

8831


No. _____

Supreme Court of Illinois

Cummins

vs.

Cummins

71641  7

No 1.3 — 5

Cummins 1859

vs

Cummins et al

8831

2538

296

2829

125

2704

1855

STATE OF ILLINOIS—IN THE SUPREME COURT—FIRST GRAND DIVISION—NOVEMBER TERM, 1859.

Page of
Record.

JOHN H. CUMMINS, Plaintiff in Error, vs. JOHN D. CUMMINS, Defnd't in Error.

1

Thos. D. Cummins, father to the pln'tff, on 21st Oct., 1834, made his will.

2

On the 14th Nov., 1834, was proven and ordered of record in Gallatin county, Hezekiah Hargrave was appointed in said will executor, with power to sell all the real estate of dec'd; after paying off all the debts, the ballance was to be placed in the hands of one John Siddle, subject to the order of John D. Cummins, his brother, for the use of John Harvey Cummins, to be paid to him when he should arrive at the age of 21 years, and to Mary Ann and Pheba Cummins, when they should arrive at the age of 18 years, who were then infants.

3

On 4th of March, 1839, the executor entered into bond, that the executor made a settlement with the probate of Gallatin co., that from said settlement there was after the payment of debts arising from the sale of the real and personal estate \$627 79, subject to be paid to John Siddle and to the order of the said John D. Cummins, pursuant to the directions of said will.

4

That on 2d of Oct., 1838, Siddle commenced suit at law upon the bond of the executor Hargrave and his securities in the Gallatin Cir. Court to recover the balance due from said executor on account of said estate. That he recovered against the said executor Hargrave a judgment for \$418 75, it being the balance due. That on the 7th Nov., 1840, an execution issued upon said judgment directed to the sheriff of Gallatin county for \$418 25.

5

Execution was levied by the Sh'ff of Gallatin co., upon certain lands in Gallatin co. That the land was sold to Henry Eddy, Esq., Att'y for pln'tff in execution. The certificate of purchase was afterwards assigned to John D. Cummins.

6

Mary Ann Cummins departed this life in 1846, leaving no heirs except her brother and sister. That compl'n't arrived at the age of 21 years on the 12th of Jan'y, 1850, and became entitled to his portion of said estate according to the will.

7

States that compl'n't is entitled to one-half of \$627 75, the am't which came to the hands of the said John Siddle; that the full am't of said \$627 75 was fully accounted for by said Siddle to the said John D. Cummins, and that the same remains in his hands; that no record evidence is now in existence or can be found, or any parol testimony within the knowledge or reach of compl'n't; that Siddle has left the country; charges that compl'n't is entitled to full am't of one-half of said sum of money, and that the said John D. Cummins refuse to pay him the same, but intends to cheat and defraud your orator out of the same.

8

Charges that said lands were purchased through the means arising from the estate of Thos. D. Cummins, dec'd, by the said John D. Cummins; that by virtue of said will the said John D. Cummins became the trustee for compl'n't and Pheba Cummins; that he

should be held strictly responsible; that the said Pheba Cummins is now 18 years of age, and is married to some person whose name is unknown to compl'n't.

0 Charges John D. Cummins well knowing the premises, refuse to pay compl'n't his undivided moiety of said estate, or to convey one-half of said real estate, or in any manner account for said estate; prays that John D. Cummins and Pheba Cummins may be made defnd'ts to the bill, and that they answer the same upon oath.

10 Requires John D. Cummins to answer and say whether or not he did not receive the \$627 75, and to say how much he did receive from John Siddell or any other source on account of said estate, and in whose hands the balance may be found; whether or not the said land was not purchased with the effects of said estate; whether he did not take upon himself the trust according to said will, and whether he did not purchase said lands for the benefit of the heirs of Thos. D. Cummins, dec'd.

11 Whether he is not holding the same in trust for their use, the amount of rents and profits, and prays for special and general relief.

