

12024

No. _____

Supreme Court of Illinois

Merritt

vs.

Ely, et al

71641  7

United States of America
State of Illinois
County of Cook

Sp.

Heas before the Honorable Giles Spring
Judge of the Cook County Court within and for
the County of Cook and State of Illinois, had in
Vacation after the October Term of said Court
in the Year of Our Lord one thousand eight hundred
and forty nine and of the Independence of the United
States the twenty third.

Present the Honorable Giles Spring Judge
Attest
Walter Kimball Clerk

Be it Remembered that heretofore to
wit, on the twenty third day of November A D
1849, came O. M. Donnan Attorney for Zebulon
J. and Enoch D. Ely and filed in the office of
the Clerk of the said Cook County Court a Declara-
tion, which said Declaration is in the words and
figures following to wit,

Cook County: Sp.

Cook County Court
In Vacation Nov 1849.

Zebulon J. Ely & Enoch D. Ely copartners doing
business under the firm name of Ely & Brother plain-
tiffs by O. M. Donnan, their Attorney, complain of
Gaius Perkins & Silas Merrill copartners doing busi-
ness under the firm name of Merrill & Perkins
having been summoned of a plea of trespass on the case
upon promises &c. For that whereas the defendants

Heretofore, to wit, on the twenty eighth day of August
in the Year of our Lord one thousand eight hundred
& forty nine at Chicago within the said County of Cook
made under the name & style of Merrill & Perkins
their promissory Note in writing & delivered the same
to the plaintiffs & thereby promised to pay to the
plaintiffs under the name & style of Ely & Brother
One thousand Dollars at their office in Chicago one
day after date thereof which period has now lap-
sed, and the defendants afterwards in consideration
of the premises, then & then afterwards, on the day
& Year aforesaid, promised to pay the said money
to the plaintiffs on request, but the defendants have
disregarded their promises & have not paid the said money
or any part thereof to the plaintiffs damage of fif-
teen hundred dollars & therefore they bring suit &c,
O. W. Donnan
Plffs, atty.

(Copy of Note)

\$1000.

Chicago 28 August 1849

One day after date for Value received we prom-
ise to pay to Ely & Brother or order one thousand
Dollars payable at office of Ely & Brother Chicago
(Signed) Merrill & Perkins,

And upon the same day to wit the
Twenty third day of November A.D. 1849. there was
also filed in the office of the Clerk of said Court in
said Cause a Note with a Warrant of Attorney
and affidavits thereto attached, which said
Note Warrant of Attorney and affidavits are
in the words and figures following to wit

\$1000 Chicago 28 August 1849.

One day after date for Value Received we
promise to pay Ely & Brother or order One Thousand
Dollars, payable at office of Ely & Brother Chicago.
Merrill & Perkins.

Know all men by these Presents, that whereas the
subscribers are justly indebted to Ely & Brother in
the sum of One Thousand Dollars, for which sum
the said subscribers have executed their promissory
note of even date herewith bearing interest at the
rate of — per cent per annum, payable one day
from date to the order of Ely & Brother.

Now, therefore, in consideration of the premises we
do hereby make, constitute and appoint S. J. Ely
or any Attorney of any Court of Record, to be our true
and lawful Attorney, in and for us and in our
names and stead, to enter our appearance before
any Justice of the Peace or any Court of Record in
the United States of America, or any of the Territories
thereof, at any time from and after the date here-
of to waive the service of process and confess a judg-
ment in favor of said Ely & Brother or their assign-
s or assigns, upon the said Note for the above
sum, or for as much as appears to be due, accor-
ding to the tenor and effect of said Note, and
interest thereon, to the day of the entry of said
judgment, together with Costs and Attorney's fees,
and also to file a Cognovit for the amount
that may be ^{so} due, and to release all errors
that may intervene in the entering up of said
judgment, or in giving the execution thereon. Truly

ratifying and confirming all that our said Attorney
may do by virtue thereof

Witness our hand and seal this twenty eighth day of
August A D 1849

In Presence of
J. J. Williams

James Jenkins JS
Silas Merrill JS

State of Illinois
Cook County

J. J. Williams being duly sworn
deposes & saith, that he knows James Jenkins, that he
saw the said Jenkins sign the Name of Merrill &
Jenkins to the within note, and also saw the said Jen-
kins sign their names to the within warrant of attorney
and that he signed his name as subscribing witness
thereto

