

No. 683

Supreme Court of Illinois

McConnell, Orensbe, Co.

vs.

Wm. P. Warren & Wm. Miller et al

(379)  7

Was held at Jacksonville, within
and for the County of Morgan and
State of Illinois before the Honoura-
ble Samuel H. Treat, Judge of the
Eighth Judicial Circuit of the State
of Illinois, sitting in exchange with
the Honourable William Thomas Judge
of the first Judicial Circuit of the
State of Illinois, on the 27th day of
June A. D. 1839.

Murray McConnell & Holloway
v. Nancykel, & Joseph M. Ormsbee

vs
William B. Warren William
Miller, & Austin Brockenbrough

Upon Petition Summons

Be it remembered

that on the first day of June 1839 the plaintiffs
in the above entitled cause filed in the office of
the clerk of the circuit court of Morgan County
their Petition in the words and figures following
to wit,

Morgan Circuit Court, Of the June term in the
State of Illinois Year one thousand eight
Morgan County hundred and thirty nine

Murray McConnell Joseph M.
Ormsbee and Holloway M. Nancykel plaintiffs (trading
& doing business under the name style & firm of
McConnell Ormsbee & Co) state that they hold a bond
on the defendants William B. Warren William Miller
& Austin Brockenbrough in substance as
followeth.

~~1100~~ ³³/₁₀₀

Jacksonville Fla. No 2

Two Years after date, I promise to pay
Joseph Duncan, his heirs or assigns eleven hundred
and ~~ten~~ ³³/₁₀₀ dollars, together with eight per cent
interest per annum, from date until paid, the interest
to be paid annually and on condition of a failure
to pay said interest when due, I ~~promise~~ agree and
bind myself to pay twelve per cent interest on this
note until paid, value received, on this 31st day of
October 1836. Witness my hand and seal

H. B. Warren (seal)

William Miller (seal)

Austin Brockenbrough (seal)

on which are the following assignments

Pay to John Mathers

1st April 1839—

Joseph Duncan

Pay to McConnell Ormsbe of or order, recourse to
be taken on Joseph Duncan before it is had
on me, May 27th 1839—

John Mathers,

whereby the Plaintiffs hath become the proprietors,
thereof, of which the defendants hath had due notice.

Yet the same debt & interest remains unpaid,
wherefore they pray Judgement for their debt and
damages for the detention of the same, together with
their costs,—

McConnell & M Dougall

H. B. Warren

And afterwards to wit on the third day of June
in the year last aforesaid, the following ~~summons~~
summons issued, upon the Petition filed in this
cause, in the words and figures following, to wit,

morgan circuit court, Of the June term, in the
State of Illinois Year one thousand eight
hundred and thirty nine.

Murray McConnell, Joseph
W. Ormsbee, and Holloway W. Karsyckel Plaintiffs
trading & doing business under the name, style &
firm of McConnell, Ormsbee & Co state that they
hold a Bond on the defendants William B.
Warren, William Miller, and Austin Brockenbrough
in substance as followeth.

~~11110~~ ³³/₁₀₀

Jacksonville Ill. No 2

I do Grant after date I promise to pay
Joseph Duncan his heirs, or assigns Eleven hun-
-dred and ten ³³/₁₀₀ dollars, together with eight
per cent interest per annum from date until paid,
the interest to be paid annually, and on condition
of a failure to pay said interest, when due, I agree
and bind myself to pay twelve per cent interest on
this note until paid. - value received on this 27th
day of October, 1836 - Witness my hand, and seal

W. B. Warren Seal

William Miller Seal

Austin Brockenbrough Seal

on which are the following assignments.

