

Filed Feb. 10, 1859
S. Selwyn
Clerk
By J. B. Rice Deputy

Recd Transcript
of 1 by McAllister

STATE OF ILLINOIS, }
SUPREME COURT, }

ss. The People of the State of Illinois,

TO THE SHERIFF OF THE COUNTY OF *Cook*

GREETING:

BECAUSE, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the *Circuit Court of Cook County* of *Cook* county, before the Judge thereof, between *Zebulon S. Ely* Survivor of *Enoch De Ely* Partners under the name & style of *Ely & Bro.* Plaintiff and *Archibald McAllister* Survivor of *Jacob R. De Puy* —

defendant, it is said that manifest error hath intervened, to the injury of the said

Archibald McAllister —

as we are informed by *his* complaint, the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; THEREFORE, WE COMMAND YOU, that by good and lawful men of your county, you give notice to the said *Zebulon S.*

Ely —

that *he* be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the *second* Monday in *June* — next, to hear the records and proceedings aforesaid, and the errors assigned, if *he* — shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said *Zebulon S. Ely* —

notice, together with this writ.

WITNESS, The Hon. WALTER B. SCATES, Chief Justice of our said Court, and the Seal thereof at Ottawa, this *10th* day of *February* in the Year of Our Lord One Thousand Eight Hundred and Fifty-Seven.

S. Leland
Clerk of the Supreme Court.

By J. B. Rice Deputy

We the undersigned attorneys for the
 defendant in Error within named hereby
 appear for him and authorize the
 Clerk of the Supreme Court to enter
 our appearance in the within entitled
 cause for said Zebulon S. Ely
 & stipulate to try said cause
 April 14th 1857.

Thurman Hale Name
 Defendant Atty

12338

Filed Apr. 16, 1857
 S. de laune
 Clerk

Archibald McArthur
 vs
 Zebulon S. Ely
 De laune

RECORDED IN THE RECORD AND PROCEEDINGS AND ALSO IN THE RECORD OF THE JUDGE
 TO THE CLERK OF THE SUPREME COURT OF THE STATE OF ILLINOIS
 The People of the State of Illinois

The State of Illinois

In Supreme Court

Leahue J. Esq.

Sumner vs

Eds

Archibald McCarter

And now comes the defendant
and says that there is no error in
reids records as is by the
plaintiff in over alleged and
~~g the by defendant~~ upon the
~~country~~ & prays that said
judgment may be affirmed
to

Sumner vs to Same
Defendants atty

75

Leblanc & Ely
Junior &
at
A McAllister
founder

Filed April 21, 1887
L. Leblanc
Clerk

Murray Bates
Jr
Defendants attys

STATE OF ILLINOIS, }
SUPREME COURT, } ss.

The People of the State of Illinois
TO THE CLERK OF THE ~~CIRCUIT~~ *Circuit* COURT FOR THE COUNTY OF *Cook* GREETING:

BECAUSE, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the *Circuit Court of Common Pleas of Cook County*, before the Judge thereof, between *Zebulon S. Ely Survivor of Enoch S. Ely Partners in trade under the name & style of Ely & Bro.*

plaintiff, and *Archibald McAllister Survivor of Jacob R. De Puy*

defendant it is said manifest error hath intervened, to the injury of the aforesaid

Archibald McAllister as we are informed by *his* complaint, and we being willing that error should be corrected if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the *Second Monday in June* — next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

WITNESS, The Hon. WALTER B. SCATES, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this *10th* day of *February* in the Year of Our Lord One Thousand Eight Hundred and Fifty-Seven

L. Leland

Clerk of the Supreme Court.

By J. B. Rice Deputy

Handwritten: Clerk of the Supreme Court

Handwritten: of our Court One Thousand Eight Hundred and Eighty-
three this day of February in the Year
Justice of our said Court and the Seal thereof at Oc-
tober, The Hon. WILLIAM B. SCOTLAND Clerk

be done according to law.
affected, we may cause to be done therein to correct the error, writ of right ought to
next, that the record and proceedings being in-
the same before our Justice at Ottawa, in the County of La Salle, on the
stated, with all things touching the same, under your seal, so that we may judge
sent to our Justice of the Supreme Court the record and proceedings of the Court
may you that if judgment thereof be given, you distinctly and openly, without delay,
containing the points being in dispute, and the parties thereto, and the Court, and the
determination of the Court, and the parties thereto, and the Court, and the

Archibald McAllister
or
Zebulon S. Ely
Writ of Error

This Writ of Error is
to operate as a super-
sedeas and as such
is to be obeyed by all
concerned.

