

Samuel C. Melvin Plff in Error

vs
Phoebe King et al excc
utors of Lyman King's Efts

Superior Court
June Term 1853

Error to the Honorable Co

State of Illinois

McHenry Court, 3rd

Lyman S. Church being duly
sworn deposes to the following Statement

I was counsel in the above cause in the
court below for the testator of the Efts ^{in error} and
was employed by the Defendants in error to
defend the same in the Superior Court in case
it should be there prosecuted. The above
facts Mr Charles McClure always knew
During the week previous to the present session
of the Superior Court I had a conversation with
said McClure in regard to the cause which
he proposed to prosecute in the Sup Court
also one that I proposed to take up on error
at his request I proposed to enter my
appearance and join in error in all
cases in which I had been concerned
whether he had service of process or not

With the above understanding, Mr McClure
left to attend court. I reached Ottawa
on Thursday of the first week. Mr Melvin
was in attendance ^{on the court} before me, and requested
that I should join in error in the
Case of William Montgomery vs Harley
Wayne and John Crum during that day
so that he could go home on the next day

Filed July 1. 1853
L. L. and Clerk
By J. H. Ireland

I asked him if he was not going to prosecute
any other causes wherein I was concerned
he replied that he was not going to prosecute
any other cause and that he was anxious
to go home I did as he requested in the
Montgomery & Wayne case which he argu-
ed and left town on the next day

On the next Monday having submitted
all the causes which I supposed I
had before the Court I went home

I had relied on the statement made
by Mr McClure that he was going
to prosecute no other cause and ^{had} not
made any inquiry into the above cause
of Melvin vs King et al. I heard of
no rule to join in error. Neither did
I inquire if there had been any such rule
or even look at the Docket. I had relied
on his statement above mentioned

After I came home I learned by the
Newspaper that the case of Melvin vs
King et al had been removed by Default
This was the first time that I ascertained that
any order had been had in the cause or
any steps taken by Mr McClure or any
other person to bring the cause on for trial
If there was a rule to join in error I should
certainly have ascertained and complied with
it had not Mr McClure the counsel for the
Plaintiff in error made the statement above
referred to I further state that I verily believe
that the Defects in error have a good defence and
that there are no errors in the record of said cause

Given and subscribed to before me this 29th June 1838

Witness my hand and the Seal of the Circuit Court of
Montgomery County at Princeton the day & year aforesaid
J. H. Johnson Clerk