

14081

No. \_\_\_\_\_

# Supreme Court of Illinois

People

---

vs.

Francis Bur<sup>NA</sup>~~ap~~

In the Supreme Court,

To the Honorable the Justices  
of the Supreme Court of the  
State of Illinois, in session  
at the Capitol in Springfield.

The undersigned Francis Burrage, of  
Rockford in the county of Winnebago, an  
attorney and counsellor ~~at law~~ of this  
court, maketh application and states that  
he is unlawfully restrained of his liberty,  
and imprisoned in the common jail of  
said county at Rockford aforesaid, in the  
custody of the coroner of said county by  
virtue of a writ of ne exeat, whereof a copy  
is herewith annexed marked B; which  
writ was issued upon a petition filed in  
the Circuit Court for the said county, a copy  
whereof is herewith annexed and marked  
A. and the order of the master in show  
copy of said county in that behalf

[Read petition]

And this applicant further states that  
the delinquencies alleged in the bill re-  
ferred to in the said petition are wholly  
false; and that <sup>certainly</sup> some of the most ma-  
terial of them were known to be false  
by the person who swore to the said  
bill. And as an instance of the mis-  
statements contained in the said bill, this  
applicant shews that the said bill men-

and alleged in effect  
tioned, that this applicants had collected up-  
wards of \$1700 (one thousand seven hun-  
dred dollars) of the said trust funds men-  
tioned in the said bill, and out of the  
same had paid out \$581 (five hun-  
dred and eighty-one dollars) in effecting  
certain bond securities, and had appro-  
priated the residue of the said sum of  
\$1700 to his own use, such residue amounting  
to \$1119 (one thousand one hundred and nine-  
teen dollars) when in fact this applicant had  
paid out \$485 (four hundred and eighty-  
five dollars) in necessary expenses of executing  
said trust; and that the person who swore  
to the said bill shortly before the time when  
he swore that this applicant had appropri-  
ated the said last mentioned sum to his  
own use, had examined the account of  
expenses wherein most part of the said sum  
was entered, and well knew that such ex-  
penses had been made. And this appli-  
cant further states that it was by the afore-  
mentioned and like falsehoods that the  
decree in the said petition mentioned was  
obtained. And this applicant further states,  
that the said petition intently represents that  
the said bill alleged that the said balance  
for which this applicant was accountable  
was about \$800 (eight hundred dollars) ~~and~~  
whereas said bill represented, it was about \$1300 (thir-  
teen hundred dollars) ~~and~~ instead of \$1119 as aforesaid; and this appli-  
cant believes if the said bill had so repre-  
sented the said balance, the said decree  
would never have been made.

And this applicant further states that at  
the time of the filing of the said bill, the

balance of the said trust funds which he had collected and not paid out, was not sufficient to compensate him for his services in executing the said trust, at the rate at which similar services are usually charged.

And this applicant further states, that he believes he shall be able to justify his conduct in regard to the decree in the said petition mentioned, at the proper time, and before the proper tribunal; and if he shall not be able to do so, he will be ready to submit to such penalty as the court may impose upon him in that behalf.

And this applicant further states, that for several months past he has had negotiations with the said petitioners respecting their said bill and suit thereon against this applicant, and has caused to be exhibited to them full and accurate accounts with regard to the execution of the said trust; and has received information upon which he relies, that they are satisfied that the conduct of this applicant in regard to the said trust has been just and correct; that Jason Marsh, with his partner Wright, solicitors in the said suit, wrote to them urging them to commence the said suit, and agreed not to charge them any thing for carrying it on, <sup>except what they could make out of it;</sup> that notwithstanding said agreement, the said Jason Marsh subsequently applied to them for money to carry on the said suit, which they refused; that they are satisfied the said suit is corruptly and maliciously carried on in their names

against this applicant, but are unwilling to interfere to discontinue the same, because they are apprehensive that by so doing they would give the said Jason Moore a legal claim against them for carrying on the said suit.

And this applicant further states, that a bond of which the annexed, marked C is a copy, was filed with the said petition that names M. Wright, the surety in the said bond is not sufficient, and that the sum of five hundred dollars, the penalty of the said bond, could not probably be collected of him; that no power of attorney authorizing him to execute the said bond in the names of the said petitioners has been exhibited; that this applicant has been informed by the clerk of the Wrentham Circuit Court, the said bond having been approved by the master in chancery, that he had applied to the said Wright for the said power, and he declined to produce any; from which and what he has learned of the disposition of the said petitioners in regard to said suit this applicant believes that the said Wright executed the said bond in their names, without the necessary authority to do so, and that they are not bound by the said bond.

And this applicant further states, that he never entertained nor expressed, nor intimated any intention of leaving this state; and that he has reason to believe and does believe, that the said writ of ne quid was sued out for the purpose and with the

expectation of unjustly <sup>in</sup> extorting from this applicant the assets of the said trust, by duress of imprisonment.

