

12101

No. _____

Supreme Court of Illinois

Burnap.

vs.

Wight.

State of Illinois, sct.

WRIT OF ERROR—FREE TRADER PRINT.

The People of the State of Illinois,
To the Clerk of the Circuit Court for the County of *Winnebago* - 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 *Winnebago* county, before the Judge thereof, between _____

Francis Burnap - plaintiff - and *James M. Wright*

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

as we are informed by *his* complaint, and we being willing that error, if any there be, should be
corrected 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 *2^d 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. SAMUEL H. TREAT, Chief Justice of our said
Court, and the seal thereof, at Ottawa, this *23rd* _____
day of *September* in the year of our Lord one thousand eight
hundred and fifty *two.*

A. Ireland Clerk of the Supreme Court.

26
Francis Burnap

James M. Wright

Writ of error to Winchester

To June Term 1852.

Filed June 27 1853

C. S. Hufford
Clerk

Burnap.

State of Illinois
Winnebago County

Pleas before the Hon
Jesse B. Thomas at a Circuit Court
begun and holden at the Court House in
Rockford in & for the County of Winnebago and
State of Illinois on Monday the 1st Day of November
A.D. 1847. Present the Honl Jesse B. Thomas
Presiding Judge William A. Boardman State
Attorney Abram R. Maynard Sheriff Attest
C. H. Shufford Clerk

It is remembered that herefor
to wit on the 22 Day of May A.D. 1846. Francis
Pomroy filed in the Clerk's Office of said
Circuit Court his certain Precept which
said Precept is in the words and figures
following to wit.

In the Winnebago County Circuit Court
Winnebago
County Command the Sheriff of the
County of Winnebago to
Summon James M. Wright Bappein on the
first day of the next Term of the Court, Answer
unto Francis Pomroy in answer that he
order to the said Francis Pomroy the Sum
of One thousand Dollars which he owes him
unjustly claims from him & his damage of
five hundred Dollars

Francis Pomroy
Plff and Demand

and afternoon 3. Sent on the 23rd May of May
AD 1846 - a summons was issued from said
clerk's Office in words and figures following
to wit.

"State of Illinois The People of the State of
Winnebago County of Illinois To the Sheriff of said
County. Greeting;

We command You that You summon
James M. Wright, Defendant the Circuit Court of
said County, on the first day of the next Term
thereof, to be held at the Court House in
Rockford on the third Monday of August next
between Francis Corns in a plea that
he rendered to the said Francis Corns the sum
of one thousand Dollars which he owes to
and unjustly claims from him & his damage
of five hundred Dollars, and that You then
show this writ

Witness Jason Marsh Clerk
of said Circuit Court at
Rockford the 23rd May of
May AD 1846.

Attest Jason Marsh - Clerk
for S. W. Church Deputy,

Which said writ of summons has endorsed
thereon the words & figures following To wit

"I have read the within writ the
25th May of May AD 1846, by
reading the same to James M. Wright
H. R. Wraymond Sheriff Win. Co. Ill.

And afterwards Docket on the 17th day of
August AD 1846 at the August Term of said
Court. the following proceedings were had in
said Court as appears from the record of the proceedings
of said Court in said Cause Docket

Francis Barnard }
vs } Ablett
James M. Wright } "

This day comes the said
Plaintiff and makes his Motion on petition and
affidavit for a change of venue in this Cause "

And afterwards Docket on the 18th
1st day of September AD 1846 of the August
Term of said Court the following proceedings
were entered of Record in this Cause Docket

Francis Barnard }
vs } Ablett
James M. Wright }

And now at this day
comes the said parties and the Motion heretofore
made for a change of venue in this Cause
coming on to be heard. And the Court having
considered the petition & affidavit in support
of said Motion It is Ordered that the venue herein
be changed to the County of Ogle, and it
further Ordered that the Clerk of this Court transmit
to the Clerk of said Ogle County Circuit Court
all and sundry in this Cause together with a complete

Transcript of the Record herein by the first day
of November next,

And of Remands writ
on the third day of May A.D. 1847 at the
May Term of the Ogle County Circuit Court
the following ^{proceedings} ~~proceedings~~ were had in
said Court in the cause of writ

Francis Burnap
vs
James M. Wright } Alcott

It is ordered by the Court
in pursuance of an act of the Legislature at
its last Session that the following causes now
pending in this Court, be remanded to the
County of Winnebago writ

William Wilson vs Francis Burnap
L. M. Boyce vs Asenim Simonds, John Bull
vs Carlhis & Reed. Francis Burnap vs
James M. Wright and D. J. Wier vs Francis
Burnap, of the common Law writ. And
Jacob Alberts et al vs Francis Burnap. Royal
S. Mayfield vs Jonathan Welden, & Jonathan
Welden vs Royal S. Mayfield, and that
the Clerk of this Court make out a Transcript
Transcript of all the orders heretofore entered of record
in ^{the} ~~the~~ cases in this Court and transmit the same
together with all the papers now on file in said cases
to the Clerk of the Circuit Court of the County of
Winnebago

And of records to wit on the 23^d day of April A.D. 1847. The following Declaration was filed in Office of the Clerk of the Circuit Court of said County of Wmmebago in this cause which said Declaration is in the words & Figures following to wit.