13 Contains the will of Thos. D. Cummins, dec'd.

15 Order of the Probate Court in the proof of said will.

17—18 Settlement of the executor with the Probate Court of Gallatin co., and an order directing that the executor pay to John Siddell \$627 79, the balance in the executor's hands.

22 The defnd't John D. Cummins, in his answer, admits the will of dec'd.

That said will was duly proven, and entered of record in the county of Gallatin; that Hargrave was appointed executor in said will, that the will delegated to the executor the power to dispose of all the estate, both real and personal of the decedent, but denies that the provisions of said will after the payment of the debts of decedent, that the balance was to be paid to John Siddell in trust; he avers that considerable portion of said estate was by the provisions of said will bequeathed to the widow of the decedent and her daughter Nancy.

24 Admits the payment of all debts of the dec'd, and the bequest to the widow and daughter, and that the residue was to be paid to John Siddell subject to his order for the use of the said compl'n't and his sisters; admits the settlement with the Prob. Court.

25 Admits that according to the settlement there was a balance of \$627 79, subject to the provisions of the will, that suit at law was commenced in the name of John Siddell upon the bond of the said executor and his securities, and that a judgment of \$418 75, but whether that sum was a balance due from said executor to said Siddell, or whether said Siddell had before that time ever recovered any thing he does not know.

26 States that he called on Siddall for what he might have in his hands, that Siddall denied having rec'd any thing.

27 Admits that the land levied upon by the Sh'ff was bid in by Henry Eddy, Esq., for the sum of \$426 25; that said certificate was assigned to him by the said Eddy, and that he obtained a deed therefor.

28 Admits the death of Mary Ann Cummins, denies the right of compl'n't to recover the one-half of \$627 75, does not know whether it came to the hands of John Siddall or not; denies having rec'd any thing from Siddall.

- 30 Sets up that by virtue of directions and agreements made by said decedent on his death bed outside of said will for the custody, control, and education and raising his children, he was made to some extent the trustee of the estate of compl'n't, and of his sister Pheba, and that decedent was solicitous that the children should be placed under his care, and have them educated.
- 31 That in endeavoring to recover said estate he expended large sums of his own funds.
- 32 That he was forced to pay the widow \$100 to relinquish her dower in the decedent's land. That he paid considerable sums of money in making trips from Kentucky to Illinois in the prosecution of the suit against the executor. That he paid expenses, costs and lawyers fees in the suit instituted in the name of Siddall against the executor.
- 33 Charges that he paid to lawyers \$55 as per Henry Eddy's receipt. Paid cost to the am't of \$31 87 1-2 as per the fee bill, beside divers other large sums of money in raising and educating said children, as per his account. That said land was all the assets he ever rec'd from said estate.
- 37 Admits that Pheba Cummins is now over 18 years of age. Denies receiving \$627 75 from said Siddall or any other person whatever of the effects of said estate, nor did he receive anything whatever except said land.
- A statement of his account with said estate, amounting to much larger sums than the assets
- 43 Rec't from Henry Eddy for \$25, in which it is stated that he knew of Jesse I. Robinson retaining \$30
- 44 Clerk's fee bill for \$11 18 3-4.
- 49 Order changing the venue to Johnson County.
- 51-2-3-4 Is the answers of John and Pheba, admitting all that is stated in said bill to be true.
- 64 The decree dismissing compl'n'ts bill, to which the compl'n't excepted.
- 65 Judgment of the Supreme Court reversing the decree of the Cir. Court, and remanding the cause.
- 67-68 Is the opinion of the Court.
- 70 Order requiring defnd'nt to account.
- 79 The evidence of Wm. Armington on the part of compl'n't; he stated that compl'n't lived with defendant Cummins for a number of years, can't say how long; that compl'n't performed services of defnd'nt on the farm of his wife sufficient to pay all his expenses. That compl'n't was sometimes badly clothed; the treatment he received was complained of by those who were familiarly acquainted with such treatment; I have seen him in the winter badly clothed; that he had saw him bear footed in cold weather when a boy should have had good shoes; that he had saw him with defnd'nt's old boots on, which were so worn that they would not protect his feet from the cold; that he had seen this in winter season frequently; don't know that he was sent to school; that his education was very de-
- 80

fective when grown; lived within three miles of defnd't at the time; was at defnd't's house frequently; was his family physician.