J. J. Williams

Subscribed & sworn to
this 23 day of Nov 1849
before me

Walter Kimball cm

And then was also filed on the said day to wit
the twenty third day of November A D 1849 by the said
O. W. Norman in the office of the Clerk of said Court
in said Cause a Cognovit, in the words and figures
following to wit

Cook County Court 23 Nov
1849. In Vacation.

Zebulon Ely &
Enoch D Ely

vs
James Jenkins &
Silas Merrill

Trespass on Case on promises
Cognovit

We confess this action & that the plaintiffs have sustained
damage to the amount of One thousand & fourteen
¹⁶/₁₀₀ Dollars besides their costs & charges to be taxed
and we consent that judgment for the said sum of
One thousand & fourteen ¹⁶/₁₀₀ Dollars may be entered
up in the Cook County Court immediately in vacation
against us & for the costs & charges, and that execution
may issue thereon immediately, and we waive all
irregularity or want of form in issuing No writ in
this cause & to release all error if any in entering
the same or issuing execution thereon, & this judgment
shall bear interest at the rate of six per cent
till paid, 23^d Nov 1849 Chicago.

Jarius Jenkins & Silas Merrill by
O. W. Harman. Attorney for
said Jarius Jenkins & Silas Merrill
Defendants.

And thereupon the following proceeding was had
in said Court, and entered of Record on the said
twenty third day of November A.D. 1849. To wit

Zebulon S. Ely &
Enoch S. Ely

In Vacation Nov^r 23^d 1849

Confession.

Jarius Jenkins &
Silas Merrill

And now upon this twenty third
day of November A.D. 1849. comes the said plaintiffs by
O. W. Harman their Attorney and file herein their declar-
ation of a plea of Disputa on the case upon promises. And
thereupon also comes the said Defendants by O. W. Harman
their Attorney in fact. who files herein their warrant

of Attorney the execution of which being duly proved,
And also their Cognarists Confessing the action of the
said plaintiffs against them, and that they have sus-
tained Damages by occasion of the premises to the
sum of One thousand and fourteen dollars and
Sixteen Cents.

Wherefore it is considered that the said
plaintiffs do have and recover of the said defendants
the said sum of One thousand and fourteen dollars
and Sixteen Cents their Damages aforesaid in form
aforesaid Confessed together with their Costs and
Charges by them in this behalf expended, and
have execution therefor.

State of Illinois }
Cook County } Jp.

I Walter Kimball Clerk of the
Cook County Court of Common Pleas within
and for the County of Cook and State aforesaid,
Do hereby Certify that the foregoing is a true and
Correct Copy and Transcript of the papers and of
the Record in said Cause now on file in my
office.

In Witness whereof I have
hereunto set my hand and
the Seal of said Court at Chicago
in said County this 8th day of
January A D 1850

Walter Kimball,
Clerk

\$ 1014.16

And Silas Merrill one of the Defendants named in the foregoing Record & proceedings, and says that ^{the} said Record & proceedings, and also in the rendition of the judgment therein described, there is manifest error in this, to wit:

That the said judgment was rendered & entered against him the said Silas Merrill without authority of Law.

That the said Court in which said judgment was rendered had no jurisdiction of the person of the said Silas Merrill in any manner, and that the said Court had no right or authority nor had the Clerk thereof any right or authority to enter the said judgment against him.

That said judgment in said Record described was rendered & entered up on the Confession of O. M. Dor-man Esq. the Attorney for the Plaintiff, to said judgment & proceeding, as appears from said Record & proceedings, contrary to Law.

That the Power of Attorney in said Record & proceedings described, and the proof of the same, as appears by the said Record & proceedings, contains no Authority whatever warranting or authorizing the said judgment to be rendered against him said Silas Merrill.

