

No. 12587

Supreme Court of Illinois

McCormick

vs.

Falton

71641  7

Be it Remembered that on the 27th day
of July 1857 Elisha Nye filed in the
office of the Clerk of the Circuit Court
a Transcript which is in the words
and figures as follows to Wit,

State of Illinois } ss
Warren County } Justice Court before
Elisha Nye JP

James Fulton
For use of S. B. McCoy } Summons Issued May 7th
vs } 1857 on Note and delivered

Jacob M. Cornick to D B Eilenburger Const

Demand \$99.36 To serve and returnable for trial on
Justice fee 1.31 the 18th day of May 1857 at 11 o'clock
Court fee .70 A.M.

Summons returned duly served by
reading D B Eilenburger Const. fee 70

And now at the time of trial there
being no defence and deft doth not appear
it is considered by the Court that judgment be
rendered against the deft for Debt by default
for Debt \$99.36 and cost of suit and Execution
may issue therefor.

May 20th 1857 this day comes the said Defendants
with A. C. Kirkpatrick as security and file their
Bond to take an appeal which bond is approved
by the Justice and appeal granted,

State of Illinois }
Warren County, }

I Elisha Dye a Justice of the peace in and for said County, do certify that the foregoing Transcript is truly copied from the files and books of my office.

In Witness whereof I have hereunto set my hand this 27th day of July 1857

Elisha Dye J.P.

Filed July 27. 1857 Wm. Safford, clk

(Copy of Bond)

Know all men by these presents that we Jacob M^cConnick, Elisha M^cConnick & A. C. Kirkpatrick are held and firmly bound unto James Fulton for the use of S. W. M^c Coy in the penal sum of Two hundred & twenty five dollars for the payment of which well and truly to be made we bind ourselves our heirs and Administrators jointly severally & firmly by these presents. Witness our hands and seals this 20th day of May A.D. 1857. The Condition of the above Obligation is such that whereas the said James Fulton for the use of S. W. M^c Coy did on the 18th day of May A.D. 1857 before Elisha Dye a Justice of the peace for the County of Warren recover a Judgment against the above bounden Jacob M^cConnick for the sum of Ninety nine & ³⁶/₁₀₀ dollars from which Judgment the said Jacob M^cConnick has taken an appeal to the Circuit Court of said County of Warren & State of

Illinois. Now if the said Jacob Mc Cormick shall prosecute his appeal with effect & shall pay whatever judgment may be rendered by the Court upon dismissal or trial of said appeal. then the above obligation to be void otherwise to remain in full force & effect.

Jacob Mc Cormick (Seal)

Elisha Mc Cormick (Seal)

A C Kirkpatrick (Seal)

Approved by me at my office this 20th day of May 1857.

Filed July 27. 1857. Wm Lafayette Clerk

Upon the filing of the said Bond & Transcript a Summons issued out of the office of the Clerk of said Court & Summons which is in the words & figures as follows to Wit,

State of Illinois } ss The people of the State of Illinois
Warren County } To the Sheriff of said County, Greeting

We Command you to Summon James Fulton for the use of Samuel W Mc Coy if he be found in your County to be and appear before the Judge of our Circuit Court for the County of Warren on the Third Monday in the Month of September next to answer to an appeal obtained by Jacob Mc Cormick from a judgment rendered against him in favour of James Fulton for the use of Samuel W Mc Coy before Elisha Ayer a Justice of the Peace of said County on the 18th day of May 1857 for the sum of

Ninety Nine Dollars & thirty six cents and costs
of Suit; And have you then and there this writ

LS3

Witness Wm Laferty Clerk of said Court at
the Court house this 27th day of July 1857. the
Seal of said Court being hereto affixed

Wm Laferty Clerk

On the back of the foregoing Summons is
the following return made by the Sheriff of
Warren County, Illinois, as follows to Wit,

I did on the 29th day of July 1857 serve
the Within by reading the same to Samuel
W Mc Coy