134 Is the evidence of Francis Nelson, taken by compl'n't. States that he knew that
compl'n't lived with John D. Cummins in Switzerland co., Indiana; he was some seven
135 or eight years old when he first went there, and lived with him about three years; he
thinks he was well fed, but was very badly clothed; he thinks he did not receive any
schooling; thinks he was very badly treated by the family while there; he thinks that
compl'n't earned fully all that he received, and more too.

136 A rec't of Jesse I. Robinson for \$250 part payment of the claim in the case of "the
People for the use of John Siddall against Hezekiah Hargrave and others in the Gallatin Circuit Court.

DEFENDANT'S EVIDENCE.

85 Smith P. Wastel states that the first time he saw compl'n't he was residing with de-
fendant in Switzerland co., Indiana; that he lived with him about three years.

86 Compl'n't was between 3 and 4 years of age when he first saw him; that he was well
treated and well provided for while there; he thinks it was worth \$100 per annum to
keep compl'n't; was residing with defnd't; that Pheba was residing with Dr. Armington
in 1835; thinks she lived there about ten years; she was about three years of age; he
88 is acquainted with Dr. Armington's hand writing; he states that the name signed to the
agent is his proper hand writing; Dr. Armington told him that John D. Cummins paid
him a horse at \$150 for keeping Pheba Cummins.

92 Hezekiah Hargrave states that Thos. D. Cummins died in 1834; that he left a widow;
he thinks the oldest of the children at the time they were taken away, was not over eight
or ten years of age.

94 He thinks that Thos. D. Cummins requested him to write a letter to John D. Cum-
mins, which he did, requesting him to come and get the children, and requested me to
furnish money to defray their expenses to John D. Cummins, to Vevay, Ind., on condi-
tion that his brother did not come after them; he did come after them, three in number,
and took them away in December, 1834.

95 He did not furnish any money to defray expenses of the children; he does not know
96 whether the widow of dec'd refused to relinquish dower in the lands of dec'd; he was sued
on his bond in the name of John Siddall, Henry Eddy and Jesse I. Robinson were the
attorneys that attended to the suit against him.

97 He went with part of the money to Siddall; he would not receive it and said he did
not want to have anything to do with it, he then deposited the money in the Bank; that
98 he gave Robinson a check for the money and he expects he withdrew it; the am't I de-
posited was about \$225, and drew it out by a check to Robinson.

99 Thornton Cummins, dec'd, left four children; John H. Cummins was about eight years
of age; Polly Ann about nine, and Pheba about three and Nancy about five, at the death
of their father.

100 Was removed from this State some time in Dec 1834, by John D. Cummins, he took

three, John H., Polly Ann, and Pheba, was taken to the tavern of Mr. Gillings and boarded a short time; that they were then taken to Mr. Rosenborroughs.

101 Thinks it would have been worth some \$35 or \$50 for the time the children staid at Mr. Roseborroughs; Pheba was taken to Dr. Armington's, and John H. was taken to Mrs. Magrudes; Polly was taken to Kestlows; Pheba staid at Armington's about 18 months before he left; Armington charged for keeping Pheba; she could not have been kept for less than \$50 a year.

102 Defnd't let Armington have a horse; he took him up to Mt. Sterling; heard Armington say the horse was for keeping Pheba; horse worth \$40; John H. was at John D. Cummins' some three months after he came; was taken from Mrs. Magrudes.

104 John H. was at John D. Cummins' about three months before witness left; don't know that he stayed any longer; says it would be worth \$30 a year to feed and wash for him.