"
In the Wmmebago Circuit Court

As yet of the Term of August in the
Year of our Lord one thousand Eight
hundred and Sixty Six

Ogle County ss.

James M. Wight was summoned by the Sheriff of the County of Wmmebago according to the form of the Statute in such case made and provided to answer before the Circuit Court for the said County of Wmmebago and Francis Bonnap in a plea that he owes unto the said Francis Bonnap one thousand dollars which he owns to and unjustly detains from him. And thereupon the said Francis Bonnap in person complains of the debt whereas heretofore to wit on the sixteenth day of January in the Year of our Lord one thousand Eight hundred and Sixty Six at Rockford in said County of Wmmebago, John A. Albert John M. Moore Augustus J. Albert and William S. Albert of the City of Baltimore in the State of Maryland, filed in the Office of the

Clerk of the Circuit Court for the said County
of Winnebago their Petition in Chancery against
the said Plaintiff therein praying among other
things, that a writ of the Court might be
issued out of the same Court against the
said Plaintiff restraining him from departing
without the jurisdiction of this State until the
matters and things set forth in the said
petition could be heard. Upon the filing of
which said Petition as aforesaid a writ of the
Court was thereupon there and there issued out
of the said Clerk's Office signed by the said Clerk
and under the Seal of the said Circuit Court
for said County of Winnebago directed to the
Coroner of the same County and commanding
the Coroner of the said County to cause the said
Plaintiff to execute a bond with Security in the
penal sum of two thousand Dollars conditions
not to depart the said State without leave of
the said Court and to render himself in
execution hereon any judgment or decree
which the said Court might render against
him in the premises, and further requiring
the said Coroner in default thereof to
commit him to the Common Jail of the
said County until he should do so of
his own accord. And upon the occurrence
of the filing of the said Petition and of the going
out of the said writ as aforesaid, the said Defendant
there to and there by his certain ^{written} & obligatory, sealed
with his Seal and now shewn to the Court here
the date whereof is the day and Year last aforesaid

acknowledged himself to be held and firmly
bound unto the said complainant in the
sum of five hundred dollars, parcel
of the sum above demanded, with a
condition thereunder written that of the said
petitioners should well and truly prosecute
their said petition with effect and reimburse
to the said Plaintiff all such damages and
costs as he the said Plaintiff should lawfully
sustain by occasion of the said writ, then the
said obligation was the void else to remain in
full force and virtue. And afterwards to wit
on the seventeenth day of January in the Year
last aforesaid at Rockford aforesaid in the
County of Winnebago aforesaid, the said
Coroner by virtue of said writ arrested and
apprehended the said Plaintiff, and then and
there committed him to the Common Jail
of the said County of Winnebago and kept and
detained the said Plaintiff in close custody in
the said Jail by virtue of the same writ for a
long space of time to wit for the space of sixty
three days then next ensuing, By means of
which said several premises the said Plaintiff
whilst he was so imprisoned as aforesaid not
only suffered great pain of body and mind
and was greatly exposed and injured in his
Reputation Credit and Circumstances, and
was interrupted and hindered and prevented
from performing and transacting his lawful
affairs and business by him during that time
to be transacted and performed, whereby he
suffered damage to a large amount to wit

Suit to the amount of five hundred dollars but was also forced and obliged to lay out and expend and did necessarily lay out and expend diverse large sums of money in and about procuring his liberation and release from his said imprisonment and his maintenance and support during the same, and in and about defending the said Petition and the Suit in that behalf of the said Petitioners, amounting in the whole to a large sum to wit the sum of one hundred dollars to wit at Rockford aforesaid in the County of Winnebago aforesaid, And the said Plaintiff avers that the said Petitioners did not prosecute their said Petition with effect according to the condition of the said Writing obligatory, but on the contrary thereof wholly failed therein and that afterwards to wit on the 1st of May in the Year of our Lord one thousand Eight hundred and forty six at Ogle in the County of Ogle aforesaid to wit at Rockford aforesaid in the County of Winnebago aforesaid by the Order and Decree of the Circuit Court for the said County of Ogle, to which Court the said Petition and Suit in that behalf had been removed and transferred from the said Circuit Court for the County of Winnebago by a change of venue in the said Cause to the said County of Ogle according to the form of the Statute in such case made and provided the said Petition was dismissed and it was thereupon ordered and decreed by the same

