

12018

No. _____

Supreme Court of Illinois

Griswold

vs.

McMillan

71641  7

Case ~~14~~ 14

Warren H. Griswold

Joseph H. McMillan

12018

1850

Repaired
E. C.

United States of America
State of Illinois
Du Page County

Pleas before the Honorable Jesse W.
Thomas one of the Associate Justices
of the Supreme Court in and for the State
of Illinois, and Presiding Judge of the
Seventh Judicial Circuit in said State,
at a Circuit Court in and for the County
of Du Page in said Circuit, begun and
held at Naperville in said County on
Monday the twenty seventh day of Sep-
tember in the year of our Lord One
thousand eight hundred and forty
seven, and of the Independence of the
United States of America the seventy second

Present the Honorable Jesse W. Thomas Judge
William A. Boardman, State Attorney
George Roush, Sheriff of said County of Du Page

Attest: C. W. Bell Clerk

By John A. Middled Deputy

Be it remembered that heretofore, on the
Twentyeth day of April in the year of our Lord One thousand
eight hundred and forty seven, being one of the days of
the April Term of said Court, the following among other
proceedings were had to wit:

Marion H. Griswold who does for the use
of Stephen Whipple, Appellants

vs
Joseph McMillan

Appeal

And now comes the Defendant by Barringer
his Attorney, and makes his defence, pleading the
Bankruptcy of the Plaintiff, which is granted by the Court
and on Plaintiff's motion this Cause is continued

And afterwards to wit on the twenty eighth

day of September A.D. 1847 the following among other process-
days were had to wit:

Warren H. Gusswold who sues for the
use of Alphonzo Whipple, Appellant

vs
Joseph McMillan
Def

Appeal

After day comes the Defendant by Allen
and Harris worth his Attornies, and files his Affidavit
and moves the Court for a Continuance herein, and the
Plaintiff also comes by his Attornies and admits the
Allegations contained in said Affidavit, it is therefore
Ordered by the Court that said Motion be overruled.

And afterwards to wit on the twenty fourth
day of September A.D. 1847 being one of the days of said
September Term of said Circuit Court, the following further
proceedings were had viz:

Warren H. Gusswold who sues for use
of Alphonzo Whipple, Appellant

vs
Joseph McMillan
Def

Appeal

And now come the parties by their Attor-
nies and submit this Cause to the Court for trial.
And the Court having heard the testimony, and
being fully advised in the premises, it is ordered
that the Judgment of the Court below be affirmed
and that the said Defendant recover of the said
Plaintiff his Costs and Charges, as well in the Court
below as in this Court, and that he have Execution
thereof.

And thereupon comes the Plaintiff by
his Attornies and files his Bill of Exceptions
to the Judgment of the Court, which Bill of
Exceptions is in the words & figures following to wit:

State of Illinois } Du Page Circuit Court Sept Term
Du Page County, } 44 1847

Warren H. Griswold for the use
of Alphonzo Whipple

vs
Joseph McMillan

Action of Debt
Tried by the Court

Be it remembered that on the trial of the
above entitled cause the Plaintiff read in evidence to the
Court the Note drawn on which is in words and figures fol-
lowing to wit:

For value received I promise to Warren
H. Griswold or Bearer twenty two dollars and seven
Cents with use by the first day of July next
Dated Feb 4th 1834 Joseph McMillan

And then rested his case, whereupon the Defendant
read in evidence to the Court the following Affidavit
of the Debt & his Attorney in the words and figures fol-
lowing to wit:

W. H. Griswold for the use
of Alphonzo Whipple

Du Page Cir: Court
Sept Term 44 1847

vs
Joseph McMillan

Joseph McMillan being duly sworn
doth depose and say that at the last past term of
this Court he employed P. Wallingair Esq of Chicago
to attend to this suit in the absence of S. F. Farnsworth
who was his Attorney in said Cause, that this affiant
had before that time in obedience to the direction of
his last mentioned Attorney sent to New York & pro-
cured a copy of a Record from the District Court of
the U. S. in the Matter of the Bankruptcy of the said
Plaintiff, from which it appeared that the Plaintiff
had no right of action against this affiant, that
this affiant put the said record into the hands of