And this applicant further states, that at the time of the suing out of the said writ there was as he conceives a sheriff of the said county in office, to whom the said writ should have been directed; and that no cause was shewn why the said writ should not be directed to him; and that at said time the said sheriff had recently been removed from the office of collector of said county, in consequence of his sureties having given notice that they were unwilling longer to continue his sureties.

And this applicant suggests to the justices here, that it is impracticable for him to specify the grounds wherein the illegality of his said imprisonment consists, otherwise than by referring to the foregoing facts, and the annexed documents.

This applicant therefore prays the said justices that a writ of habeas corpus for his relief in this behalf may be issued out of this court, directed to the coroner of the county of Wiltshire, ~~or whoever may have this applicant in his custody~~, according to the form of the statute in such case made and provided, and that he may be released from his said imprisonment.

Francis Burnap.

State of Illinois. }  
Winnebago county ss. }

Francis Burnap, the above named applicant maketh the solemn affirmation and oath, that he believes the facts set forth in the foregoing application to be true; and that such of them as purport to be of his own knowledge are true.

Affirmed at Rockford, in  
the county of Winnebago,  
the 23 day of January, 1846,  
before me,

Francis Burnap.

James Mitchell Clerk  
Cir. Court Win. Co.  
" "

In Chancery.

A.

To the Hon. Thomas C. Browne,  
one of the Justices of the  
Supreme Court of the State  
of Illinois, and Judge of  
the Circuit Court of Winne-  
bago County in Chancery  
Sitting.

The Petition of Jacob Albert, John R. Moore,  
Augustus J. Albert, and William J. Albert,  
of the city of Baltimore in the State of Mary-  
land, Respectfully sheweth,

That on the twentieth day of March last  
past, they filed their Bill on the Chancery side  
of your Honorable Court, in and for the County  
of Winnebago, setting forth among other things  
that one Jacob B. Miller formerly of the County  
of Winnebago and State of Illinois, was in-  
debted to them in a sum exceeding five  
hundred dollars, and that said Miller had  
before that time and on or about the 14th  
day of December, 1841, assigned to Francis  
Burnap defendant in said Bill a large  
amount of effects, demands and choses in  
action for the benefit of his creditors generally  
and that your petitioners were entitled to a  
part of the proceeds of the effects so assigned,  
and that the said Burnap had collected a  
large amount of money under said assign-  
ment, and that he refused to make distribu-  
tion of the same to the creditors, although  
bound by the terms of his assignment to  
do so.

And your petitioners further shew that by the said bill they alleged against the said Burmap divers mismanagements and delinquencies in the management of the trust fund under such assignments and particularly that he had ~~collected~~ <sup>collected</sup> the trust funds by him collected over and above certain expenses to his own use and that the said Burmap then had in his possession or was liable to account to the creditors of said Miller for a balance over and above all expenses, of about eight hundred dollars subject however to such reasonable compensation as the said Burmap might be intitled to as trustee in that behalf.

And your petitioners further shew that by the said bill they then prayed your Honorable Court that an account might be taken of the actings and doings of the said Burmap therein; that he might be removed from being trustee in that behalf, and that he might be decreed to deliver up to such trustee as might be appointed, all writings, papers, books of accounts, effects and choses in action belonging to said trust concern, and that pending the litigation that some suitable person might be appointed as receiver to collect the debts of said concern and take the management thereof while said suit was pending, and also for such other and further relief as the case might require.

And your petitioners further shew that after the filing of the aforesaid bill, and at

the April term of your Hon. Court sitting in Winnebago County the said Burnap to such action and by his petition in said Court obtained a change of venue to the Circuit Court of Ogle County in the state aforesaid and that at the May term last past of said Circuit Court of Ogle County your petitioner appeared and moved the said Court for the appointment of a receiver to take the management of the effects of said concern pending litigation therein and that Burnap, <sup>also</sup> appeared there and resisted such motion and that the Judge of said Court reserved his decision upon said motion until the last September term of said Court and that at said September term thereof the motion of your petitioner was granted, and an interlocutory order or decree entered therein, referring the matter to Henry Roberts, Master in Chancery for said County of Ogle with full power to said Roberts to appoint whoever upon inquiry he might deem to be a proper person as receiver in said cause.

And your petitioners further shew that by said order said master was to appoint some fit and suitable person receiver, and was to summon the said Burnap before him to make a transfer of the said effects under oath to the said receiver.

And your petitioner further shews, that about the twenty-fourth day of December last past he issued his summons to the said Burnap to appear before him at the Court house in Rockford on the 1st day of January,

1846, at ten o'clock a.m. when a hearing would be had on the aforesaid order of reference to said master and that said summons was served upon said Burmap several days before the said first day of January by leaving a copy thereof with the said Burmap by a deputy sheriff of said county of Winnebago, and that said Burmap resides in Rockford where said hearing was had.