Circuit Court for the County of Ogle that the
said Plaintiff should ^{thereof} ~~give~~ ^{without} day, and
that he should have and recover against
the said Petitioners his costs on that behalf, as
by the record and proceedings thereof now remaining
of record in the said Circuit Court for the County of
Ogle will more fully appear to wit at Osgood
aforesaid, Dent at Rockford aforesaid in the
County of Winnebago aforesaid, and the said
Plaintiff further avers, that the said Petitioners
have not reimbursed or paid to the said Plaintiff
the damages and costs by him wrongfully
sustained by occasion of the said writ as
aforesaid or any part thereof according to the
form and effect of the said condition of the said
writing obligatory. By reason whereof the
said writing obligatory became forfeited,
and thereby an action hath accrued to the
said Plaintiff to demand and have of and from
the said Defendant the said sum of five hundred
dollars, the penalty therein, parcel of the
sum above demanded.

And whereas also the said Defendant
heretofore to wit on the sixteenth day of January
in the year of our Lord one thousand eight
hundred and forty six at Rockford aforesaid
in the County of Winnebago aforesaid by
his certain other writing obligatory sealed
with his Seal and now shown here to the
Court here, the date whereof is the day

and seen last aforesaid, a knowledge
him to be held and firmly bound unto
the said Plaintiff in the penal sum of five
hundred Dollars, other parcel of the said
sum above mentioned demanded; which
said last mentioned writing obligatory
was and is subject to a certain condition
therein written, whereby after reciting
in substance, and to the effect that Jacob
Alberts John R. Moore, Augustus J. Alberts
and William J. Alberts, had obtained an
order from the Master in Chancery of the
County of Winnebago aforesaid for the issuing
of the Peoples writ of the great Republica
and that the said writ was about to be
issued ~~into~~ commanding the Coroner of the
said County of Winnebago to summon the
said Plaintiff Dubheer before the said Circuit
Court for the County of Winnebago on the first
day of the then next Term thereof to be
holden at the Court House in Rockford on
the second Monday of April then next to
answer to a petition exhibited against
him by the said Jacob Albert John R. Moore
Augustus J. Albert and William J. Albert in
that behalf and also to oblige the said Plaintiff
to give Bond with good and sufficient security
payable to the said Jacob Albert John R. Moore
Augustus J. Albert and William J. Albert in
the penal sum of two thousand Dollars lawful
Money of the United States, conditioned that he

would not depart this State without leave
of the said Court, and that he would render
himself in execution to answer any
judgment or decree which the said Court
might render against him in the premises,
and further requiring the said Coroner
in default of his giving such Bond
and Security to commit him to the Common
Gaol of the said County, until he should
do so of his own accord, it was conditio-
-ned that if the said Jacob Albert John B
More Augustus J Albert and William
J Albert should well and truly prosecute
the said Petition with effect and reimburse
to the said Plaintiff all such ^{damages} costs as he
should wrongfully sustain by occasion
of the said Writ, then the last mentioned
obligation was to be void, else to remain in
full force and virtue, as by the said last
mentioned writing obligatory and conditio-
-tion will among other things more fully and
at large appear, And afterwards to wit on the
day and Year last aforesaid, at Rockford
aforesaid, in the County of Winnebago aforesaid
pursuant to the said Order a Writ of
Prevent was issued out of the Office of
the Clerk of the Circuit Court for the said
County of Winnebago, signed by the said
Clerk, and Sealed with the Seal of the
said Court directed to the Coroner of said
County of Winnebago whereby the People
of the State of Illinois commanded the

Said Coroner to summon the said Plaintiff
to appear and answer the said last mentioned
petition as aforesaid, and to cause the said
Plaintiff to give a bond with good and
sufficient security payable to the said
Jacob Albert John R. Moore Augustine
J. Albert and William J. Albert in the
sum of two thousand Dollars
lawful Money of the United States
conditioned that he would not depart
this State without leave of the said
Court and that he would render himself
in Execution to answer any judgment
or decree which the said Court might
render against him in the premises
and further commanding the said
Coroner in default of his giving such
bond and security to commit him
to the Common Jail of the said County
until he should do so of his own
accord, By virtue of which said
last mentioned writ, the said
Coroner afterwards went on the
seventeenth day of January in the
Year last aforesaid at Rockford aforesaid
in the County of Winnebago aforesaid,
arrested, and apprehended
the said Plaintiff and then and there
committed him to the Common Jail
of the same County, and kept him
and detained the said Plaintiff in

close custody in the said Jail by virtue
of the same writ for a ^{space of} long time, to wit,
for the space of sixty three days then next
ensuing. By means of which said several
prisoners in this Court stated, the said
Plaintiff while he was so imprisoned as
last aforesaid, not only suffered great
grief of body and mind, and was greatly
exposed and injured in his reputation
credit and circumstances, and was
interrupted and hindered and pre-
vented from performing and transacting his
lawful affairs and business by him during
that time to be transacted and performed,
whereby he suffered damages to a large
amount, to wit, the amount of five
hundred dollars, but was also forced
and obliged to lay out and expend, and
did necessarily lay out and expend diverse
large sums of money in and about
procuring his liberation and release from
his said last mentioned imprisonment,
and his maintenance and support
during the same and in and about
defending the said last mentioned ^{petition} and
the suit in that behalf, of the said
Jacob Albert, John R. Brown, Augustus
J. Albert and William J. Albert amounting
in the whole to a large sum of money
to wit the sum of five hundred dollars,
done at Rockford aforesaid in the
county of Winnebago aforesaid, And the

