

12287

No. _____

Supreme Court of Illinois

Gray, et al.

vs.

MacLean, et al.

71641  7

It is remembered that heretofore, to wit on the twelfth day of September in the year of our Lord one thousand eight hundred and fifty four there was filed in the office of the Clerk of the Circuit Court in and for the County of Teoria in the State of Illinois a declaration, Precept, Copy of Bond and Assignment in a certain cause wherein William A. Gray, James Gray, and Barnes C. Reeves are Plaintiffs and John Maclean & Amos L. Merriman are defendants which said declaration, precept, copy of bond & assignment are as follows.

Declaration

In the Circuit Court of
Teoria county

To the November Term A.D. 1854

State of Illinois, } ss
Teoria county

William A. Gray, James Gray and Barnes C. Reeves Assignees of Leonard B. Cornuelle Esq. Sheriff of the county of Teoria in the State of Illinois complain of John Maclean and Amos L. Merriman of a plea of Debt. For that whereas the said Defendants heretofore on the third day of December A.D. 1853, to wit. fore to wit, at the County of Teoria aforesaid by their certain writing obligatory sealed with their seals, and now shown to the Court the date whereof is the day and year aforesaid acknowledged themselves (the said John Maclean by the name and style of "John Maclean" and

the said Amos L. Merriman by the name and
style of "A. L. Merriman" to be held and firmly
bound unto Leonard B. Cornwell Sheriff of
the county of Peoria in the penal sum of
Five hundred dollars lawful money of the
United States to be paid by the said Defen-
dants to the said Sheriff his heirs and assigns
Which said writing obligatory was and is
subject to a certain condition hereunder written
whereby after reciting to the effect following.
to wit that on the first day of December A.D.
1853 William S. Gray, James Gray and Barnes
C. Reeves ^{had} caused a writ of Attachment to be
issued out of the Circuit Court of the County
of Peoria in the State of Illinois and under
the seal of said Court for the sum of Two
hundred and three dollars and sixty three
cents against the property, goods and chattels
lands and tenements of John Maclean which
said writ of Attachment was directed to the
Sheriff of said Peoria County to execute under
and by virtue of which said writ the said
Sheriff of Peoria County had on the day of
the date of the said writing obligatory seized
and levied upon the Steamboat called the
"Kentucky" her apparel, engines and furniture
and then had the same in his control. It
was conditioned that if the said Steamboat

"Kentucky" her engines, apparel and furniture
should be forthcoming to answer an judgment
of said Court in said cause and at the proper
time then that obligation should be void other-
wise to remain in full force and as by the
said Writing obligatory and the condition there-
of will more fully ^{and for large} appear And whereas after-
wards to wit, on the twenty eighth day of
March A.D. 1854, at the March Term of the
said Circuit Court of the county of Floria &
State of Illinois, to wit: at the County of Floria
aforesaid the said William S. Gray, James Ray,
and Barnes C. Reeves ^{in the said writing obligatory mentioned recovered a judgment} Plaintiffs in the said cause
^{in said cause} against the said John Maclean defendant in
said cause for the sum of Two hundred and
six dollars and eight cents damages and the
sum of Nine dollars costs of suit as by the
record of said judgment still remaining in the
said Circuit Court will more fully appear -
And afterwards to wit on the Ninth day of
September A.D. 1854 a writ of fieri facias
was duly issued from the said Circuit Court
and under the seal thereof upon the said
judgment directed to the Sheriff of said
County of Floria to execute which said writ
was afterwards to wit, on the Eleventh day
of September A.D. 1854 duly entered by the
said Sheriff that the said Defendant John