C M Mills Sheriff

Filed Aug 11th 1857

Wm Laferty clk

150
Pleas before the Honorable John
S Thompson Judge of the tenth Judicial
Circuit of the State of Illinois. At a circuit
Court began and held at the Court House
in Monmouth Within and for the County of
Warren and State of Illinois on the Thirce
Monday in the month of September, In the
Year of our Lord one Thousand Eight
hundred and fifty Seven. It being the
Twenty first day of Said Month,

Present. Hon John S Thompson Judge
James H Stewart States Attorney
William Lagaty Clerk
Charles M Mills Sheriff

James Fulton use
of Samuel W Mc Coy }
122 is } Appeal
Jacob Mc Connick }

And afterwards to Wit on the tenth
day of Said term the following record was
made in the above entitled Cause to Wit,

James Fulton use
of Samuel W Mc Coy }
is } Appeal
122 Jacob Mc Connick }

This day comes the Defendant
and Withdraws his Appearance herein. And
now comes the Plaintiff by his Attorney and
the said Defendant being thru times.

Solemnly called came not nor any person
for him to defend this suit. but made
default. Thereupon it is ordered by the
Court. That the appeal taken herein
be dismissed and that a procedendo
issue herein directed to the Justice of the
peace from whom the appeal was
taken. And that the said Defendant
pay ten per cent Damages for the delay
in taking the appeal. And it further
ordered by the Court that Judgment be
entered against the said Defendant for
the costs of suit. Thereupon it is Consid-
ered by the Court that the said Plaintiff
have and recover of and from the said
Defendant his cost by him in this Court
Expended and may have Execution
Therefor &c.

And afterwards to Wit on the Thirtieth
Day of said Term the following order was
made in the above entitled Cause.

122 James Fulton was
of Samuel W McLoe }
vs } Appeal
Jacob Mc Cormick }

This Day came the Defendant

by his Counsel and enters his motion to
set aside the default and dismissal of
the appeal herein. which said motion
was heard and Overruled by the Court.
Then came the Defendant by his Counsel
and prayed an appeal to the Supreme
Court, which was allowed on ^{the} condition
that the Defendant file his Bond during
this term of the Court, in the sum of
Three hundred dollars with A. L. Kirkp
atrick as Security)

(Copy of Bill of Exceptions)

James Fulton use	{	Warden Circuit
of Saul W McLeay		Court Sept Term
vs		<u>AD 1887</u>
Jacob Mc Cormick		Appeal

Be it Remembered That at
the said term of said Court which was
the first Term in which said Appeal
had been pending in said Court. the
case being called the deft by his Counsel
withdrew his appearance herein. And
then was a default taken against
said Jacob Mc Cormick & the appeal
dismissed with a judgment for a writ
of Proceaduo to the Justice of the Peace
to collect the amount of the judgment

And costs before him rendered with ten per cent damages.

And at a subsequent day of the same Term of said Court to Wit. September Term A D 1857. The said Defendant appeared by Counsel and entered his motion to set aside the said default taken against him also to dismiss the suit, And grant the said Defendant a trial on the merits thereof. for the following reasons to Wit

Jacob McCannick	{	Nanum Circuit Court September Term 1857
Sas		
James Fulton vs		
of Samuel W. McCoy		

The said Defendant comes and moves the Court to set aside the default and dismissal of the appeal for the following reasons to Wit

- 1 There was no service of Process on the Appellee and this is the first Term of this Court in which this appeal has been pending, therefore this Court had no right to take a default against this Defendant who is the Appellant & dismiss the appeal
- 2 This Defendant has a complete defence to this action in this. That the said note

herin sued on was given in the State of Ohio in Consideration of the Plaintiff furnishing the Defendant a Threshing Machine which said Plaintiff warranted. And this Defendant avers that Machine was totally unfit for the purpose for which it was intended so that this Defendant returned the same to the Plaintiff, but the Plaintiff refused to deliver the said note to this Defendant and retained the same. All of which Statements & facts this Defendant expects to prove if this motion is granted by the Court, at the next term of this Court by taking the Depositions of Witnesses in Ohio & California