108 Hannah Wostal states she first saw Pheba at John D. Cummins' 17 or 18 years ago, she then lived with Dr. Armstrong; he was a doctor; lived with Armington about 3 years; she was about 2 or 3 years old at the time; Dr. Armington said he was sending her to school. Pheba afterward taught school.

109 It was worth \$1 50 per week to keep her; first saw John H. at John D. Cummins', Indiana, in the year 1835.

110 John H. Cummins was about 5 years of age; he had good comfortable clothes, and plenty of that that was good to eat; he went to school while at John D. Cummins'.

111 Thinks it would have been worth \$100 a year for keeping John H.; that witness resided with John D. Cummins at the time.

114 Witness says that her husband and John D. Cummins' wife are brother and sister.

116 Benj. Cummins says that Thos. D. Cummins was the father to John H. Cummins and Pheba Eudaly.

117 Thos. D. Cummins died Sept. or Oct, 1834; Jno D. Cummins took charge of the children; that he knew of shoes and clothes having been furnished the children by John D. Cummins before they were taken up to Indiana, and thinks it was worth \$5 apiece; said children was removed to Switzerland co., Ind., to Jno D. Cummins, and thinks it was worth \$25 to remove them.

118 Witness heard Rosanna Cummins, widow of Thos Cummins, say she would break the will if she was not allowed more than was allowed in the will. That she had been left with less than she came there with, and left with an heir.

119 Heard her say she would give up to have the land sold if Jno D. Cummins would give her \$100; heard men say they would not purchase the land with that incumbrance; he thinks that Jno D. Cummins gave his note for \$100 to the widow.

120 Heard Jesse Reeder say divers times that he would not buy the land with the incumbrance; Reeder afterwards bought the land.

124 Witness says that he and the said Jno D. Cummins are half brothers.

125 Jas. Cummins states that he saw Jno D. Cummins pay Rosanna Cummins \$80 to abide the will of her husband.

126 Paid Howard at Raleigh about \$40 for her; made Jno H. a coat a short time before he left; Jno D. Cummins paid him.

127 States he is a half brother to Jno D. Cummins.

JAS. M. WARREN, att'y for pln'tff in error.

143. On the 16th Oct 1856 the Saline Circuit Court entered up a decree for Compels for the sum of \$82.00

103

For the purpose of the 1859-60
Survey made by the U.S. Army
of the New York State of New York

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Continued

in

Continued

Continued

Continued

Filed Nov. 16. 1859-
A. Johnston Clerk

Error to Saline

John H. Cannon } Supreme Court
" } 3 Grand Jurors
John D. Cannon } Nov. Term 1859

This affiant James M. Warren
attorney for plaintiff in this ^{cause} comes and
upon his oath states, that he is the
Only Counsel in the case and has
been from the commencement of the
suit; That said cause was commenced
in the Saline Circuit Court; That
said cause the venue in said cause
was changed to Johnson County on
account of the Judge having been
of Counsel in the cause; That
said cause was removed to Johnson
County, but was afterwards removed
to Perry County on account of
the Judge also having been of Counsel
in the cause; That the order was
made in the Johnson Circuit Court
to change the venue to Perry and
the clerk made out the record
for that purpose, but before the
cause was filed in the Perry County
It was agreed by Hugh Montgomery
Esqr. principal Counsel for defendant
in the cause, ~~that the cause should~~

and Affiant, that the cause should go back to Saline County as the cause for the change from that County did not then exist, And by verbal agreement, Montgomery was to obtain the Record and have it filed in the Saline Circuit Court, which was done by the said Montgomery, and the cause proceeded, without objection by any person, at the time of the cause being filed in Saline there was no evidence taken in the case, That the said defendant has taken a large number of Depositions since said cause was filed in Saline, That said cause was filed in Saline some time in the Month of Oct 1854, and continued on the Docket up to the October Term of said Court 1856, when the cause was tried before the Hon. Judge Beach, Judge of said Court.