McClean had no property within the said County of Floria as by the said writ and the return thereon still remaining in the said Circuit Court will more fully appear. And the Plaintiffs in fact say that the said Steamboat "Kentucky" her engines apparsely and furniture were not forthcoming to answer the judgment of the said Circuit Court ^{of Floria County} in the said Cause, and at the proper time according to form and effect of the said writing obligatory but the said Defendants have hitherto wholly neglected and refused and still neglect and refuse to have the said Steamboat forthcoming to answer the said Judgment. by reason whereof the said writing obligatory became and was forfeited to the said Sheriff and the said writing obligatory being so forfeited, the said Leonard B. Cornwell Sheriff of the county of Floria as aforesaid afterwards to wit on the ninth day of September A.D. 1854, to wit at the county of Floria aforesaid by a writing thereon under his hand and in presence of two credible witnesses assigned transferred and set over the said writing obligatory to the said Plaintiffs according to the form of the Statute in such case made and provided as by the said assignment endorsed on the said writing obligatory and to the Court now shew the date whereof is the day and

year last aforesaid will more fully appear - By reason whereof and by force of the Statute in such case made and provided an action has accrued to the said Plaintiffs assignees of the said Sheriff to demand and have of and from the said defendant the said sum of Five hundred dollars the Debt in said writing obligatory mentioned. Yet the said Defendants have not paid the said sum of money above mentioned demanded or any part thereof to the Plaintiff but have wholly neglected and refused and still neglect and refuse to do to wit at the county of Peoria aforesaid. And also for that whereas the said Defendants afterwards to wit on the third day of December A.D. 1853, to wit at the county of Peoria aforesaid made their certain writing obligatory sealed with their seals and now shown to the Court the date whereof is the day and year aforesaid in substance as follows to wit "Know all men by these presents that we John Maclean and A. L. Herriman are held and firmly bound unto Leonard B. Cornwell Sheriff of the County of Peoria in the penal sum of Five hundred dollars lawful money of the United States to the payment of which well and truly to be made ^{executors administrators unto the said Sheriff his heirs} we do bind ourselves our heirs, and assigns ^{and severally} firmly, jointly, by these presents. Witness our

hands and seals this 3^d day of December
A.D. 1853.

The condition of this obligation is such that
whereas on the first day of December A.D. 1853
Williams A. Gray, James Gray, Barnes C. Reeves
caused a writ of attachment to be issued out
of the Circuit Court of the county of Peoria in
the State of Illinois and under the seal of
said Court for the sum of two hundred and
three 3/100 Dollars against the property, goods
and chattels, lands & tenements of John Maclean
which said writ of Attachment was directed
to the Sheriff of said Peoria County to execute
under and by virtue of which said writ
said Sheriff of Peoria County did on the day
of the date thereof seize and levy upon the
Steamboat ^{Called the} "Kentucky" her apparel engines and
furniture and now has the same in his control
Now if the said Steamboat "Kentucky" her en-
gines, apparel and furniture shall be forthcoming
to answer any judgment of said Court in
said cause and at the proper time then the
above obligation to be void else to be and
remains in full force and virtue.

John Maclean 

A. L. Merriman 

As by the said writing obligatory and the
condition thereof will more fully appear.

And afterwards to wit on the twenty eighth day of March A.D. 1854. at the March Term of the said Circuit Court for the said county of Teoria - to wit at the county aforesaid the said William B Gray, James Gray and Barnes C. Reeves Plaintiffs in the said cause in the said writing obligatory mentioned, recovered a judgment in the said Cause against the said John Maclean Defendant in the said Cause for the sum of Two thousand hundred and six dollars and eighty cents damages. And the sum of Nine dollars cost of suit as by the Record of said Judgment file remaining in the ^{said} Circuit Court will more fully appear. And afterwards to wit on the ninth day of September A.D. 1854 a writ of Fieri Facias was duly issued upon the said judgment from the said Circuit Court and under the seal thereof directed to the Sheriff of said county of Teoria to execute which said ^{was afterwards to wit} writ, on the 11 day of September A.D. 1854. to wit at the county of Teoria aforesaid duly returned by the said Sheriff that the said defendant John Maclean had no property within the said county of Teoria and that on the 11th day of September A.D. 1854 he presented said execution to Amos L. Merriman and demanded of him the Steamboat Kentucky