Mr Ballingall to use in evidence in said suit, & supposed that Mr Ballingall put the same upon the files of this Court until the present term when he was informed that no such paper could be found & now supposes that Mr Ballingall took the said paper away with him — this affiant is informed that Mr Ballingall is sick & for that reason is detained from this Court, this affiant cannot safely proceed to trial without said paper, but can by the next term of this Court either procure said paper or send & get another copy.

Sworn & Subscribed before me

this 28 day of Sept. 4th 1847

Chas. W. Hill Clerk

John F. Riddle Dep

Joseph McMillan

Warren H. Cusick for the use of
Alphonzo Whipple

Joseph McMillan

On Page County Circuit
Court September Term

In the Year of our Lord one
thousand eight hundred
and forty seven.

J. H. Farnsworth being duly sworn doth depose and say that he is employed by the defendant in the above entitled cause to defend said suit, this affiant successfully defended said suit in the Court below & the appeal was taken by the Plaintiff in said suit to this Court, this affiant believes that the Plaintiff has no right of action against the defendant in this suit whatever, this affiant was not present at the last or Spring term of this Court in consequence of the fact that the same Circuit Court was in session at the same time that this Court was & it was more necessary for this affiant to attend that Court than this, this affiant had a paper which was

indispensably important for the defendant to use in
his defense in this suit, which paper this affiant sent
to the said Joseph McMillan, on the first day of the last
Term of this Court. Just and this affiant has not seen nor
does he know any thing about said paper since, that
the paper alluded to above is a Transcript from the
District Court of the United States for the Western District
of New York properly certified to, in the matter of the petition
of the Pff in this suit to be declared a Bankrupt in
Conformity to the Act of Congress of 1841. & from which it
appeared that the said Plaintiff was declared a
Bankrupt & decreed wholly discharged from the
payment of all his debts, and this affiant says
that the Defendant cannot safely proceed to trial
at this time unless the said paper can be produced
in evidence in said suit.

Sword & subscribed to before me
this 28th day of Sept. AD 1847.
C. B. Will. Clk.

J. J. Farnsworth

John J. Riddle Dep.

(which were the same affidavits which were read on
def's motion for continuance, and which were admitted
by the Plaintiff at time shewing the bankruptcy of the
Plaintiff) this being the whole of the evidence the
Court found the issue for the Defendant, thereupon
the Plaintiff moved the Court for a new trial upon
the ground that the finding of Court is against law
& the evidence in this case, the Court overruled the
motion for new trial, The Plaintiff excepts to opinion
of Court in that respect & prays that his bill of
exceptions be signed & sealed and made a part
of the Record.

J. B. Thomas Secy

State of Illinois
Du Page County, I John J. Riddler Clerk pro
tem of the Circuit Court in and for the County of Du
Page in the State of Illinois, do hereby Certify the
following to be a true and full Transcript of the Record
in the Cause entitled Wm. H. Curwold who sues for the
use of Alhinga Whipple vs Joseph McMillan, as also
of the Affidavits, Notes and Bill of exceptions on file
in my Office.

Witness my Hand and the Seal of said
Court at Naperville in said County
this 14th day of December. A.D. 1867

John J. Riddler, Clerk
Pro tem

12018-47

49.

Lyndolde for use

or

Mc Millan

Filled June 15. 1849.
Edel and Oth.

Fees \$2.00

State of Illinois, Etc.

WRIT OF ERROR.—FREE TRADER, OTTAWA.

The people of the State of Illinois,

To the Clerk of the circuit court for the county of *Du Page* = 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 *Du Page* — county, before the Judge thereof, between *Nathan H. Griswold for the use of Alphonzo Whipple*

plaintiff and

Joseph McMillan

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

plaintiff

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 *second Monday of 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 *18th* — day of *June* — in the year of our Lord one thousand eight hundred and forty-*nine*.