Said Plaintiff avers that the Jacob Albert
John R. Moore, Augustus J. Albert and William
J. Albert, did not prosecute their said
last mentioned petition with effect accord-
ing to the condition of the last mentioned
writing obligatory, but on the contrary
thereof wholly failed therein? And that
afterwards doct on the ninth day of
May in the Year last aforesaid at Oregon
in the County of Ogle, doct at Rockford
aforesaid in the County of Winnebago
aforesaid, by the order and decree of the
Circuit Court for the said County of
Ogle, to which Court the said petition and
suit in that behalf had been removed
and transferred from the said Circuit Court
for the County of Winnebago, by a change
of venue in the said last mentioned cause
to the said County Ogle, according to
the form of the Statute in such case
made and provided, the said last
mentioned petition was dismissed, and
it was thereupon ordered and decreed
by the said Circuit Court for the County
of Ogle that the said Plaintiff should go
thereof without day and that he should
have and recover against the said Jacob
Alberts John R. Moore Augustus J. Albert
and William J. Albert his costs of defense
in that behalf, as by the record and proceed-
ings thereof now remaining of record
in the said County Circuit Court for

the County of Ogle, more fully appears,
Doit at Oregon aforesaid, Doit at Rockford
aforesaid in the County of Winnebago aforesaid
And the said Plaintiff further avers that
the said Jacob Alberts John R. Moore
Augustus J. Albert and William J. Albert
have not reimbursed or paid to the said
Plaintiff the damages and costs by him
lawfully sustained by occasion of
the ~~xxx~~ said last mentioned writ as
aforesaid or any part thereof according
to the form and effect of the said condition
of the said last mentioned writing obligatory.
By reason whereof the same writing obligatory
became forfeited, and thereby an action
hath accrued to the said Plaintiff, to demand
and have of and from the said Defendant
the said last mentioned sum of six hun-
dred dollars the penalty, therein, other
sums of the sum above demanded

And whereas heretofore
Doit on the thirteenth day of January in
the Year of our Lord one thousand eight hundred
and forty six at Rockford aforesaid, in the
County of Winnebago aforesaid, the said De-
fendant, by his certain writing obligatory
purporting to be the joint and several bond
of himself and of Jacob Alberts, John R. Moore
Augustus J. Albert and William J. Albert of
the City of Baltimore and State of Maryland,
and which was sealed with the seal of the said

Defendant, and now here shewn to the
Court here, acknowledged himself to be
held and firmly bound unto the said
Plaintiff in the penal sum of five hundred
dollars other parcel of the sum above de-
manded, which said last mentioned
writing obligatory was and is subject to a
certain condition thereunder written, whereby
after reciting to the effect that the said
Jacob Albert John R Moore Augustus J Albert
and William J Albert had obtained an
order from the Minister in Charge of the
County of Winnebago aforesaid for the
issuing of the Process out of the Great
Republic, and that the said writ was about
to be issued from the Clerk's Office of the
said Court (meaning the Circuit Court for
the said County of Winnebago) Commanding
the Coroner of the said County to summon
the said Plaintiff, personally to be and appear
before the said Circuit Court on the first day
of the then next term thereof to be holden
at the Court House in Rockford on the
second Monday of April then next to answer
the petition exhibited against him by the said
Jacob Albert John R Moore Augustus J Albert
and William J Albert in that behalf and
also to oblige the said Plaintiff to give bond with
good and sufficient security payable to
the said Jacob Albert John R Moore Augustus
J Albert and William J Albert in the penal
sum of two thousand dollars lawful.