That the said Record & proceedings show that the Power of Attorney therein described & set forth, was never executed by him said Silas Merrill, and that no Authority ever existed in, or was conferred upon the said Court or the Clerk thereof to render or enter up the said judgment therein described against him the said Silas Merrill -

And the said Silas Merrill prays that a writ of Error from the Supreme Court of the State of Illinois may be granted & issued herein, and that the same may be made to operate as a Supersedeas that all proceedings relative to said judgment or the

Collection thereof may be stayed, that the said Cause & the errors herein assigned may be heard & determined by the said Supreme Court, that a Supercedias may issue to the Sheriff of Will County in said State of Illinois into whose hands an execution has come for the collection of said judgment, and that the judgment aforesaid for the errors aforesaid and for the errors apparent in the record and proceedings aforesaid may be reversed, annulled, and altogether held for nothing, and that he the said Silas Merrill may be restored to all things which he hath lost by occasion of the said judgment &c.

H. L. Hawley +

State of Illinois.

Osgood & Little Attorneys
for Silas Merrill
Plaintiff in error

The Clerk of the Supreme Court of the third Circuit Division of said State, Will, upon filing the foregoing record, in his office, together with, and bond conditioned as the law directs, in the penal sum of two thousand dollars, signed & executed by said Silas Merrill as principal & Albert S. Anderson, Charles H. Weeks, ~~Seymour~~ ~~& Charles~~ & Harvey Merrill, sureties issue a supercedias, in said Cause

Id. Caton

Just. Sup Court Illinois

Jan'y 30th 1850.

Filed Feb'y 12. 1850
Wm. C. McLean Clk.

March 2. 25

Johnston of City & County of Cook
Jesse Johnston &
John W. Bennett

Sackport July, 3d

Wm. H. Ego
Sir

Enclosed find \$415.00. Paid
for cost in Mass of Ely &c & for an duty,
attributed to Quincy's and Quincy's
Morse Perkins

Know all men by these Presents, that we Silas Merrill, as
Principal and Albert S. Anderson, ~~Complainant~~
~~Defendant~~, Harvey Merrill and Chas. H. Weeks as Securities
of the County of Cook and State of Illinois, are held and
firmly bound unto Gebulon V. Ely and Enock D. Ely of
the County of Cook and State of Illinois in the penal sum
of two thousand dollars lawful money, for the payment
of which debt and truly to be made unto the said
Gebulon V. Ely and Enock D. Ely, their Executors, administrators
or assigns, we bind ourselves, our heirs, Executors and admin-
istrators, jointly, severally, and firmly, by these presents.
As witness our hands and seals, this Tenth day of February 1851.

The condition of the above obligation is such, that
whereas the said Gebulon V. Ely and Enock D. Ely did
recover a judgment against James Jenkins and Silas
Merrill for the sum of one thousand and fourteen dollars
and sixteen cents damages and the costs by them expended in
said suit, in the Cook County Court of Cook County
State of Illinois on the Twenty third day of November AD 1849
And whereas the said Silas Merrill one of the said defendants, has
sued out a Writ of Error from the office of the Clerk of the
Supreme Court for the Third Grand Division of this State,
You therefore if the said Silas Merrill shall prosecute
said Writ of Error with effect, or if the said Judgment
shall be affirmed by the Supreme Court, shall pay the
said Judgment, Interest, costs, & damages without default
then this obligation to be void otherwise to remain in full
force and effect.

Test & Delivered in

Presence of

AS Danby

Silas Merrill

Albert S. Anderson

Harvey Merrill

Chas. H. Weeks

Sub

Sub

Sub

Sub

20
L. Leland Clerk
To

Arbular L. Ely and
Enoch C. Ely.

Bonds

Filed Feb. 10th 1850.
L. Leland Clerk.

Sackport Dec 25 51

Edelard Esq

Sir

Mr Paddock has presented
Bill for fees in Case of Minell and Ely
for \$9.15 which is correct. You should
however credit me with five dollars
which was sent you by mail at the
Commencement of the suit by Mr Hawley
our Atty. let us hear from you.