Subscribed & sworn to }
17th Nov 1859 }

Jas M Warren

A. Johnston At

Authorly cited in using
the Motion.

Consent of parties will give
Jurisdiction, if the Court had Juris-
diction of the subject matter in
controversy. *Allen vs Belcher* 3 Gil
594.

The Doctrine that Consent cannot
give Jurisdiction will not apply
in this case, *Allen vs Belcher*
3 Gil 596.

5-
Cammis

by

Cammis

Cfft.

Went

Filed Nov. 17. 1859-
A. Johnston Clk

John H. Cummins, *Pl* Complainant
against Error to Saline
John D. Cummins
and others. Defendants

John Olney being first duly sworn
states on oath that on the trial of this
cause in the Circuit Court of Saline County
oral evidence on the part of the defendant
John D. Cummins was heard by the Court.

And affiant is advised by the Hon. Edwin
Becher the then presiding Judge of said Court
that he reduced said evidence to writing and
signed the same and ^{placed} filed it with
the papers in said Cause.

The record of said Cause now filed in
this Court does not contain a copy of
said evidence

Sworn to and Subscribed

John Olney

before me, Nov. 16, 1859

Wm. Johnston *Alk*
" "

No record from Perry Co. page 69

John H. Cummins

vs.

John D. Cummins et al.

State of Ohio

Attorney

Filed Nov. 17, 1859

A. Johnston clk

JOHN H. CUMMINS }

vs. }

JOHN D. CUMMINS. }

Additional abstract prepared by Defendant.

86] Testimony of S. P. Worstel.

Ans. to interrogatory 7. Witness was residing at defendant's at the time complainant lived there.

88] The signature referred to in Int. 13 is that of Dr. Armington to an agreement, which is between John D. Cummins and said Armington, by which Cummins agreed to pay to Armington \$140, as follows: \$40 in hand, \$35 in one year, \$35 in two years, \$30 in three years, for the maintenance of said Phoebe Cummins until she was 8 years old. Armington had the right to keep her until she was 18. Date of agreement, May 9, 1835.

Testimony of Hezekiah Hargrave.

93] Says Thomas D. Cummins, while on his death bed, requested witness to write to John D. Cummins to come and take the children to Indiana, as

94] he didn't want them raised in this country. Witness did write Thomas D. had no money at the time of his death that witness knew of.

111] Testimony of Hannah Worstel on cross-examination.

Says Phebe lived with Dr. Armington about three years, during which
112] time she went to school. She then left, but returned and went to school again. Witness was living about two miles from Dr. Armington at the time. Armington said then he did not want to keep Phebe any longer, as he had children and they did not agree very well.

113] Answer to question 8. Says the reason she thinks it was worth \$100 a year for the three years John H. lived with John D. was, that she did the work for him mostly herself—that she did not make the statement of what it was worth on the supposition that he went to school all the time; “but he went to school a good part of the time, or at least he was started to
114] school.” Witness says she was residing with the family of John
115] D. Cummins at that time. I saw Dr. Armington bring Phebe to a lady near us when he and his wife were going to New York, and saw him take her away again; and when she was nearly grown heard her say she lived there three years.

120] Testimony of B. Cummins.

Heard Jesse Rude say he would not buy the land with the widow's claim hanging over it. After that was fixed up Rude bought it. In opinion

121] of witness it sold for more after widow's claim was settled. John D. furnished the children, before removing them to Indiana, with two suits

122] each of clothing—it was comfortable clothing and good shoes. Saw him get some of the clothing—was with him in town at the time.

Evidence of B. R. Cummins taken in open court.