Pay to John Mathers

1st April 1839

Joseph Duncan

Pay to McConnell, Ormsbee & Co or order, recourse
to be had taken on Joseph Duncan before it is had
on me. - May 27th 1839

John Mathers

whereby the Plaintiffs have become the proprietors
thereof of which the defendants have had due notice
Yet the said debt & interest remains unpaid
wherefore they pray Judgement for their debt, and

damages for the detention of the same, together with
their costs—

McConnell, vs Dougall for
Plffs

State of Illinois
Morgan County

To the People of the State of Illinois
To the Sheriff of Morgan County Greeting!!
We command you to summon William A. Warren
William Miller, and Austin Brockenbrough to
appear before our Circuit Court of Morgan County
on the second day of the next term of said court
to be holden at the court house in Jacksonville
on the last Monday of June inst, to answer a
certain Petition against them, in our said court, by
Murray McConnell, Joseph W. Ormsbee, & Holladay
W. Tansyckel, of which the foregoing is a copy. And
have them and there this writ.

JS

Witness Dennis Roestmell clerk
of our said court, at Jacksonville
the court house this third day
of June 1839— the seal of said
court, being hereto affixed

Dennis Roestmell clerk

which writ was afterwards returned to wit on the
8th day of June 1839 by the Sheriff of Morgan County
endorsed as follows, to wit:

I executed the within writ
upon the defendants William A. Warren, William
Miller, and Austin Brockenbrough by delivering a
copy of the within writ to each of
them, June 4th 1839— A. Dunlap Shff. M. Co.

And afterwards to wit, on the 23rd day of March 1837 the following order was made to wit,

on motion of defendants by their attorney time is given the defendants until tomorrow morning to plead.

And afterwards to wit, on the 26th day of June in the year last aforesaid the following order was made.

This day came the defendants by their attorney and file pleas one, two, three, four, five, & six to which the ~~def~~ Plaintiffs file their Demurrer.

And afterwards to wit, on the same day, the defendants filed the following pleas to wit.

No 5. And for further plea herein they say action non, because they say, that they have well and truly paid the debt in the Petition mentioned before the institution of this suit, & of this they put themselves upon the country.

Walker J. C.

And for further plea herein the defendants say action non, because they say, that before said Duncan assigned the writing obligatory declared upon to wit, on the 1st day of December 1836. at the circuit aforesaid, the said Duncan by his deed of release of that date signed with his hand and seal, & now here ready to be shown to the court, released and released and acquitted the defendant Austin Brockenbrough from all demands whatever, & from all demands that ~~that~~ had arisen, or might arise, upon the writing obligatory.

declared on, and this defendants are ready to verify
or wherefore they pray Judge &c
Walker p. d.

And afterwards to wit, on the same day the Plaintiffs
filed the following demurrer to defendants pleas to wit,

And the said plffs come & say as to pleas 1. 2.
3. 4. 5 &c of the said defendants preclusion, because
they say, that the matters and things in the said
several pleas set forth & alleged are insufficient in
Law to bar, the said plffs from having & maintaining
their aforesaid action, thereof against the said defts
in this they are ready to verify wherefore &c

McConnell & Dougall
attys

And defendants say that plaintiff action on
because they say, that defts pleas are good & suffi-
cient in Law, to bar said action, and this he is
ready to verify or wherefore he prays Judge &c
Walker p. d.

And afterwards to wit, on the 27th day of June in
the year last aforesaid, the Plaintiffs filed the
following replication to plea N^o 5, to wit, and the
said Plaintiffs come & say that they ought not to be
barred from having & maintaining his action aforesaid
by reason of any thing in the said defts 5th plea in this
behalf contained because they say, that the said
defendants, have not well and truly paid the debt
in the said petition set forth as in the said plea
alleged, & of this they put themselves upon the country
&c

McConnell & Dougall attys for plff

And afterwards to wit, on the same day the following order was made, to wit,

This day came the parties, by their attorneys, and the demurrer of the Plaintiff being joined, and the matters of Law arising thereon being argued. It is considered and adjudged by the court, that the demurrer be sustained to pleas 1. 2. 3. 4. &c. and overruled as to the 5th plea whereupon the Plaintiff files his replication & plea to five, thereupon defendants withdraw their plea herein filed, and saying nothing farther in bar or preclusion to the plaintiffs action. It is considered and adjudged by the court, that the plaintiffs recover of the defendants the sum of Eleven hundred and ten dollars, and thirty three cts. of the debt in the Petition mentioned, also the damages sustained by reason of the detention thereof, and because those damages are unknown to the court, it is ordered that the clerk ascertain and assess the same, who reports that said damages amount to the sum of Three hundred and sixty five dollars and Nineteen cents. Therefore it is considered and adjudged by the court, that the plaintiffs recover of the defendants the debt and damages aforesaid, and also their costs herein expended.