which was attached by virtue of the original writ of attachment in said suit, and that he refused to deliver the same, and that he could not find the defendant John Mackan nor any ~~other~~ property belonging to him in his county. As by the said writ and return endorsed thereon still remaining in the said Court will more fully appear. And the plaintiffs say that the said Steamboat Kentucky her engines apparel and furniture were not forthcoming to answer the said judgment of the said Circuit Court of said Georgia county in the said cause and at the proper time according to the form and effect of the said writing obligatory but the said Defendants have hitherto wholly neglected and refused and still neglect and refuse to have the said Steamboat Kentucky her engines, apparel and furniture forthcoming to answer the said judgment. By reason whereof the said writing obligatory became and was forfeited to the said Leonard B. Cornwell sheriff of the said county of Georgia and the said writing obligatory being so forfeited the said Leonard B. Cornwell sheriff as aforesaid afterwards to wit on the ninth day of September A.D. 1847 to wit at the County of Georgia aforesaid according to the form of the Statute in such case made and provided, and in presence of two credible wit-

nesses assigned the said writing obligatory
to the Plaintiffs by a writing thereon under his
hand, in substance as follows to wit, "Leonard
B. Cornwell Sheriff of the County of Teoria in
the State of Illinois do hereby assign transfer
and set over the within Bond together with
the right of action thereon unto William A,
Gray ^{James Gray} and Barnes & Reeves to their heirs and
assigns forever. In testimony whereof I have
hereunto set my hand and seal at Teoria
this 9th day of September A.D., 1854.

Signed & sealed in } Leonard B. Cornwell Seal
presence of as }
James S. Berkman }
Lewis Nelson " }

As by the said Assignment
endorsed on the said writing obligatory and to
the Court now shown will more fully appear.
By reason whereof and by force of the Statute
in such case made and provided an action has
accrued to the said Plaintiffs Assignees of
the Sheriff and Plaintiffs in said cause in
said writing obligatory mentioned to demand
and have of and from the said Defendants
the said sum of Five hundred dollars the
debt in said writing obligatory mentioned.
Yet the said Defendants have not paid the
said sum of money above demanded or any
part thereof to said Plaintiffs but to pay the

same or any part thereof have hitherto wholly neglected and refused and still neglect and refuse so to do, to wit at the county of Georgia aforesaid.

To the damage of the said Plaintiffs
Five hundred dollars and therefore they
bring suit &c.

Purple, Sanger & Pratt
Plffs Attys

Recipe

William A. Gray
James Gray
Barnes & Reeves

vs
John Maclean
Amos L. Merriman

Circuit Court
Georgia county
November Term 1854
In Debt

Debt \$500.

Damages 500.

Issue Summons to
Sheriff of Georgia county
as above and oblige

Purple, Sanger & Pratt
Plffs Attys

Sept 12th 1854 "

Copy of Bond

Copy of Bond and assignment filed on in this cause

" Know all men by these Presents that we
John Maclean and A. L. Merriman are held

and firmly bound unto Leonard B. Cornwell
Sheriff of the County of Peoria in penal sum
of Five hundred Dollars lawful money of
the United States to the payment of which well
and truly to be made we do bind ourselves
our heirs executors administrators unto said
Sheriff his heirs and assigns firmly, jointly
and severally by these presents. Witness our
hands and seals this 3rd day of December
A.D. 1853.

The condition of this obligation
is such that whereas on the first day of
December A.D. 1853 William B. Gray James
Gray, Barnes C. Reeves caused a writ of at-
tachment to be issued out of the Circuit
Court of the County of Peoria in the State
of Illinois and under the seal of said court
for the sum of Two hundred and three
13/100 Dollars against the property, goods and
chattels, lands and tenements of John Maclean
which said Writ of attachment was directed
to the Sheriff of said Peoria County to execute
under and by virtue of which said Writ said
Sheriff of Peoria County did on the day of
the date hereof seize and levy upon the
Steamboat called the "Kentucky" her apparel
engine and furniture and now has the
same in his controul - Now if the said Steam

boat Kentucky her engines apparel and furniture shall be forthcoming to answer any judgment of said Court in said cause and at the proper time then the above obligation to be void else to be and remain in full force and virtue

John Maclean Seal
A. L. Merriman Seal

Copy of Assignment

Copy of Assignment endorsed on said Bond.
I Leonard B. Cornuelle Sheriff of the county of Teoria in the State of Illinois do hereby assign transfer and set over the within Bond together with the right of action thereon unto William A. Gray, James Gray and Barnes C. Reeves to their heirs and assigns forever. In testimony whereof I have hereunto set my hand and seal at Teoria this 9th day of September A.D. 1854.