And your petitioners further shew that said Burmap refused to appear before said master on the hearing under said order of reference although notified that said master was ready to go on with the same and waiting for his appearance, but wholly refused to appear or produce his papers according to the order of said court of Ogle county in that behalf and that the said master after waiting a long time for said Burmap to appear finally proceeded & parted with the hearing, and appointed John W. Taylor Esq. reviewer he being a fit and suitable person for such appointments.

And your petitioners further shew that they have been informed and believe that within a few days after his aforesaid appointment as reviewer, the said John W. Taylor notified the said Burmap in writing of his appointment and demanded the delivery to him by the said Burmap of all books of account, notes, demands, choses in action or things which had been assigned to him by the said Miller for the benefit of his creditors or that he had in his possession belonging to said trust concern and that the said Bur

to said trust concern and that the said Bur-  
nap then refused to deliver the same to said  
Taylor and he still neglects and refuses  
to do, and that your petitioners have been  
informed and believe, that the said Bur-  
nap has repeatedly declared his determination  
to resist the order of the court in that behalf  
and has declared that he never would de-  
liver said papers, books of account &c. belong-  
ed to said concern but would go to jail  
and lie there first and also that he would  
fight in resistance of any officer who might  
be charged with the execution of any orders of  
court to furnish him for such contempt.

And your petitioners further shew that  
ever since the making said appointments of  
receiver as aforesaid the said Burnap has  
had the papers, books, &c. of the said concern in  
his possession and exclusive control subject  
to his sole disposal, and that the said receiver  
is not able to obtain possession of the same  
as he is advised until he can be able to  
proceed against the said Burnap in <sup>contempt</sup> ~~contempt~~  
and that such proceeding is at present in-  
<sup>practicable</sup> ~~practicable~~ and that the said Burnap has it  
now in his power to leave the state and  
take the said books beyond the jurisdiction  
of this court.

And your petitioners further shew that  
they have been informed and believe, that the  
said Burnap contemplates leaving this state  
and that within a few weeks past he has  
repeatedly declared his intention of visiting  
within a very short time the city of Wash-

ington, and that he has been endeavoring to collect the debts of said trust concern since the appointment of said receiver (although he is enjoined in the above mentioned suit from receiving any of the debts of the concern) and still is so endeavoring, and that he relies upon such money as he might so collect to bear his expenses east, and that they have good reason to fear and do fear that it is the intention of said Burrup to collect all the debts he can of the concern and leave the state with the intention of not returning but of remaining beyond the jurisdiction of this state and that he intends taking the books, papers &c. of said concern with him or otherwise concealing them in such manner that the said receiver shall never be able to obtain possession of the same.

And your petitioners further shew that they have good reason to believe that the books in the possession of said Burrup belonging to said concern shew a much larger balance against said Burrup than they have any means of shewing by any other means, and that such fact is the reason why he so obstinately refuses to deliver up the same.

And your petitioners further shew that the effects of the said trust fund in the hands of said Burrup are worth, as your petitioners are informed and believe, the sum of three thousand dollars, and that unless the said Burrup shall be restrained by the people's writ of Ne Exeat publica, from departing from this state, great and irre-

departing from this state, great and irreparable injury may be done your petitioners and the other creditors of said Miller, interested in said trust fund.

Your petitioners therefore pray that a writ of summons may issue against the said Francis Burnap, that he may be compelled to answer all and singular the matters and things hereinbefore set forth, and that a writ of Ne Quat Republica may issue against the said Francis Burnap restraining him from departing without the jurisdiction of the said state of Illinois, until the matters and things hereinbefore set forth can be heard in equity, and that on the final hearing of this petition the said Francis Burnap may be compelled to surrender up to the aforesaid receiver, all the goods, chattels, books, choses in action, demands, title papers, and in short all and every thing that he holds as trustee for the creditors of said Jacob B. Miller, and that your petitioners may have such other and further relief in the premises as equity and good conscience may require and as to your honor may seem just and equitable, and your petitioners will ever pray, &c

(Signed)

Marsh G. Wright  
Sol for Pet.

(Signed)

Joseph Albert, John D. Ross,  
Augustus J. Albert, William  
J. Albert.

State of Illinois  
Winnebago County, Is.

James M. Wright, attorney for the  
above named petitioners being duly sworn

according to law, deposes and says that all the several matters in the aforesaid petition set forth as from information and belief, he believes to be true, and that all the several other matters and things therein set forth are true in substance and in fact.

(Signed) Jas M Wright

Sworn to and subscribed  
before me this 16 day of  
January, A.D. 1846

(Signed) John W. Taylor  
Master in chancery  
Win. Co.