Beland

Clerk of the Supreme Court.

Clerk of the Supreme Court.

one thousand eight hundred and forty-
in the year of our Lord
and of the Independence of the United States
the said Court, and the
WITNESS, the Hon.

the 10th day

we may cause to be done thereto, to correct the error, what of right ought to be done accord-
next, that the record and proceedings, being introduced,

before the Justices of the Supreme Court, in the County of the City of New York, on the 10th day of
the said Court, the Justices of the Supreme Court, the Clerk of the Court, and the
the said Court, the Justices of the Supreme Court, the Clerk of the Court, and the
the said Court, the Justices of the Supreme Court, the Clerk of the Court, and the
the said Court, the Justices of the Supreme Court, the Clerk of the Court, and the

complaint, and we hereby certify that error, if any there be,

of the Court, the Justices of the Supreme Court, the Clerk of the Court, and the

the said Court, the Justices of the Supreme Court, the Clerk of the Court, and the

the said Court, the Justices of the Supreme Court, the Clerk of the Court, and the

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the said Court, the Justices of the Supreme Court, the Clerk of the Court, and the

44

Marion H. Griswold
for ee.

Joseph McCollum
Writ of Error

Filed June 15, 1849.
H. H. and C. H.

State of Illinois, }
 Supreme Court, } SS.

The People of the State of Illinois

TO THE SHERIFF OF *Du Page* 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 *Du Page* county, before the Judge thereof, between *Warren H. Gribwold who sues for the use of Alphonzo Whipple, plaintiff* and *Joseph McCallan*

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

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 *Joseph McCallan*

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 *second* Monday in *June* next, to hear the records and proceedings aforesaid, and the errors assigned, if *he* 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 *Joseph McCallan* notice, together with this writ.

WITNESS, the Hon. *Daniel H. Treat*
 Chief Justice of our said Court, and the seal thereof,
 at Ottawa, this *15th* day of *December*
 in the year of our Lord, one thousand eight hundred
 and forty-*nine*.

L. Keland

Clerk of the Supreme Court.

No. 14.

Warren H. Griswold & co.

Joseph McClellan

Sci. Ho. to Du Page Co.

To June Term c. d. 1850.

Presented the within writ
by reading the same in
the hearing of Joseph
McClellan and in the
presence of Samuel Curtis
and A. G. Bancroft.

July 5 to 1850
Her Honor Sheriff
of Du Page County

1 term	60
50 miles	250
1 1/2	10
	\$3.20

E. Peck R. H. Counsel

State of Illinois, ss.

Supreme Court, Third Grand Division, at Ottawa:

The People of the State of Illinois, to the Sheriff of *La Page* County---Greeting:

WE COMMAND YOU, That of the goods and chattels, lands and tenements, and real estate of

Warren H. Gierbold (who sued for the use of Elvazgo Whipple)

you cause to be made the sum of *four* _____ dollars and

seventy _____ cents ~~damages, and the sum of~~
~~dollars and~~

~~cents~~ costs in the said Supreme Court, which _____

Joseph McCallan _____

lately recovered against *him* before the Justices of our said Supreme Court, as appears to us of record, and make return hereof in ninety days.

WITNESS, the Hon. SAMUEL H. TREAT, Chief Justice
of our said Court, and the Seal thereof, at Ottawa,
this *17th* _____ day of *December*
in the year of our Lord one thousand eight hundred
and *fifty* _____

L. Ireland Clerk of the Supreme Court.

Supreme Court
Wm. H. Griswold vs

Joseph McMillan
Executor vs plff.

Bill of costs \$4.70
Fee Bill 11.16 1/4
Chas. V. 15.86 1/4

Filed Jan'y. 11. 1851.
L. Ireland Clk.