Leonard B. Cornuelle Seal

Signed & sealed in presence of us
James I. Backman, Lewis Heyon.

Security for costs

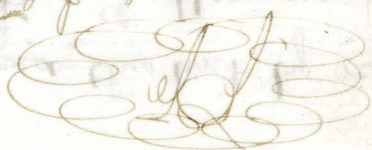
William A. Gray } Circuit Court Teoria County
James Gray } Illinois, do the November term 1854.
Barnes C. Reeves }

as
John Maclean } I do hereby enter myself a security
Amos L. Merriman } for costs in this cause and act-
knowledge myself bound to pay or cause to be paid all costs which may accrue in this action ei-
ther to the opposite party or to any of the officers of this Court in
pursuance of the laws of this State Dated this 12th day of September
A.D. 1854.
N. H. Tenple.

And on the said 12th day of September A. D. 1854 there was issued out of said clerk's Office of said circuit court under the seal of said court a writ of summons in said cause, which writ with the return of the Sheriff thereon is in the words and figures following, to wit:

Summons

The People of the State of Illinois, to the Sheriff of Peoria County greeting: We command you to summon John Maclean and Amos L. Merriam, if they may be found in your county, to appear before our Circuit Court on the first day of the next term thereof to be held at Peoria, within and for the said county of Peoria on the third monday of November next, then and there, in our said Court to answer unto William B. Gray, James Gray and Barnes C. Reeves of plea of debt for debt five hundred dollars and damages five hundred dollars for detention of ^{said} debt as is said and make return of this writ, with an endorsement of the time and manner of serving the same on or before the first day of the said Court to be held as aforesaid. Witness, Jacob Gale, Clerk of our said Court, and the seal thereof, at Peoria, this twelfth day of September in the year of our Lord one thousand eight hundred and fifty four.



Jacob Gale, Clerk

Return

"I served this writ by reading the same to John McLean
and Amos L. Merriman, September 25" 1854

L. B. Cornwell, Sheriff, P. C."

Proceedings at a term of the Circuit Court be-
gun and held at the Court House in the City
of Teoria in and for the County of Teoria in the
State of Illinois on the third day of November
in the year of our Lord one thousand eight
hundred and fifty four it being the twentieth
day of said month. Present the Honorable Orlando
Peters Judge of the Sixteenth Judicial Circuit in
the State of Illinois - David D. Irons, Sheriff -
Olbridge P. Johnson, States Attorney & Jacob Gale
clerk.

Wednesday November 22^d A D 1854.

William A. Gray & others

John Maclean & Amos L. Merriman

} Debt on Bond

The Plaintiffs by Turple, Sanger & Pratt their
Attorneys enter a motion for a rule on the defend-
-dants to plead in this cause by Friday
morning next

Friday November 24th A.D. 1854.

William A. Gray, James Gray
Barnes O. Reeves,

as
John Maclean, Amos L. Merriam

Debt on Bond

This day
Came on to be heard the motion for a rule
on the defendants to plead herein whereupon
it is ordered that the Defendants plead to
this Action by Monday morning next.

Tuesday March 27th A.D. 1855.

And afterwards to wit on the 4th day of December A.D. 1854, the defendant filed
pleas in said cause, which are as follows.

"William A. Gray & all

Florida Circuit Court
Nov Term 1854.

as
John Maclean & all

1st
Defendants come &
defend the wrong and injury when &c. & say
that they did make the said writing obli-
-gatory in said Declaration mentioned & of

this they put themselves upon the country &c
Affs likewise

Manning & Merriman
Defts Attys

And for a further plea in this behalf
Defendant Merriman as to the damages
in said declaration claimest say Actio non
because they say that at the time of the
making of said supposed writing obligatory
the said Steam boat Kentucky her apparel, en-
gines & furniture &c on said were not &
at the present time are not now the property
of said defendant John MacLean the defendant
of said declaration in said original but in
said declaration mentioned nor was the same
liable to attachment as his property but were
the property of my Hamilton & this he the
said defendant Merriman is ready to verify
wherefore he prays judgment &c.