- 3 Under the Statute in an appeal case from a Justice of the peace this Court has no Authority to reverse the Appellant when the appeal has not been served with process at the first Term of Court in which the case is pending
- 4 Because the said judgment is unjust
- 5 Because this defendant has a complete defence to this action

A. C. Kirkpatrick

Deft Atty

But the Court overruled the motion and the defendant then & there in open

Court excepted. which said Exception is
now reduced to Writing and allowed &
signed & Sealed by the Court

John S Thompson *Seal*

Filed Oct 7th 1887

Wm Saguty Clk

(Copy of Bond)

Know all men by these presents that we
Jacob McCormick and A. L. Kirkpatrick of
the County of Warren and State of Illinois are
held and firmly bound unto James Fulton
for the use of Samuel W. McCoy in the penal
sum of One hundred dollars for the
payment of which well and truly to be made
we and each of us bind ourselves our heirs
Executors and Administrators jointly and
severally and firmly by these presents Sealed
with our Seals and dated at Monmouth,
this Sixth day of October Anno Domini
One thousand eight hundred & fifty seven

The Condition of the above obligation
is such, that whereas James Fulton for
the use of Samuel W. McCoy did on the
second day of October 1887 in the Circuit
Court at Monmouth within and for the
County of Warren and State of Illinois
obtain a judgment against the above
bounden Jacob McCormick for the sum

of Nine Dollars & ninety four Cents & Costs
of suit & also a Judgt for a Writ of Proce-
dendo, to the Justice of the peace to collect
the amt of the Judgt & costs before him
rendered, from which Judgmet the Said
Jacob McCormick has prayed for and
obtained an appeal to the Supreme Court
of Said State. Now if the Said Jacob
McCormick shall duly prosecute said appeal
and shall moreover pay the amount of the
Judgmet costs interests and damages
rendered and to be rendered against him
the Said Jacob McCormick in case the said
Judgmet shall be affirmed in the said
Supreme Court then the above obligation
to be null and void otherwise to remain
in full force and virtue

Jacob McCormick {Sd}
A G Kirkpatrick {Sd}

Filed Oct 8th 1887

Wm Laferty Clk

State of Illinois }
Warren County } ss I William Sagut, Clerk
of the Circuit Court for said County, do
hereby certify that the foregoing is a true &
perfect Copy ^{from} the Proceedings in the foregoing
Case as appears from the files and records
now in my office

In Testimony whereof I have hereunto
set my hand and affixed the Seal
of said Court at my office in Monmouth
this 5th day of March AD 1888
Wm Sagut, Clerk

Jacob McCombs

vs

James Fulton
use of S. McCombs

Record

for \$3.00

State of Illinois 3^d Grand Division
Supreme Court April Term 1858,
Jacob McCormick }
vs }
James Fulton for the } Appeal from Warren
use of Samuel W. McCoy }

And now comes Jacob McCormick, the Appellant herein, by his attorneys and says that manifest ^{error} hath intervened in the course whereof the foregoing is a record of the proceedings and for errors therein he assigns the following, to-wit,

1st The Circuit Court erred in dismissing the appeal and awarding procedendo.

2^d The Circuit Court erred in rendering judgment for damages

3^d The Circuit Court erred in refusing to set aside the default and vacate the judgment, and

4th The proceedings are otherwise informal & erroneous.

~~Wherefore~~ ^{Wherefore} he prays may be enquired of by the Court and that the judgment be reversed and the cause remanded &c.

A. G. Kirkpatrick
Gandy Speed

Appellants attorneys

And now comes the said defendant says that in the record & proceedings & judgment aforesaid no such errors hath intervened

By Mead & Williamson
his attorney

Jacob McCormick

vs

James Fulton for the
use of Samuel H. McCoy

Appeal from Warren

Filed April 22, 1858

Leland
Clk

258

McCormick

1858

12587

X