W. H. Griswold, Defendant
in this County

D. R. Parmelee
Sheriff
of the County

Rec'd this the 21st day
Dec 1850 at 8 o'clock
D. R. Parmelee

Warren H. Griswold who sued
for the use of Henry Whipple

14

vs

Joseph McDillan and
Ppss. cts-

} Ena to Du Page.

Just. app.

Fil. transpt. 20, & h. cane 100 appur. 25, fil. Ena 64,	.63 $\frac{3}{4}$
Mit of ena & seal & fil. 106 $\frac{1}{4}$, Sei. fa. seal & fil. 106 $\frac{1}{4}$,	2.12 $\frac{1}{2}$
Contn. 25, & h. cane 10, Ent. argt. 25, Ent. Subn. 25,	.85
Ord. taking time 25, bill of cts 25, copy 25, Cur. & seal 25,	1.00
Fil. & h. 15, Shffs. return 10, & h. fa 125, postg. 20, Sate fa. 25, Transpt. & 3.00,	4.85
Env. & h. Sei. fa. 70, mil. 10 miles, 50	Am't. \$ 9.96 $\frac{3}{4}$
	1.20
	Am't. \$ 11.16 $\frac{3}{4}$

State of Illinois, ss.

Supreme Court—Third Grand Division, at Ottawa:

The People of the State of Illinois to the Sheriff of Du Page County---Greeting:

WE COMMAND YOU, that of the goods and chattels, lands and tenements of Warren H. Griswold (who sued for the use of Henry Whipple) you cause to be made the sum of eleven dollars and sixteen & a fourth cents, the amount of the foregoing bill, which is due and unpaid, and is a true copy from the Fee Book in my office; and hereof make due return in ninety days.

WITNESS, the Hon. SAMUEL H. TREAT, Chief Justice of our said Court, and the seal thereof, at Ottawa, this

17th day of December—
A. D. 1850.

H. Deland Clerk of the Supreme Court.

Griswold vs. C. M. Millan
Fie Bill \$11.16¹/₄
~~\$496¹/₄~~

Defendants not found
in my County
C. H. Parmelee
Sheriff
of Du Page Co Ill

Warren H. Givens who sued
for the use of Henry Whipple -

14

Joseph McMillan

Depts. cts.

Ever to Du Page.

judt. aff.

Appr. 25, fil. & ent. joiner 30, Ad. aff. 9. 25	.80
Fil. Apr. 8, ent. judt. & opinion 90, copy of judt. 50,	1.45
Entp. seal 25, judt. for cts 25, Sh. judt. 25, Ad. for ext. 15,	1.00
Execution 25, bill of cts 25, copy 25, fil. & Sh. 15,	.90
Sh. wh. 10, postage 20, Ent. satis. 25,	.55
Bill of costs 25, copy 25, entp. seal 25, fil. & Sh. 15, Appr. 25, Judt. 25,	4.70
	8.70

State of Illinois, ss.

Supreme Court—Third Grand Division, at Ottawa:

The People of the State of Illinois to the Sheriff of Du Page - County---Greeting:

WE COMMAND YOU, that of the goods and chattels, lands and tenements of

Joseph McMillan you cause to be made the

sum of five dollars and seventy

cents, the amount of the foregoing bill, which is due and unpaid, and is a true copy from the Fee Book in my office; and hereof make due return in ninety days.

WITNESS, the Hon. SAMUEL H. TREAT, Chief Justice of our said Court, and the seal thereof, at Ottawa, this

10th day of January

A. D. 1854.

L. Leland Clerk of the Supreme Court.

Warren H. Griswold pro.

Joseph H. McEllillan

For Bill vs McEllillan

Edm. H. \$870

No goods or Chattels
Land or Tenements of the
Defendant found in any
County whereon to Levy
and I return this writ
unsatisfied in any part
Jan 23

C. H. Pammel

Sheriff
of Du Page Co

Rec'd this execution
this 16th day of Jan AD 1851
at 12 o'clock M.

C. H. Pammel
Sheriff Du Page Co