Manning & Merriman
Defts Attys

And for replication to said defendants second plea Plaintiffs say Procludi non because they
say that the said Steam Boat at the time when &c was not the property of the said Hamilton
but was the property of the said John MacLean the defendant in said attachment
and of this he puts himself on the country for trial &c. Purples & Sanger for plffs
Dec. 2. 1854. And afterwards to wit on the 11th day of December A.D. 1854 the Plaintiff
filed his answer to the second plea of the defendant, which is as follows
William A. Gray et al.

John MacLean, et al. 3 Nov Term AD 1854.
And now comes the said

Plaintiffs by their attorneys and as to the said
Plea of the said Defendant Merriman by him
secondly above pleaded says preclude now
because they say that the matters and
and things in said Plea stated in manner
and form as therein stated are not sufficient
in law and that the said Plaintiffs are
not bound further to reply to the same which
Plffs are ready to verify, wherefore they pray
Judgment &c.

Jurple, Sanger & Pratt
Plffs Attys

Proceedings of the Circuit began and
held at the Court House in the City
of Peoria in and for the County of
Peoria in the State of Illinois on the
first Monday in March in the year of our
Lord one thousand eight hundred and
fifty five it being the fifth day of
said month. Present the Honorable
Ouslow Peters, Judge of the sixteenth
Judicial Circuit in the State of Illinois
- David D. Irons Sheriff, Elbridge
G. Johnson State Attorney, and
Jacob Gale Clerk, to wit,

Tuesday, March 27th A.D. 1865

William H. Gray
James Gray Barnes C. Reeves

vs attachment
John MacLain

This day comes the plaintiffs
by Norman W. Purple their attorney
and on their motions the proceedings
of the claimant of the property attached
William Hamilton are dismissed on
account of his not having given securi-
ty for costs according to a former order
of the Court herein

Monday April 2nd A.D. 1855
William H. Gray James Gray
Barnes C. Reeves

vs debt on bond
John MacLain, Amos L. Merriman

This day this cause came on to be
heard on the demurrer of the plaintiff to
the 2nd plea of the defendant Merriman on consi-
deration thereof the Court being fully advised
in the premises, is of opinion that said 2^d plea
is sufficient in law to bar the plaintiffs ac-
tion, whereupon on motion of the plaintiffs leave
is given them to withdraw their said demurrer
and reply to said 2nd plea

Proceeding at a term of the Circuit Court
begun and held at the Court House in the
city of Peoria, in and for the County of Peoria
in the State of Illinois on the third Monday
of November in the year of our Lord one thousand
eight hundred and fifty five, it being the
nineteenth day of said Month present the
Honorable Ors low Peters judge of the six-
teenth Judicial Circuit in the State of
Illinois. David D. Irons sheriff and
Jacob Gale Clerk, to wit

Tuesday ~~Thursday~~ December 4th
A.D. 1855.

William H. Gray & others

vs.

debt on bond

John MacLain Amos L. Merriman

This day came the plaintiffs by
Norman H. Purple their attorney and
entered a Motion to set aside the issues in
this cause because immaterial.

Tuesday December 11th A.D. 1855.

William H. Gray

James Gray Barnes Reeves

vs

debt on bond

John MacLain Amos L. Merriman

This day came on to be heard the motion of the plaintiffs to set aside the issue in this cause, and the Court being fully advised in the premises overruled said motion;

The plaintiffs by leave of Court withdrew their replication to the defendants 2nd plea and say that they will abide by their demurrer to said 2nd plea whereupon the defendants move for leave to amend their said 2nd plea to the declaration herein,

Wednesday December 12th A.D. 1855.

William H. Gray & others

v.

debt on bond

John MacLain

Amos L. Merriman

By agreement of parties this cause is continued to next term of Court.

Proceedings at a term of the Circuit Court begun and held at the Court House at the City of Peoria in and for the County of Peoria in the State of Illinois on the ^{second} ~~third~~ Monday of November, ¹⁸⁵⁵ in the year of our Lord one thousand eight hundred and fifty six. Present the Honorable Jacob Gale, Judge of the sixteenth Judicial Circuit in the State of Illinois.

