

No. 2805

Supreme Court of Illinois

Leonard White et al.

VS.

Joseph B. Williams.

also
(379) 7

Sloan + White
vs.
By Wilson

State of Illinois }
Harden County } ff

Plas before the Hon. W. A. Dunning Judge
of the Harden Circuit Court in the Third Judicial
Circuit and one of the Associate Justices
of the Supreme Court of the State of Illinois
At the Court house in Elizabethtown in said
County and State, on the 25th day of May A.D. 1848.

State of Illinois }
Harden County } to wit

Affidavit This affiant Joseph B. Williams, being of
lawful age and first duly sworn states
that Leonard White and James C. Sloo stand
jointly indebted to him the said Joseph B.
Williams in the just and full sum of
one hundred and thirty four dollars &
twenty six cents, due by note the 1st day
of September 1847 and that the said
Leonard White and James C. Sloo is about
to remove their property from this State
to the injury and damage of said Joseph
B. Williams and prays an attachment
against the said White & Sloo to be levied
upon their personal ~~and~~ estate. And further
this deponent saith not.

"Joseph B. Williams"

Subscribed and
sworn to before me
this 24th day of November
A.D. 1847

Wm Collins Depty
Geo John D. Knop clerk

Endorsement { "Filed 24th day of November AD 1847"
 "Wm Collins Secy"
 "Hon John P. Knop Clerk"

State of Illinois }
 Macou County } to wit

Bonds { Know all men by these presents that we
 Joseph B. Williams by Wilson and Andrew
 McCallen are held and firmly bound unto
 Leonard White and James C. Sloo in the just
 and full sum of two hundred and
 sixty eight dollars and fifty two cents to
 the payment of which well and truly to
 be made we bind ourselves our heirs exe-
 cutors administrators and assigns jointly
 severally firmly by these presents, sealed and
 dated this 24th day of November in the year 1847.

The condition of the above obligation is such
 that whereas the above bounden Joseph B. Willi-
 ams hath on the day of the date hereof procured
 an attachment out of the Circuit Court
 of said County against the personal estate
 of ^{the above named} Leonard White and James C. Sloo for the
 sum of one hundred and thirty four dollars
 and twenty six cents due by note Sept 1st
 1847 and the same about to be returned
 of said Court returnable the 25th day of
 May next to the term of the Court then to be
 holden. Now if the said Joseph B. Williams
 shall prosecute his suit with effect or
 in case of failure therein shall well and
 truly pay and satisfy said White and Sloo

all such costs in said suit and such damages as shall be awarded against the said Joseph B. Williams his heirs, executors or administrators in any suit or suits which may hereafter be brought for wrongfully serving out the said attachment thus the ^{above} obligation to be void otherwise to remain in full force and effect.

"Joseph B. Williams" *Seal*

"Andrew McCallister" *Seal*

"By Wilson" *Seal*

Endors-
ment

"Filed 24th November 1847"

"McCallister Depty"

"For John J. Knapp clk"

State of Illinois }
Harrison County } to wit

Writ

The people of the State of Illinois to the Sheriff of said County greeting.

Whereas Joseph B. Williams hath complained on oath to the clerk of the Circuit Court of Harrison County that Leonard White and James C. Sloo are justly indebted to the said Joseph B. Williams to the amount of one hundred and thirty four dollars and twenty six cents due by note Sept. 1st 1847 and oath having also been made that the said Leonard White & James C. Sloo are about to remove their property from this State and the said Joseph B. Williams having given bond and security according to the directions of the act in such cases made and provided. We therefore command you that you attach so much of the personal estate of said Leonard White and James C. Sloo.

to be found in your county as shall be of value
sufficient to satisfy said debt and costs accor-
ding to the Complaint. And such estate so
attached in your hands to secure or so to
provide that the same may be liable to further
proceedings thereupon according to law at a
Court to be held at Elizabethtown for the
County of Warren upon the 25th day of
May next so as to compel the said Leonard
White & James C. Sloo to appear and answer
the Complaint of the said Joseph B. Williams
when and where you shall make known to
the said Court how you have executed this
writ. And have you thus and thus this
writ. Witness John V. Knop clerk of our said
Court and the Judicial Seal thereof
at Elizabethtown November 24th.