155] Knew of complainant living with Defendant in Indiana two years. Complainant was five years old when his father died, Phebe 3, and Polly Ann 8. John D. then resided in Indiana. Thomas D. died in September or October, 1834. Was not more than a month or six weeks after his death when the children were taken away. Saw them living with Defendant two
156] years afterwards. Mr. and Mrs. Worstel were then living at John

D. Cummins'. Think it was worth \$50 to come down and get the children. Know of Defendant getting clothing for the children to take them to Indiana. Was worth \$15 for the three. Saw Complainant at Defendant's, and the two girls at Mrs Roseborough's—appeared to be well clothed and treated; saw no deficiency in clothing—knew of persons objecting to buying the land on account of the widow's dower—heard Rude and others object—widow said she would not abide by the will unless she was paid for it. John D. paid her to release her claim—heard the neighbors say it brought \$400. *mov.* Harvey was born June 20, 1829—think Jesse Rude bought part or all the land—don't know what land was then worth—Defendant gave her \$100 not to revoke the will—heard her say that was the contract—the reason for not abiding by the will was, it did not give her as much as she had taken there. Widow married to Wm. Smith.

Paper offered by Defendant.

Receipts of Wm. Smith for \$20 and \$30, without proof of hand writing of Smith.

Receipt of Henry Eddy for \$25. Cost bill in case of *Siddell vs. Exr.* &c. receipted in full, for \$29 31. Notes of Defendant to Dr. Armington, as follows: two for \$35 each, and one for \$30, all dated May 9, 1835. Receipt of Dr. Armington for services for Complainant \$2, June 17, 1835. Acc't of J. R. Eaton for boarding complainant \$3 25, dated October 20, 1835. Receipt of Armington for medical bill of Complainant, \$3 50.

Complainant offered a receipt of J. J. Robinson for \$250. Objected to by Defendant.

John H. Curran

v.

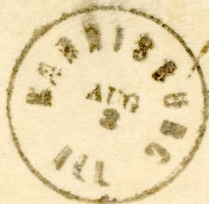
John D. Curran

Additional Abstract.

Julia Nov. 11. 1862.

A. Johnston cly

1839



Noah Johnston Esq
Clerk Supreme Court
Mt Vernon
Ills

State of Illinois,
SUPREME COURT,
First Grand Division.

88

The People of the State of Illinois,
To the Sheriff of Saline County.

Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Circuit Court of Saline county, before the Judge thereof between

John H. Cummings plaintiff and John D. Cummings, John Endaley, Phiba Endaley, John D. Church and William W. Bowland defendants it is said that manifest error hath intervened to the injury of said John H. Cummings 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 Mount Vernon, 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 John D. Cummings, John Endaley, Phiba Endaley, John D. Church and William W. Bowland

that They be and appear before the justices of our said Supreme Court; at the next term of said Court, to be holden at **Mount Vernon**, in said State, on the first Tuesday after the second Monday in November next, to hear the records and proceedings aforesaid, and the errors assigned, if They shall think fit; and further to do and receive what the said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said Defendants notice together with this writ.

WITNESS, the Hon. John D. Catron Chief Justice of the Supreme Court and the seal thereof, at MOUNT VERNON, this twenty three day of May in the year of our Lord one thousand eight hundred and fifty nine.

North Johnston

Clerk of the Supreme Court.

Executed the within by reading to
John D Cummins and William
W Bowland. the other defendants
are not found August 5th 1859

Willis A Stuerlin Sheriff.
Saline County, Illinois
By W. C. Sloan Dep

Shuffe Fees

Sum on Two @ 50 - 1.00
10 miles train - 50
Return 10
Postage

W A Stuerlin Shff \$ 1.63
Saline Co Ills By W. C. Sloan
Dep

SUPREME COURT.

First Grand Division.

John H. Cummins

Plaintiff in Error,

VS.

John D. Cummins, for Coadjutor,
Phelan Coadjutor, for D. C. C. C.
and William W. Bowland
Defendant in Error.

SCIRE FACIAS.

Retained & FILED Aug 24th 59.

W. C. Sloan Clerk

STATE OF ILLINOIS
SUPREME COURT,

} SS.

THE PEOPLE OF THE STATE OF ILLINOIS;

WRIT OF ERROR.