Tuesday May 13th A.D. 1856

William A. Gray
James Gray
James C. Reeves

Debt on Bond,

John Maclean
Amos L. Merriman

This day came the defendants by Julius Manning their attorney and withdrew their motion for leave to amend the Ind plea to the declaration, Thereupon it is considered by the Court that the said John Maclean and Amos L. Merriman go hence without day and have and recover of the said William A. Gray, James Gray and James C. Reeves their costs and charges by them about their defence in this behalf expended and that they have execution therefor.

State of Illinois,
County of Peoria, I, James S. Bartman, clerk of the Circuit Court in and for said County of Peoria, in the State of Illinois, do hereby certify, that the foregoing is a correct transcript from the Records of the proceedings in a certain cause wherein William A. Gray, James Gray, James C. Reeves are plaintiffs and John Maclean & Amos L. Merriman are defendants as the same appears of record & on file in my office. In witness whereof, I hereto set my hand and affix my seal of office at Peoria, the 9th day of June A.D. 1856, James S. Bartman, clerk

Wm. A. Gray v. the Supreme Court.

John McLean v. the said Court. And now comes the said Plaintiff in Error, and says

that in the Records and proceedings and in the rendition of the Judgment aforesaid there is manifest error in this to wit

1st. Said Court erred in consulting the Record to the defendants Memorials and Plea

2nd. Said Court erred in rendering Judgment in favor of the defendants.

For these and other errors they pray that said Judgment may be reversed set aside and wholly for nothing esteemed.

June 10th 1856.

Wm. A. Gray

Att'y
for said

For consideration
of the Court
in the
case of
the
said
Gray
v.
the
Court.

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William A. Gray

John McLean

STATE OF ILLINOIS, SUPREME COURT,

To JUNE TERM, 1856.

Error to Peoria.

WILLIAM A. GRAY, JAMES GRAY, and BONUS C. REEVES
vs. JOHN MACLEAN and AMOS L. MERRIMAN.

ABSTRACT OF THE RECORD.

On the 1st day of December, A. D. 1853, plaintiffs issued out an attachment against MacLean, from Peoria Circuit Court, which was levied on the steam boat "Kentucky," as the property of MacLean.

To release the boat from the attachment, MacLean and Merriman made the following bond :

"Know all men by these presents, that we, John MacLean and A. L. Merriman, are held and firmly bound unto Leonard B. Cornwell, Sheriff of the County of Peoria, in the penal sum of five hundred dollars, lawful money of the United States, to the payment of which, well and truly to be made, we do bind ourselves, our heirs, executors, administrators, unto said Sheriff, his heirs and assigns, firmly, jointly, and severally, by these presents. Witness, our hands and seals, this 3d day of December, A. D. 1853.

"The condition of this obligation is such, that whereas, on the first day of December, A. D. 1853, William A. Gray, James Gray, and Bonus C. Reeves caused a writ of attachment to be issued out of the Circuit Court of the county of Peoria, in the State of Illinois, and under the seal of the said Court, for the sum of two hundred and three dollars and sixty-three cents, against the property, goods and chattels, lands and tenements of John MacLean, which said writ of attachment was directed to the Sheriff of said Peoria County to execute, under and by virtue of which said writ said Sheriff of Peoria County did, on the day of the date hereof, seize and levy upon the steam boat called the "Kentucky," her apparel, engine, and furniture, and now has the same in his control : Now if the said steam boat Kentucky, her engine, apparel, and furniture shall be forthcoming to answer any judgment of said Court in said cause, and at the proper time, then the above obligation to be void, else to be and remain in full force.

JOHN MACLEAN, [L. s.]

A. L. MERRIMAN, [L. s.]"

The declaration is upon this bond assigned to plaintiff, alleging the rendition of judgment against MacLean, the issuing of an execution, and that same was returned no property, and that the steam boat was not forthcoming to answer the judgment—all in due form.

The Defendants pleaded *non est factum*, on which issue was joined to the country.

Defendant Merriman pleaded the following plea :

"And for a further plea in this behalf, defendant Merriman, as to the damages in said declaration claimed, says *actio non*, because they say

11 Mc 417

1st Com 148

4 Black 435

Decisions

Commentary

15 Pic 42

12 do 560

24 do 196

4 Met 382

Under Review

12 Mc 93

7 258

that, at the time of the making of said writing obligatory, the said steam boat Kentucky, her apparel, engines, and furniture, &c., on said, were not, and at the present time, are not, the property of said defendant, John MacLean, the defendant in said original suit in said declaration mentioned, nor was the same liable to attachment as his property, but were the property of ——— Hamilton, and this he, the said defendant, Merriman, is ready to verify; wherefore he prays judgment, &c.