Money of the United States, conditioned
that he would not depart this State without
leave of the said Court, and that he would
render himself in execution to answer any
judgment or decree that the said Court
might render against him in the premises
and further requiring the said Coroner in
default of his giving such bond and security
to commit him to the Common Jail of
the said County until he should do so of
his own accord. It was conditioned that
if the said Jacob Albert John R. Moore
Augustus J. Albert and William D. Albert
should well and truly prosecute their said
petition with effect and reimburse to the
said Plaintiff all such damages and costs
as he the said Plaintiff should wrongfully
sustain by occasion of the said writ, then
the said Obligation to be void else to remain
in full force and virtue; as by the said
last mentioned writing obligatory and
conditioned will more fully and at large
appear. And afterwards Advised on the day
and Year last aforesaid at Rockford aforesaid
in the County of Winnebago aforesaid, pursuant
to the said last mentioned order, a writ of
Cere Breve was issued out of the Office of
the Clerk of the said Circuit Court for the County
of Winnebago, signed by the said Clerk, and
sealed with the Seal of the said Court directed
to the Coroner of the said County of Winnebago
whereby the People of the State of Illinois

commanded the said Coroner to summon
the said Plaintiff Buppem and return the
said last mentioned petition as aforesaid,
and to cause the said Plaintiff to give
a bond with good and sufficient security
payable to the said Jacob Albert John Edward
Augustin J. Albert and William S. Albert in the
legal sum of two thousand dollars lawful
money of the United States, conditioned that
he would not depart this State without leave
of the said Court and that he would render him-
self in execution to answer any judgment
or decree which ^{the said Court} might be rendered against
him in the premises, and further commanding
the said Coroner in default of his giving such
bond and security, to commit him to the
Common Jail of said County until he should
do so of his own accord. By virtue of which
last mentioned writ, the said Coroner after-
wards did on the seventeenth day of January,
in the Year last aforesaid in the County of
Winnebago aforesaid arrested and apprehended
the said Plaintiff, and then and there committed
to the Common Jail of the same County,
and kept and detained the said Plaintiff
in close custody in the said Jail by virtue
of the same writ for a ^{space of} long time, to wit
for the space of sixty three days there next
ensuing. By means of which said several
premises, in this court stated, the said
Plaintiff whilst he was so imprisoned as last
aforesaid, not only suffered great pain of

and mind, and was greatly exposed and
injured in his credit reputation and circum-
stances and was interrupted and hindered
and prevented from performing and transac-
ting his lawful affairs and business by him
during that time & he transacted and
performed, whereby he suffered damage
to a large amount & suit to the amount of
five hundred dollars, but also spent and
obliged to lay out and expend, and did
necessarily lay out and expend diverse large
sums of money in and about procuring his
liberty and release from his said contin-
ued imprisonment, and his maintenance
and support during the same, and in and
about defending the said last mentioned petition
and the suit in that behalf of the said Jacob
Albert John R. Moore Argusson J. Albert and
William J. Albert, amounting in the whole
to a large sum of money, & suit the sum of
five hundred dollars, & suit at Rockford
aforesaid in the County of Winnebago aforesaid,
and the said Plaintiff avers that the said
Jacob Albert, John R. Moore Argusson, J.
Albert and William J. Albert did not prosecute
the said last mentioned petition with effect
according to the conditions of the said last
mentioned writing obligatory, but on the
contrary thereof, wholly failed therein; and
that afterwards & suit on the ninth day of
May in the Year last aforesaid, at
Oregon in the County of Ogle aforesaid, & suit
at Rockford in the County of Winnebago

aforsaid, by the Order and decree of the
Said Court of the said County of Ogle
to which Court the said Petition and writ in
that behalf had been removed and transferred
from the said Circuit Court for the County of
Winnebago by a change of venue in the said
last mentioned cause to the said County of Ogle
according to the form of the Statute in such
case made and provided, the said last
mentioned petition was dismissed, and it
was thereupon ordered and decreed by the
said Circuit Court for the County of Ogle
that the said Plaintiff should go thereof
without day, and that he should have and
recover against the said Jacob Albert John C
Morse Augustin J. Albert and William J. Albert
his costs of defence in that behalf, as by the
record and proceedings thereof now remaining
of record in the said Circuit Court for the County
of Ogle more fully appears. Dated at Oregan
aforsaid in the County of Winnebago Dated
at Rockford aforsaid in the County of
Winnebago aforsaid

And the said Plaintiff further
avows that the said Jacob Albert John C Morse
Augustin J. Albert and William J. Albert have
not reimbursed or paid to the said Plaintiff
the damages and costs by him wrongfully
sustained, by occasion of the said last
mentioned writ as aforsaid, or any part
thereof, according to the form and effect of the
last mentioned writing obligatory. By reason

whereof the same writing obligatory became
forfeited, and thereby an action hath accrued
to the said Plaintiff to demand and recover of
and from the said Defendant the said sum
mentioned some of five hundred dollars
the penalty therein, other parcel of the same
above demanded.

(Yet the said Defendant
although often requested so to do) hath
not paid the said sum of money above
demanded, to the said Plaintiff, but hath
hitherto wholly refused and still refuses
to pay the same or any part thereof, to the
damages of the said Plaintiff of five hundred
dollars, and therefore he brings Suit for

Francis Bunnup

Plff in person

The following is a copy of the writ on
which this action is brought

Bunnup

Know all men by these presents
that we Jacob Albright, John R. Moore Augustus
Gibbs and William Salat of the City of Baltimore
and State of Maryland and James M. Night
of the County of Winnebago and State of Illinois
are held and firmly bound unto Francis Bunnup
of said Winnebago County in the penal sum
of five hundred dollars lawful money of
the United States, for the payment of which
well and truly to be made we bind ourselves
our heirs executors and Administrators

jointly and severally firmly by these presents,
sealed with our seals and dated the 16th day
of January 1846.