AD 1847

"McCullins Depy"

"Hon John V. Knop clk"

Shuff
return

"By virtue of the within writ of Attachment
I have this day at the hour of 5 o'clock P.M.
levied on seventy tons of pig ~~iron~~ metal found
at Elizabethtown Warren County N.C. belonging to
said White and Sloo &c this November the 24th 1847"

"Lewis Lavenex"

"Shuff Warren Co. N.C."

"Shuff's Fee"

"For levying attachment - \$ 50 "

"Filing bond - 50 "

"Returning attachment & Bond - 25 "

"\$ 1.25 "

"Lewis Lavenex Shuff H. C. N.C."

State of Illinois }
 Hardin County } set

Joseph B. Williams

vs

Leonard White & James C. Sloo

Attachment

Notice

Notice is hereby given to the said Leonard White & James C. Sloo that a writ of attachment issued out of the Office of Clerk of the said Hardin County Circuit Court dated November the 24th 1847 at the suit of the said Joseph B. Williams against the goods, chattels, credits and effects of the said defendants for the sum of \$134 & 26 cents (as by note 1st Sept 1847) directed to the Sheriff of said County which writ has been returned with the following endorsement by said Sheriff to wit: Seized on 70 tons of pig metal found at Elizabethtown Hardin County Illinois belonging to said Leonard White & James C. Sloo. Now unless you the said Leonard White and James C. Sloo shall do and appear before the ^{said} Circuit Court on the first day of the next Term thereof to be holden at Elizabethtown in said County of Hardin on the 25th day of May next give special bail and place ~~and~~ to the said plaintiff's action judgment will be rendered against you and the property attached sold to satisfy the same with costs.

John N. Knapp clk
 March 13th 1848. By W. Collins Deputy

Contract
of
Publications

I, F. D. Preston publisher and proprietor
of the "Democrat & Gazette" a weekly news-
paper published at Sharnettown do
hereby certify that the annexed notice
(J. B. Williams vs L. White & J. C. Sloe in attachment)
was published in said paper on the 15th day
of March 1848 and the same continued
for the space of 4 weeks (successively) and
do further certify that the papers contain-
ing the same were properly distributed
corresponding with the whole number iss-
ued from the office during such time.

Given under my hand 25th
day of May 1848

F. D. Preston

Publisher

Page 7
Note

On or before the 1st day of September 1847 we
promise to pay Joseph B Williams or order one
Hundred and eighty four dollars & twenty
six cents for value received of him

This the 28th of June 1847

"White & Sloss"

Page 8 State of Illinois In the Circuit Court
Hardin County to wit: May Term 1848

Declaration Joseph B. Williams complains of Leonard White and James C. Slos trading and doing business under the name and style of White & Slos of a plea of debt.

And that whereas the said defendants made this certain promissory note bearing date of the 28th of June A.D. 1847 at the County and Circuit aforesaid and then and there delivered the said note to the said plaintiff, by which said note the said defendants agreed to pay on or before the first day of September thereafter to the said plaintiff or order the sum of one hundred and eighty four dollars & twenty six cents for value received, by means whereof and by force of the statute in such cases made and provided, the said defendants then and there became liable to pay to said plaintiff the said sum of money in the said promissory note specified according to the tenor & effect of said promissory note, and although the said sum of money in the said promissory note specified hath been long since due and payable according to the tenor and effect of said note, yet the said plaintiff in fact saith, that the said defendants (although often requested so to do) did not nor would not pay the said said sum of money in the said note specified to the said plaintiff but hath hitherto wholly neglected & refused

and still ~~not~~ ^{refuse} to do to the
 damage of the said plaintiff of \$100.
 And therefore he brings his suit.

Elizabethtown April 6. 1848

A. McCallum "Filed in my office May 1st 1848
 Plf's Atty By John A. McCallum Clerk
 By McCallum Depty

At a circuit Court begun and
 holden at the Court house in Elizabethtown
 Hardin County Tenn on the 25th day of
 May AD 1848 Present the Hon. W. A. Sum-
 mers one of the ^{Justices} ~~apostles~~ of the Supreme Court
 of said State and presiding Judge of the
 said Hardin Circuit Court in the 13th
 Judicial Circuit of said State the
 following order was entered

"Thursday 25th day of May AD 1848"

"Joseph B. Williams Plaintiff"

vs

"Leonard White & James C. Stoo } Attachment
 Defendants

Order of Court "This day came the plaintiff J. McCallum
 his attorney as well also the defendants
 White their attorney who made a motion to
 dismiss this suit for want of sufficient bond,
 which said motion was overruled by the said
 Court; therefore the Counsel for the plaintiff
 asked leave of the Court to amend the bond
 filed herein which was granted.