“MANNING & MERRIMAN, *Defts. Attys.*”

Plaintiffs demurred to this plea, the Court overruled the demurrer, and the plaintiffs abided by the demurrer. The Court gave final judgment for the defendants.

The only question in the case is, whether this decision was correct.

N. H. PURPLE,
Plaintiffs' Attorney.

91

But

Revised

Reverend

Plaintiff's Answer.

И. Н. БУРБЛЕ

the on the other hand, whether this decision was correct.

ment for deposits.

recommenced by the defendant. The Court gave judgment.

It finally came to this point, the Court overruled the demand.

“LIVING & MERIDIAN,” DOUGLASS.

Therefore he never judgment, &c.

Hamilton, and this is the said defendant,

mentioned, ~~making~~ the same title to specimen as his property, but

John MacLean, the defendant in said original suit in said declaration

not, and at the present time, are not, the property of said defendant;

port machinery, portable engines, and furnaces, &c., on said, were

part of the time of the recording of said minutes of the said board.

Gay Rivers &c }
 vs } Error to Bond
 Maclean & Menimon }

This is an action of debt upon a delivery Bond as stated in the abstract.

Points made by Plaintiffs

1st.

That when an accountable Receipt, delivery Bond or attachment Bond are given, the Securities in such Receipt or Bonds are Estopped to deny any of the recitals in the Bond or Receipt.

Smith v. Whitaker. 11. Ill. ~~418~~ 417.

Crismon Est. v. Matthews. 1. Scam. 148.

Trimble Est. v. The State 4. Black. 435.

2nd That in an action upon any such Receipt or Bond the Securities cannot set up as a defence property in themselves.

Johns v. Church 12 Pick. 560

Bursley v. Hamilton 15 " 42

Smith v. Ludworth 24 " 196.

Harvey v. Child 4 Met. 382.

3. That when the matter in Estoppel appears on the declaration or other pleading, it may be taken advantage of on demurrer.
Smith, V. Whitaker. 11. Ill. 417.

4th That under Our Statute, the Security in Attachment Bonds are bound to deliver the property and cannot set up a plea of property in themselves or others.

Pucell, V. Steele & Co. 12. Ill. 93.

Gray Ruod sto
nd
Maclean & Meniman

Brif

Pupto

Rev

Bray
" }
Mackinac }

This case is analogous to case
of a receipt for goods to an officer, under
Law of other States -

Adams vs Fox 17th Vermont 364

decides that a receipt only shows
title in himself, upon principle
that a person giving receipt is acting
under duress. - As giving bail on
irregular process - or paying ^{illegal} toll
which can be recovered back. or
defend on Contract given for same

Samuel vs Bryant 13th Mass. 224

decides that property in a stranger is
a poor defense to the receipt on his
receipt

Bushy vs Hamilton 15th Pick 40

decides that receipt is estopped from
showing property in himself unless he
states that he was the owner at
time of giving receipt, but if before
notion he could defend by showing
title in himself

Navy vs Lane 12 Wendell 563,

Receiptor defends ~~under~~ by showing that
goods were taken from his possession
under paramount title -

Edson vs Weston 7 Cow 278

same -

The other party enters in case of
Russell vs Stule 12 M. 93.

That was a case where the probate
Board decided that if the claimant should
fail to substantiate their claim of the
property then the party should deliver up
property —

This does not say that strangers shall
come in & interfere.

As before decided in Mass. reports
of a party on Board claims, the
property himself he ~~must~~ ~~must~~
is estopped unless he gives the
receipt under protest or under an
Law interference. — Not so with strangers
they are not bound to know anything
of the receipt. They can take the
property whenever they can find it
or the receipt or signature of the Board,
and set this up as defense.

This is not a case to be found
where the receipt cannot place
property in a third person.

The case referred to by Jeff in Mass.
does not decide further than that
the party cannot set up title in
himself —

May 18 1844
Suffolk County

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William A Gray

vs

John McLean & Co

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12287

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