The condition of the above obligation
is such that whereas the above bound Jacob
Albert John R Moore Augustus J. Albert and
William J. Albert have obtained an order
from the Master in Chancery of the County
of Winnebago aforesaid for the recovery of
the Peoples vote of the recent Republic, and
whereas the said writ is about to be signed
from the Clerk's Office of the said Court commencing
in the corner of the said County of Winnebago
him the above named Francis Burrup
personally to be and appear before the said Court
on the first day of the next Term thereof
to be holden at the Court House in Rockford
on the second Monday of April next to
answer the petition exhibited against him
by the said Jacob Albert John R Moore
Augustus J. Albert and William J. Albert
in that behalf, and also to oblige the said
Francis Burrup to give bond with good
and sufficient security payable to the said
Jacob Albert John R Moore Augustus J. Albert
and William J. Albert in the ^{sum} of two thousand
dollars lawful money of the United States
conditioned that he will not depart this
State without leave of the said Court, and
that he will render himself in Execution to
answer any judgment or decree which the
said Court may render against him in the

premises, and further requiring the said
owner in default of his giving such
bond and security to commit him to the
common Jail of the said County until he
shall do so of his own accord

Now if the said Jacob Alberto John
R. Munn Augustin J. Albert and William J.
Albert shall well and truly prosecute their
said Petition with effect and doth reimburse
to the said Francis Bonnap all such damages
and costs as he the said Francis Bonnap
shall lawfully sustain by occasion of the
said Work, then this obligation shall be void otherwise
it shall remain in full force and virtue

Sealed and delivered in
Presence of
(Signed) Isaac A. Holland

Signed Jacob Albert & S
By J. M. Wright his attorney

John R. Moore & S
By J. M. Wright his attorney

Appointed this 6th day
January 1846
(Signed) John W. Taylor
Master

Augustin J. Albert & S.
By J. M. Wright his attorney

William J. Albert & S
By J. M. Wright his attorney

J. M. Wright & S

and of awards made on the 1st day
of November A.D. 1847 at the November Term
of said Court the defendant files his certain
Demurrer to the Declaration in this cause
which said Demurrer is in the words and
signifies following (To wit)

Winnibago County Court

James M. Wright

vs
Francis Winnebago

} November Term 1847

and the defendants
by March & Holland his attorneys comes
and defends the wrong and injury when he
and says, that the said several counts in
Plaintiff's declaration are not sufficient
in law,

and for cause of demurrer shows
that in each of said counts of the Plaintiff's
Declaration divers injuries to his Reputation
credit, and for interruptions and hindrances to
his business are therein set forth,

That in each of said counts of said
Declaration divers injuries not of a pecuniary
character and not capable of computation nor of
being ascertained by calculation are set forth

That in each of said
counts, plaintiff claims damages for loss
of Reputation and Credit, and for being hindered
in his business, which damages are not

of a pecuniary character and not capable
of computation nor of being ascertained
by ~~computation~~ calculation

That the said several counts
are in other respects insufficient and
uncertain

Wm J Holland
atty for def

And afterwards sent on the 3rd day of
November A.D. 1847 at the ^{of Wm J Holland} Term of
said Court ^{in the Record} of the forced
entry of said Court in this case is the following
entry sent

Franis Pennap
vs
James M Wright }

and now come the defendant
and files his Answer to the Plaintiff's Declaration
herein in which the said Plaintiff joins, and
the Court having heard the parties thereon
sustains the same, and the said Plaintiff
stands by and abides his said Declaration

It is therefore ordered and concluded
by the Court that the said ^{Plaintiff} ~~defendant~~ have and
recover of the said Plaintiff his costs and charges
herein expended and that he have Execution
therefor,

State of Illinois
Winnebago County

J. C. Haffner

Clerk of the Circuit Court in & for said
County and State aforesaid do certify
the foregoing to be a true copy of the Record
Readings & Proceedings in the foregoing cause, as appears
of the said and on file in my Office

In witness whereof I
hereunto set my hand and
affix the Seal of said Court at
Rockford the 4th day of July
A.D. 1833

Witness my hand
to 8, 33

J. C. Haffner

Supreme Court.

Francis Burnap

vs,

James M. Wright.

Record.

Filed July 5. 1858.
Held **OK**.