State of Illinois,
Morgan County

J Dennis Rockwell clerk of
the circuit court, of said county, do certify that
the foregoing pages contain, a true, and perfect
copy of the record in the cause of Murray

McCannel, Joseph M. Ormsbe, & Holloway M
Kansyckel, against William B. Warren, William
Miller, and Austin Brockenbrough, as fully
and completely as the same remains of record
or on file in my office—

Given under my hand and the
seal of said Court at Jacksonville
this 10th day of July A.D. 1829.

Dennis Rockwell clerk

Morgan Vincent & Co.

McCannel, Ormsbe & Co.

ALL

William B. Warren

William Miller &
Austin Brockenbrough

Given July 18th
1839. J. B. Warner

Copy of Record

287

Was \$3.50 paid by

Warren

Remitted by Lm

1839

William Warner & double threat
Horatio G. Rice

COOKE 1 vol Chitt p 707 18212. Jhu. Rep 10/33 page

Cooke could not dismiss suit until session of
court, when Senon procured a continuance of
suit.

Warren & Co }
vs } In Error
McCombe & Co }

Then Appellant says that there is manifest error in the Judgment & proceedings, of the Court below in this case.

1st The Court erred in sustaining the Demurrer to Defendants plea of Release,

2nd There is ~~error~~ error in the whole record in giving Judgment for Plaintiff below.

Waiver for Appellant.

Wm B Warren & others
vs
Murray M Combs & others

and the said defendants now come and enter their appearance in this cause and waive process and by leave of the Court now had and obtained -

And the said defendants in error now say that they cannot gainsay or deny the errors in manner and form as by the said plaintiffs in error in their said assignment of errors they have set forth, and now here submit to a reversal of said Judgment and pray that the same may be remanded to the Court below for further proceedings -
McCombe & Co for Defendants in error

Warren H
vs Furay
McClannid

Filed July 18
1839-Indian

in error

Dec 25. p. 492. first & second

Dec 25. p. 492. first & second

Dec 25. p. 492. first & second

Dec 25. p. 492. first & second

Warren Miller & Co
vs
McCormick Ormsby & Co } Error to the
Morgan Circuit
Court

The plaintiff comes and assigns the
following errors in the judgment &
proceedings in said case viz

1 The Court erred in sustaining the
plaintiffs demand to Defendants
plea of release.

2 The Court erred in giving judg-
ment for Defendants in error
upon the whole record

Wm. R. for Plaintiff
in error

W Council Chamber & Co
vs

William B Warren

William Miller &

Austin Brockmough

Assignment of Error

Filed July 18. 1839
J. M. Duman

William B Warren & others }
Murray M Cornell & others }

and the record and assignment of errors being ^{filed} this day come the
plaintiffs in error, and the motion for a supersedeas
being heard, ^{upon the errors assigned} it is ordered that a writ of error is in
herein ^{and that the same be made a supersedeas} upon the said plaintiffs in error entering
into bond with William French and Horatio New
as their securities as the law directs in double the
amount of the Judgment below

Whereupon come the said defendants in error
and by leave of the court enter their appearance herein
and waive process and now enter their confession of the
errors as assigned by said plaintiffs in error upon the
record, ^{of said cause, in said cause and in sustaining the plaintiffs claims thereto} now here filed in overruling the defendants plea of release ^{from}

Therefore it is ordered and adjudged that the
Judgment of the court below, ^{because of said error} be reversed with cost and
that the cause be remanded to the Circuit Court with
instructions ^{to overrule the Demurrer &} to proceed in said cause ~~as above~~ ^{they}
~~the court to overrule the plea of release~~
It is further ordered that the plaintiffs recover
of the defendants their cost in and about this their
suit in this Court expended -

with instructions to the Circuit Court
to overrule the Demurrer & proceed to
the determination of said cause
as if no Demurrer had been interposed