L. Leland
Clerk
By J. B. Rice Deputy

Filed Feb. 10. 1857
L. Leland
Clerk

Handwritten: the Judge thereof, released
of a plea which was in the Court of Common Pleas of said County, before
JUDGE, in the record and proceedings, as also in the relation of the Judgment
to the Clerk of the Court, for the County of La Salle, Illinois, and the
State of Illinois.

Know all men by these presents that we
Archibald McAllister and Edwards
McAllister of Plainfield Ill are held
and firmly ^{bound} unto Zebulon S Ely in the penal
sum of twelve hundred dollars lawful money
of the United States for the payment of which
well and truly to be made we bind ourselves
our heirs and administrators jointly severally
and firmly by these presents. Witness our
hands and seals this 15th day of January
A D 1857

The condition of the above obligation is such
that whereas the said Zebulon S Ely did on
the seventh day of September A D 1856 in the
Cook County Court of Common Pleas, at the
September Term thereof recover a judgment
against the above bounden Archibald Mc
Allister for the sum of five hundred and
forty four dollars and twenty cents and
the costs of said suit, and the said Archibald
McAllister sued out of the Supreme Court
of the State of Illinois a writ of error
for bringing the record in said Cause into
said Supreme Court, Now therefore if the
said Archibald McAllister shall duly and
diligently prosecute the said writ of error
and shall pay the judgments, costs, interest
and damages in case the said judgment

shall be affirmed by said Supreme
Court then this obligation to be void
and of no effect otherwise to remain in full
force virtue and effect

A W Allister ^{grn} Seal

E W Allister ^{grn} Seal

A McAllister ^{grn} Seal

State of Illinois }
County of Will }

Edmond M^c Allister being
duly sworn deposes and says that he is
Security upon the foregoing bond and executed
the same for the purposes therein mentioned, And
that he resides in Plainfield in the
County aforesaid and is the owner of real
Estate situate in said Town of Plainfield
of the value of more than two thousand
dollars and deponent further says that
he is worth more than the sum of two
thousand dollars over and above all his
debts and liabilities and further says, not,

Subscribed to & sworn before me
this 27th day of January 1857

E M^c Allister

J M. Park, Police Magistrate & J P. Seal

Archibald McAllister

vs

Zebulon S. Ely

Bond

Filed Feb. 10, 1857

S. Leland
Clerk

Supreme Court
Archibald McAllister
Survivor vs
Zebulon S. Ely Survivor

The matters set forth in the Special Pleas
in this action, to which the Court below
sustained a Demurrer constitute a complete
bar to the action and the Court should have
overruled the Demurrer.

These Pleas, are founded, respectively, upon
the provisions of Sec 1 Chap 97 of the
Statute Entitled "Securities." (See R S 1845
Page 493) and it is submitted that each
of them contains all the allegations requisite
to establish the Statutory defence in all its
parts, and, ^{this is so clear as to} leave no ground for argu-
ment,

A R McAllister
Atty for Plff in Error

my

W R M Allister
Puffs City

Filed April 16. 1888
V. Leland
Clerk

Supreme Court of the
State of Illinois

Archibald McAllister

vs

Plff in Error

Zebulon S Ely

Def in Error

The Clerk of said Court on filing the Trans-
cript of Record Order for Supersedeas & Bond
will please issue writ of error making
it a Supersedeas, also Certificate of
Supersedeas, and See Fa to Sheriff of
Cook County.

Chicago Feb 6th 1857,

W K McAllister

Atty for Plff in Error

Sup Court
Archibald McAllister
21

Zebulum S Ely
Præcipe

Chicago April 15th 1887

Sup Court
Submitted Wth Allister
vs
Zebulon S Ely }

Mr Clerk,

Enclosed are two more
copies of Abstracts in the above case, and
also written points upon which I propose
to submit the cause to the Court.

I wish you would mark the case
on the Docket of the Court "Submitted by
Plff on written points," or take some other
sure precaution so that the Court may know
that it is submitted in this manner.

I am so situated as to our Circuit Court
that it is impossible to leave,

Enclosed you will find Sci Fa in this case
with authority therein to enter after their the
appearance in the case by Waite Shamway
& Towne, which you will please enter.
Please also to acknowledge the receipt of
this

Yours, &c
W R M Allister

McAllister

vs

Ely

Submission

Filed, April 16. 1887

L. Leland
Clerk