Leonard White &

James C. Stoo

etc

Joseph B. Williams } Attachment
 May Term Hardin Circuit
 Court AD 1848

And the said defendants came and def.

said the wrong and injury when &c and say
they were not about to remove their property
from this state to the injury of said plaintiff
as in his said plaintiffs affidavit alleged and
this the said defendants are ready to reply
wherefore the said defendants pray judge-
ment of the said court of attachment
and that the same may be granted
&c

White & Pauls
Atty for Defts

affidavit State of Illinois }
Madison County }

This affiant being first duly
sworn deposes and says that the within
plea and the matters and things therein
set forth are true to the best of his knowledge
and further this affiant saith not.

John Robinson

Subscribed and
sworn to before me

26th May 1848

Wm Collins Deputy

For John V. Knoff Clerk

Endorsement - "Filed 26th May 1848"

"Hearse and ifue"

"McCallen & Davis"

Final "Saturday May the 27th AD 1848"

order of the Court Joseph B Williams

as Leonard White & James C. Sloo

Plaintiff

In Attachment

Defendants

This day came again the parties by their attys
and the defendants filed their plea in abatement

ent traversing the facts set forth in the affidavit of said plaintiff upon which ^{said} plea the plaintiff joins issued thereupon let a jury come thereupon came a jury to wit Erastus Dainmond 1. William Jackson 2. Solomon Beasley 3. William Weatherington 4. William C. Henkel 5. Thos Henkel 6. William P. McFarlane 7. William C. Lane 8. Robert Wash 9. Thomas B. Matthews 10. John Critchlow 11. Hammett Shepherd 12. who by electa tried and sworn the truth to speak upon the issue joined upon their oaths do say, we of the jury find for the plaintiff and assess his damages at \$140 29.

Wherefore it is considered by the Court that the said plaintiff recover against the said defendants the sum of one hundred and forty dollars and twenty nine cents also his costs and charges in and about his suit in that behalf expended and may have execution therefor &c Whereupon came the defendants and moved the Court for a new trial in this cause, which the Court after being fully advised in the premises overruled

Bills of Joseph B. Williams
Exceptions

Leonard White & James C. Slo } Attachment
Circuit Court May Term AD 1848

Be it remembered that on the trial of this issue the said defendants proved by B & A White that previous to the commencement of this suit said defendants had been engaged in making pig iron or metal in said county - and that on the

12th or 13th day of November AD 1847 said defendants delivered to John P. Knopf as agent of a Company or firm in Louisville Ky or Cincinnati Ohio (but which, he did not recollect), all the pig iron or pig metal which they said defendants had on hand at that time; part of which was then lying on the bank of the Ohio river at Elizabethtown in said County and the balance at the Furnace in said County where the same had been made. Said witness also stated that said defendants had no other personal property in said County at the time said metal or pig iron was so delivered. Said witness further stated that Knopf was acting as agent for receiving said pig iron or metal from said defendants, for a Company or firm with whom said defendants had been dealing or trading.

Said Defendants then proposed to prove by said White that one of said defendants James C. Hos owned a large amount of personal property in this State, and more than sufficient to discharge the sum claimed by said plaintiffs; free from any incumbrance whatever at the date of said writ of attachment, to which evidence the plaintiff by his counsel objected which objection the Court sustained and ruled out said evidence as improper to go to the jury, thereupon said defendants by their Counsel, as to such opinions of the Court in sustaining said objection of said plaintiffs Counsel

and ruling out said witnesses, there and there excepted.