Most Truly Yrs

Edelard Esq { Minell & Perkins
Clk Sup Court }

Silas Merrill impl. &c.

vs.

Zebulon S. Ely et al.

Error to Cook Co. Court.

Plff's costs.

Fil record & errors, 20, fil. proc. & ord. for sup. &c., 10, bond & fil., 30, \$ 60
Writ of error fil., 55, ~~2~~ order for sup. &c., 25, Supd. fil., 55, 1,35
Sci. fu. & fil., 55, Sh. Cause, 10, apprae., 25, Contnec., 25, Sh. Cause, 10, - 1,25
Contnec., 25, Sh. Cause, 10, bill of costs 25, Copy 25, Cert. & seal 25, 0,85
Fil & Sh., 15, Transcript. &c., 2,25 Ent. withdrawal of suit, 25, 2,90
Surv., 50, mil. 5, ^{Sci. fu.} Return, 10, Sh. fu 1,25 Postg. 20 2,60
\$ 7,00

~~5.00~~
~~\$ 2.60~~
4.15

note to John W. Paddock for above fees
\$9.15 chm. 26. 1887.

[218004-2]

Transcript. 2,25
Shff's fees - 65
Subt deduct \$2,90 from 7,60 = \$4,70

Merrill, Ely et al.
Bill of costs -

State of Illinois, Etc.

The people of the State of Illinois,
To the Clerk of the ~~Circuit~~ ^{Cook County} court for the county of *Cook* — Greeting :

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which was in the ~~Circuit~~ ^{Cook County} Court of *Cook* county, before the Judge thereof, between *Zebulon S. Ely & Enoch D. Ely* —

_____ plaintiffs and *Ganis Jenkins &*
Silas Ellenill —

defendant *S* it is said manifest error hath intervened to the injury of the aforesaid *Silas Ellenill* 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 plaintiff 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. *Daniel H.*
Heat Chief Justice of our said Court, and the seal thereof at Ottawa, this *12th* day of *February* — in the year of our Lord one thousand eight hundred and *fifty*.

S. Seland

Clerk of the Supreme Court.



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Supreme Court
Dilas Clemitt imp. de
Zebulan Ely et al.

Mit of Enor

Filed February 12, 1880.
L. Leland Elk.

State of Illinois,
Supreme Court, } SS.

SCIRE FACIAS.—FREE TRADER OFFICE, OTTAWA.

The People of the State of Illinois
TO THE SHERIFF OF Cook County.

Because in the record and proceedings, and also in the rendition of the judgment, of a plea which was in the ~~circuit~~ ^{Cook County} court of Cook County, before the Judge thereof, between Zebulon S. Ely & Enock D. Ely plaintiffs & Ganis Jenkins & Vilas Merrill

defendants it is said that manifest error hath intervened to the injury of the said Vilas Merrill

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 Zebulon S. Ely & Enock D. Ely

that they 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 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 Ely & Ely notice, together with this writ.

WITNESS, the Hon. Daniel A. Treat
Chief Justice of our said Court, and the seal thereof,
at Ottawa, this 12th day of February
in the year of our Lord, one thousand eight hundred
and fifty.

C. Deland

Clerk of the Supreme Court.

14

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Supreme Court

Vilas Allenill imp. ee.

vs
Zebulon S. Ely et al.

Deci. Fa. to Cook County.

To June Term 1880.

Executed in part by reading
the within in presence of
Zebulon S. Ely this 14th
day of May 1880. Enrich D.
Ely cannot be found in any
county.

1 service — 50
1 mile — 5
Return — 10

\$0.65

J. Cook Shff
By John C. Miller
Dep. Shff

Filed May 18. 1880.

Declar'd Clk.
5th / w. 9. / w. by Clk.

TO THE SHERIFF OF

The People of the State of Illinois

County.

Clerk of the Supreme Court.

WITNESS the Hon. Clerk of the Supreme Court.

20 Cook

Bilas Allenill —

vs

Zebulon S. Ely et al.

1850

12024