

Sam Brooks vs. {
Austin Brockenbrough { This was an action by petition
Jonah Lamborn & others { summons vs sundry persons who executed
the note payable to the said Brooks. McCounil one of the defendants
pleaded a plea that was personal as to him & entitled him
to his discharge. This plea was not answered and a decree
of release was entered as to said McCounil. All the
other defendants pleaded the general issue & payment and went to
trial upon the trial it was called upon said McCounil
as a witness. The ptg objected and the said McCounil
was sworn & answered questions as to his interest in the
suit whereupon said McCounil himself objected to being
compelled to give evidence in the case and swore an
oath that he was directly interested in the suit and that
if judgment was not rendered in the case he would
lose the whole amount of the note & interest upon which
the claim was also persisted in his objection. But the
Court overruled both the objection of the ptg & witness and
compelled said witness to give evidence and because
of his testimony the ptg was forced to submit to a
verdict the compelling of a witness to testify is assigned
as a ground upon to reverse this judgment.

The following authorities are referred to

Maurau vs Lamb 7 Cowen 174 - Appleton vs Boyd 7 Mass 131
Peakes Ex. 184 - 10 East 395. 1 Strange 406. 2 Root Rep 528
1 Oberton 340. 1 Martin R 23

A party to the record is an interested
party - Schermerhorn's Schermerhorn 1 Mass 117
1 N.Y. Dig 454 -

Party to the record can not be compelled to testify.
Nor can any one be compelled to testify against
his own interest.

Lambourn If The plaintiff has a right to recover
he must recover against all the defendants &
can not take judgment against one only. This an
action ex contractu

Saml J Brooks

at

at Brookmabrough

of others

abstract of No. 1.