Burnap

And now, to wit on the second Monday in June, in the year of our Lord one thousand eight hundred and fifty three, at the courthouse in Ottawa, in the county of La Salle, before the justices of the Supreme Court of the State of Illinois, comes ~~the~~ at the June term of the said Supreme Court, comes the said Francis Burnap, in person, and says that in the record and proceedings aforesaid, ^{and in the giving of the judgment aforesaid,} there is manifest error in this, that the said Circuit Court for the county of Winnebago ought to have overruled the said demurrer, and not to have sustained the same. And also there is error in this, that the said Circuit Court sustained the said demurrer for the first cause therein set forth, to wit that in each of the said counts of the plaintiff's declaration, divers injuries to his reputation and credit, and for interruptions and hindrances to his business are therein set forth, whereas the said Circuit Court ought to have overruled the said demurrer as to the said cause. And also there is error in this, that the said Circuit Court sustained the said demurrer for the second cause therein set forth, to wit, that in each of said counts of said declaration, divers injuries ^{not} of a pecuniary character and not capable of computation nor of being ascertained by calculation are set forth; whereas the said Circuit Court ought to have overruled the said demurrer as to the said cause. And also there is error in this, that the said Circuit Court sustained the said demurrer for the third cause therein set forth, to wit that in each of said counts, plaintiff claims damages for loss of re-
m.

tation and ~~business~~ credit, and for being hindered in his business, which damages are not of a pecuniary character, and not capable of computation, nor of being ascertained by calculation, ^{whereas the said being lost ought to have been the said damages} And also there is error in this, that it appears by the said record and proceedings, that judgment was therein given in favor of the said defendant against the said plaintiff; whereas by the law of the land the said judgment ought to have been given in favor of the said plaintiff against the said defendant. Wherefore for the errors aforesaid, and for other errors in the said record and proceedings being, the said Francis Burnop prays that the judgment aforesaid, for each and every of the causes aforesaid, may be reversed, annulled and altogether holden for naught, and that he may be restored to all things which he hath lost by reason thereof.

Francis Burnop.

Plaintiff in error.

And the said Defendant by J. Marsh
his Attorney comes & says in *nullo erratum*
Est.

J. Marsh. Atty. Gen. Def.

26.

Supreme Court.

Wm. W. Barron

vs.

James M. Wright.

Record Book

1853

26

Assignment of Bonds.

Returned to Record.

12101

Filed July 7, 1853.

Richard C. D.

Deposed

1853

Barron.

Scrip. Court.

Francis Purnap

^{as}
James M. Wright

State of Illinois

Winnabago County, J. Charles H. Spafford
Clerk of the Circuit Court of Winnabago County being
duly sworn doth upon his oath depose & say that
the Writ of Error in the above entitled cause was delivered
to him to file in his office on the second day of June
A.D. 1853. & that the same together with a copy thereof
was delivered by the said Francis Purnap in person.

Subscribed & sworn to this

17th day of June A.D. 1853.

before me. William Hulin

C. H. Spafford

Clerk County Court of said County.

State of Illinois

Winnabago County, J. King H. Milliken Sheriff of said
County of Winnabago. being duly

sworn doth upon his oath depose & say that he
received the said Process issued in the above entitled
cause from Francis Purnap the above named Plaintiff
on the first day of June. A.D. 1853.

Subscribed & sworn to

this 17th day of June. A.D. 1853.

before me

H. H. Milliken

William Hulin,

Clerk County Court of said County.

Burnap vs Wright
affd.

Filed June 22-1859.
S.eland CLK.

In the Minn's Supreme Court.

Francis Burnap
vs.
James M. Wright.

Error to Winnebago.

It is hereby agreed and stipulated by and
between the parties hereto, that no proceedings shall be
had in the above intitled cause until the ^{6th} ~~first~~ day of
July next. Dated 9 June 1853.

Francis Burnap, Plff.

Lura Marsh for Def.

26
Supreme Court.

Barnes
vs.
Wight.

Stimulation.

Filed June 18. 1853.
L. S. Land Clerk.

STATE OF ILLINOIS, }
Supreme Court.

The People of the State of Illinois,

To the Sheriff of the County of *Winnebago* 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 *Winnebago* county, before the Judge thereof, between *Francis Burnap* plaintiff and *James M. Wright*

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

Francis Burnap 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 *James M. Wright*

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 *2nd* 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 *James M. Wright* notice, together with this writ.

Witness, the Hon. **SAMUEL H. TREAT**, Chief Justice of our said Court, and the seal thereof, at Ottawa, this *23^d* day of *September* in the year of our Lord one thousand eight hundred and fifty *two*.

A. Seland Clerk of the Supreme Court.

Received this writ June 1st 1853
of Francis Burnap City

By R. H. Milliken Sheriff
Win. Co. Ill

²⁶
Francis Burnap
James M. Wight
Sci. Ia.

To June Term 1853.