Said plaintiff then proved by John H. Egler, that some time in the fall of 1847 Benjamin agent for said defendants delivered to said Knof as agent for W & B. Fellows & Co. a pile of pig iron then lying on the bank of said Ohio river at Elizabethtown in said County - that said delivery was made in the night time. Said plaintiff also proved by B. J. Wilson that on the day said writ of attachment was sued out said Knof told him said witness that the said pig iron or metal lying on the bank of the river in said Elizabethtown was the property of and belonged to W & B. Fellows & Co. of Louisville Ky. - that on the same day Benjamin told him said witness, the said pig iron belonged to said Knof. Said plaintiff further proved by James A. Whitcomb that some time after the levy of said writ of attachment on said pig iron or pig metal and after the execution of delivery bond said Knof shipped said iron or metal to Cincinnati Ohio as agent for some person or persons to him unknown. She further stated that said Knof did not receive the proceeds of the sale of said iron, that he knew of.

Said plaintiff also proved by Charles Mott that pig iron or metal had been removed or hauled from said Furnace after the

time of said delivery and before the commencement of this action, to said Elizabeth Towne. But he did not know of said defendants having made payment after the time of said delivery.

The said plaintiff then offered in evidence a promissory note made by said defendants to said plaintiff, to the introduction of which evidence the said defendants by their Counsel objected the Court overruled said objection and the said promissory note was introduced and read to the jury in evidence on the trial of said issue. Whereupon said defendants by their Counsel then and there excepted to such opinion of the Court in overruling said objection. This was all the evidence introduced upon the trial of said issue. The jury found the issue for the plaintiff and assessed his damages at \$ & costs and Judgement was rendered by the Court for the same.

Defendants Counsel then and there entered a motion for a new trial which was overruled by the Court, to which opinion of the Court in overruling said motion for a new trial, the said defendants by their Counsel then and there excepted. And they pray that this their bill of exceptions may be signed sealed and made a part of the record, which is done accordingly.

"W. A. Denning" Trial

State of Illinois }
 Certificate of Clerk }
 Hardin County }

I John T. Knox Clerk of the
 Hardin Circuit Court do hereby certify
 that the foregoing ^{fourteen} 14 pages contain a full
 true and complete record of the case
 therein named as the same remains on
 file in my office

In testimony whereof I have
 hereunto set my hand and
 affixed the Judicial Seal of
 said Court. Done at the Court
 house in Elizabethtown this the
 7th day of July AD 1848
 John T. Knox Clerk
 By W. Collins Deputy

White & Sloc
 J. R. Williams

Supreme Court Dec Term 1848

- And the said Plffs by Walter B. Seates their
 counsel came & say that in the record and
 in the proceedings and in the rendition of judgment
 of the Circuit Court manifest errors hath intervened viz:
- 1st The circuit Court erred in excluding relevant & proper
 evidence offered by plffs
 - 2nd The circuit Court erred in receiving in evidence the note
 offered by deft
 - 3rd The Circuit Court erred in rendering final judgment a-
 gainst the plaintiffs upon a verdict as a plea in abatement
 - 4th The circuit Court erred in refusing a new trial: and
 - 5th The circuit Court erred in rendering final judgment against
 the plffs — wherefore for the errors aforesaid and others ap-
 parent upon the record, they pray judgment, that the same
 may be reversed, annulled for nothing returned and that they
 recover their costs
- Walter B. Seates for Plffs vs Wm

Index in error
H. C. Davis
for def.

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Supreme Court

JAMES C. HOOVER
LEONARD WHITE

vs
JOSEPH D. WILLIAMS

Error to Rehear

Filed Dec 4th 1878

W. M. WILSON & C. H. R.
per Lewis & Leary, Clk

1878

White & Sloo

Williams

Sup Court Dec Term 1848

Debt upon a note signed "White & Sloo, alleged to have been made by Leonard White & Jas C. Sloo commenced by attachment. Dated 24 Nov 1847 on 70 tons of iron and publication of notice

Plen in abatement that plffs were not about to remove their property out of the State to the injury of Defendant.

Then, they, verdict for deft - assessing damages & judgment. Upon trial it was proven that plffs delivered to Geo T. Knox as agent of a company in Louisville or Cincinnati, all the pig iron they had on hand on the 12 or 13 Nov '47 - part at the furnace of a party lying on the Ohio near at Elizabethtown. That plffs had been, previously to said attachment engaged in making iron at the furnace where part of it was delivered - and that plffs had no other personal property in the county of Hardin at the time of delivery. That Knox was acting as agent for a firm with whom plffs had been dealing when he received said iron.