To the Clerk of the Circuit Court for the county of

H. S. Salinger
H. S. Salinger

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 *Harden* county, before the Judge thereof, between

John H. Cummins

plaintiff, and *John D. Cummins, John Endaley, Phoebe*
Endaley, John D. Church & William W
Bowlman

defendant & it is said manifest error hath intervened, to the injury of the aforesaid *John H.*

Cummins

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

Mount Vernon, in the county of Jefferson, on the *first Sunday after the 2^d Monday of*

November 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:

John D. Catron

Witness, the Hon. ~~WALTER D. BRIDGES~~ Chief Justice
of our said court, and the seal thereof, at Mount Vernon this

twenty-third day of *May*

in the year of Our Lord One Thousand Eight Hundred
and Fifty-*three*

Noah Johnston

Clerk Supreme Court.

John H. Cummings
Pltff in error
in } mtg of error

John D. Cummings,
John Endaley, Phila
Endaley - John D.
Church & William
W. Bowland.
Left in error

Issued Feb 23 May
1859.
A. Johnston M

Supreme Court 1st Division
November Term 1858,

John H Cummins plaintiff in error
v. Error to Saline.

John H Cummins

John Eendaley

Phiba Eendaley

John H Church +

William H Bowland } Defendants in error

Clerk of Supreme Court
into please issue *Sei facias* in
the above entitled cause directed
to the Sheriff of Saline County ret-
urnable at the November Term 1859.

Jas M Warren atty
for plaintiff in error

5- 5

Cummins

or

Cummins

at

Receipt

John H Cummins	}	Supreme Court
Or.		November Term
John D Cummins		A.D. 1858.
and others.		

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

dated the 1st Oct 1858.

Jas. M. Warren

The clerk will herewith find inclosed the sum
 of \$5- When the record comes to hand
 file it and send the writ to Saline County

Elizabethtown 18th Oct. 58. Jas M Warren

5-28

John S. Cummings

my

John S. Cummings

Carz Bma -

Place Nov. 6. 1858.

A. Johnston Clerk

Starnsburg Mo July 9th 1864

Mr. Noah Johnson

Dr. Sir In the
Case of Cummins vs Cummins I
am entitled to ~~the~~ reimbursed certain
fees which I paid during the progress
of said suit, If collected remit &
if not issue a fa vice. Judge
Marshall told me I would be repaid
expense of printing abstract &c -

Very truly yours
John D. Cummins

Mount Vernon Illinois.

July 18. 1864.

J. D. Cummins, esq.,
Jr. Sir.

The costs have not been paid.
To what County shall I send process for the
collection? Reply upon this sheet

Respectfully

Noah Johnson

Harrisburg Ill August 2nd 1864

Noah Johnson

Clerk Supreme Court

Dr Sir

In answer
to your inquiry I will state that John St
Communis is not in the state and you have
to issue against his security, whom I know
is James M Warren of Hardin If Mr
Warren is not his security please inform
me who is

Yours Respectfully

J. D. Communis

Mr. Warren. Aug. 6.
1864 - Aug. 27.

In Sup. Court Illinois
John H. Cummins

vs

John D. Cummins.

The defendant
John D. Cummins suggests to
the Court that the record filed in
this Court in this Cause is incom-
plete in this that it does not contain
a copy of the oral evidence taken
on the trial in the Sabine Circuit
Court of said Cause, which evidence
was taken down at the time of such
trial by the then presiding Judge
of said Court and signed by him
and placed among the papers
of said Cause.

And also that said Record does not
show the proceedings in the Circuit
Court of Perry County

Wherefore said defendant asks that
a *certiorari* may be issued com-
manding the Clerk of said Sabine
Circuit Court to send up a perfect
Record in said Cause

Allen & Olney for
def.

135

John H. Cummins

vs

John D. Cummins
et al.

~~after~~

motion of
J. D.

Filed Nov. 17, 1859 -
A. L. Huntington Clerk