I have served the
within writ by reading
the same to the within
named James M. Wight
this 2^d day of June A.D. 1853

Serv. 50
Fees 05
Ret. writ 10
65

R. H. Milliken Sheriff
Win. Co. Ill

Filed July 13th 1853,
L. Leland Clk.
By J. H. Leland Depy.

Serps. Court
Jas. M. Wright
vs.
Frances. Dumap.

Term. Term. 1853.
T. Dief.

Sec. 3 of the R. S. relating to Mercantile
provides for bringing suit on the bond, & assessing
damages, in the same manner as in other cases,
on penal bonds; the only other cases, or rather only
provision relating to other cases, is found in § 8. of
the Practice Act. R. S. 416. § 18. It is there

R. S.

provided that a party may assign as many breaches
as he may think fit; and in this action, setting
out the causes of damages is in the nature of assigning
breaches. The Plff. has assigned his several breaches,

and in doing this, he has enumerated several
causes of damage for which he cannot recover in
this form of action. "Pain of body & mind; injury
to credit, reputation & circumstances; interruption
& hindrance of business," are not allowable as
damages; they are too remote & speculative

J. Green.

Miller vs. Mari Church. 7. Green. 315

The damages contemplated by the statute, are such usual
pecuniary damages, as are capable of computation, or of being
reduced to a certainty; or at all events, not such damages as
are vindictive & recoverable in action for false imprisonment, or

1. Ch. Pl. 113.
malicious prosecution

Where some of the breaches assigned are
inefficient, it would be good cause for
arrest of judgment on general verdict;
therefore it certainly must be good cause for
special demurrer.

1. Mon.

Carlisle vs Hopkins 1. Mon. 245.

The Plf cannot now treat these assignments
of causes of damage as mere surplusage,
for he has himself made them the main
substance of his declaration.

This being an action to recover damages partaking
somewhat of the character of damages in Tort, the declara-
tion should contain averments of intent &c.

1 Ch Pl.

1. Ch. Pl. 389-

This being entirely a Statutory remedy, & the
Statute having provided in what cases this action
may be brought, unless the declaration contains such
averments as to bring the party within the Statute
the objection is fatal on general demurrer.

A. St.

R. S. 381, § 3. last clause.

James M. Wright

vs
Francis T. Burnap

And the said Defendant in Error
comes & makes his motion to dismiss this cause
for the reason that

1st The writ of Error in this cause
was not duly issued until
after five years from the rendition
of the judgement in the Cir. Court.

2^o No writ of Error was issued &
delivered to the proper officer
for service, before the expiration
of five years after the rendition
of the judgement in the Cir. Court.

3^o The Writ of Error & Scire Facias
were not delivered by the Plaintiff
in Error for the purpose of being
served until after the expiration
of five years from the rendition of
the judgement in the Cir. Court.

And the said Defendant
makes this motion on the return of the Clerk & Sheriff
& affidavits on file —

J. Marsh
for. Defⁿ

Sup. Court
W. M. Wright
as
Francis Banning
vs
M. to dismiss

Filed July 6th 1853.
L. Leland Clk.
By P. K. Leland Sg.

Supreme Court

Brown
vs.
Wight.

Brief on motion to dismiss.

1. The statute of limitations to a writ of error must be pleaded, and cannot be taken advantage of in any other manner. Graham's Pr. 790.

2. Whether the plea is true appears by the record, and the plea should allege the fact that the writ of error was brought after the expiration of five years from the passing of the judgment. People ~~vs. Shaw~~ & rel. Dixon, vs. Shaw. 13 Minn. 583.

3. The matter in pais alleged in the motion, if valid could not be tried on affidavits.

4. If those matters in pais ~~be~~ constituted a good bar to the writ of error, the truth of the alleged facts must be tried by a jury. ~~It~~ ~~such~~ trial ~~must~~ be could not be tried in this court, but must be tried below upon a framed issue. 1 Strange 127.

Graham's Pr. 86, 87.

3 Scam. 4. 1 Scam. xiii.

Supreme Court

Barnes

vs,
Wright

Brief on motion to dis-
miss.

Barnes.

Illinois Supreme Court.

Ottawa.

A writ of error directed to the clerk of the Circuit Court for the county of Winnebago, to remove into the Supreme Court for the Northern Grand Division, the record and proceedings in a certain cause lately depending in the said Circuit Court, wherein Francis Barnard was plaintiff and James M. Wright was defendant. Dated 18 Sept. 1852.

Francis Barnard,
Plaintiff in error.

A writ of *scire facias* to hear errors, in the above case, directed to the sheriff of the county of Winnebago, commanding him to warn James M. Wright to appear on the first day of the next term, at Ottawa, &c.

Francis Barnard,
Plff. in error.

26
Supreme Court,
Francis Burnap
vs.
James M. Wight.

Procipe.

Filed Sept. 23^d 1852.
S. Ireland Clerk

Burnap