Deft proved that some time in the fall of '47 that Union agent for said plffs delivered to said Knox as agent of W. H. Fellows & Co - a pile of pig iron lying on the Ohio at Elizabethtown and which was done in the right time. That Knox told one Wilson on the day attachment issued, that the iron on the river bank belonged to W. H. Fellows & Co of Louisville - and that on same day Union told said Wilson that it belonged to Knox. That Knox shipped said iron, after the levy of attachment & execution of a delivery bond, to Cincinnati as agent for some house or person, unknown to witness - and that Knox did not, to witness's knowledge, receive the proceeds of sale. That pig iron had been hauled from the furnace, after the delivery of iron, & before this suit - and witness did not know of plffs making iron after delivery.

Plffs introduced B. F. White a witness & offered to prove by him that Jas C. Sloo, one of plffs, owned a large amount of personal property in the State, and more than sufficient to discharge the debt of deft - and free from incumbrance at the date of attachment - all which was excluded by the court and excepted to.

The deft offered in evidence a note signed "White & Allos"
which was admitted & excepted to

Points

same as made in White & Allos vs Wilson - Also
The proper judgment on plea in abatement is responded
See Rev Stat p 63 sec 1

The defendant declared against Leonard White and Samuel C. Allos
upon a note made by them - and offered in evidence a note
signed "White & Allos" without declaring that plffs made
their note by that description - the variance is fatal to the
admission of such a note in evidence

Statute Contract 1 Chit Pl 331.

No 8

White & Allos

vs
Williams

Abstract

Filed Dec 6th 1848

John Wilbarkes Clerk

p Lewis T. Covery &c

Leonard White &
James C. Sloo

vs
Jos. B. Williams

Supreme Court December Term 1848

Sett upon a note signed White and Sloo - alleged
to have been made by Leonard White and
James C. Sloo. Commenced by Attachment Served 24th
Nov '47 on 70 tons iron & publication of Notice

Plea in abatement that plaintiffs were not about
to remove their property out of the State to the
injury of the defendant. Come - Try - Verdict
for deft - assessing damages & judgment upon it

Upon trial it was proven that plffs delivered
to Geo. T. Knox as agent of a company in Louisville
or Cincinnati all the pig iron they had on hand on the 12 or 13th
Nov 1847, part at the furnace & part lying on the Ohio river
at Elizabethtown - that plffs had been previous to said
attachment engaged in making iron at the furnace where
part of it was delivered - and that plffs had no
other personal property in ~~said~~ the county of Hardin at
that time of delivery - That Knox was acting as
agent for a firm with whom plffs had been dealing
when he received said iron

The defendant proved that some time in the fall of '47
Union agent for plffs delivered to said Knox as agent
for W. C. Fellows & Co a pile of pig iron lying on the Ohio
at Elizabethtown - & which was done in the right time

That Knox told one Wilson on the day attachment issued
that the iron on the bank of the river belonged to
W. C. Fellows & Co of Louisville - and that on same
day Union told said Wilson that it belonged to Knox.

That Knox shipped said iron, after the levy of at-
tachment & execution of a delivery bond, to Cincinnati
as agent for some house or person unknown to witness
and that Knox did not to witness knowledge receive
the proceeds of sale

That pig iron had been hauled from the furnace
after the said delivery of iron & before this Suit - and
witness did not know of plffs making iron after
said delivery

Plffs introduced B. & White a witness & offered to prove
by him that Jas C. Sloo, one of plffs, owned a large a-
mount of ~~property~~ personal property in the State and
more than sufficient to discharge the debt of deft
& free from incumbrance at the date of attachment

all which was excluded by the court & excepted to
The deft offered in evidence a note signed "White and
Sloo" which was admitted - and excepted to.

Ponits
Same as made in White & Sloo v Wilson — Also
See Rev Stat p 63. Sec 1

The proper judgment on plea in abatement is respondens

The deft declared against Leonard White & James
C. Sloo upon a note made by them — and offered in
evidence a note signed "White and Sloo"
without declaring that plaintiffs made their note
by that description. The variance is fatal — to the
admission of such a note in evidence.

Setting contract

1 Ch. Pl 331