Filed 16th Jan 1846

James Mitchell S.C.

Let an writ of ne exeat  
repeal his issue according  
to the prayer of the within  
petition & hold the defend-  
ant to the bail in the sum  
of two thousand dol-

lars. (Sd) John W. Taylor  
Master

B.

State of Illinois,  
Winnebago County,  So.

The People of the State of Illinois,  
to the coroner of said county, greet-  
ing.

Whereas it has been represented to John M. Paylor, Esquire, master in chancery of said county of Winnebago, on the part of Jacob Albert, John R. Moore, Augustin J. Albert and William J. Albert, complainants in a petition exhibited by them against Francis Burnap, defendant, that the said Francis Burnap designs quickly to leave this state as by the affidavit of James M. Wright, attorney for said petitioners in that behalf appears, which tends to the great prejudice and damage of the said petitioners for causes in the said petition set forth; therefore in order to prevent this injustice we command you that you do without delay summons the said Francis Burnap, if he should be found in your county personally to be and appear before our said circuit court on the first day of the next term thereof, to be holden at the Court House in Rockford on the second Monday in the month of April next, to answer to the said petition exhibited against him by the said Jacob Albert, John R. Moore, Augustin J. Albert, and William J. Albert, as aforesaid, and also that you do at the same time cause him the said Francis Burnap to make and execute a bond with good and suffi-

ient security payable to the said Jacob Albert,  
John R. Moore, Augustin J. Albert, and William  
J. Albert in the penal sum of two thousand  
dollars, lawful money of the United States,  
conditioned that he will not depart the  
said State without leave of the said Court  
and that he will render himself in execution  
to answer any judgment or decree which  
the said Court may render against him  
in the premises, and that in default of  
his giving such bond and security then you  
are to commit him to the common jail  
of your county there to be kept in safe  
custody until he shall do so of his own ac-  
cord, and when you <sup>shall</sup> have taken such secu-  
rity you are forthwith to make and return  
a certificate thereof to the said Circuit Court,  
distinctly and plainly under your hand  
and seal, together with this writ.

L. S.

Witness James Mitchell, Clerk  
of said Circuit Court at Rock-  
ford, this 16th day of Janu-  
ary, A.D. 1846.  
(Signed) James Mitchell, Clerk

(Indorsed) "The Coroner will take bail in the  
penalty of \$2000."  
James Mitchell, Clerk

C.

Know all men by these Presents, That we Jacob Albert, John R. Moore, Augustin J. Albert, and William J. Albert, of the city of Baltimore and state of Maryland, and James M. Wright of the county of Winnebago and state of Illinois are held and firmly bound unto Francis Burnap of said Winnebago county in the penal sum of five hundred dollars, lawful money of the United States, for the payment of which well and truly to be made, we bind ourselves, our heirs executors and administrators, jointly and severally, firmly by these presents, sealed with our seals and dated this 16th day of January, 1846.

The condition of the above obligation is such, that whereas the above bound Jacob Albert, John R. Moore, Augustin J. Albert and William J. Albert have obtained an order from the master in chancery of the county of Winnebago aforesaid, for the issuing of the people's writ of ne exeat republica and whereas the said writ is about to be issued from the clerk's office of the said court, commanding the coroner of the said county to summon him the above named Francis Burnap personally to be and appear before the said circuit courts on the first day of the next term thereof to be holden at the courthouse in Rockford on the second Monday of April next to answer the petition exhibited against him by the said Jacob Albert, John R. Moore, Augustin J. Ab-

best and William J. Albert in that behalf and also to oblige the said Francis Burnap to give bond with good and sufficient security payable to the said Jacob Albert, John R. Moore, Augustin J. Albert and William J. Albert in the penal sum of two thousand dollars lawful money of the United States, conditioned that he will not depart this state without leave of the said court, and that he will render himself in execution to answer any judgment or decree that the said court may render against him in the premises and further requiring the said coroner in default of his giving such bond and security to commit him to the common jail of the said county until he shall do so of his own accord.

Now if the said Jacob Albert, John R. Moore, Augustin J. Albert and William J. Albert shall well and truly prosecute their said petition with effect, and doth reimburse to the said Francis Burnap all such damages and costs as he the said Francis Burnap shall wrongfully sustain by occasion of the said writ then this obligation to be void else to remain in full force and virtue.

Sealed and delivered  
in presence of  
(Ad) J. W. [unclear] Clerk.

(Signed)

Jacob Albert <sup>seal</sup>  
by Jas. M. Wright his attorney

John R. Moore <sup>seal</sup>  
by Jas. M. Wright his attorney

Augustin J. Albert <sup>seal</sup>  
by Jas. M. Wright his attorney

William J. Albert <sup>seal</sup>  
by Jas. M. Wright his attorney  
Jas. M. Wright <sup>seal</sup>

Approved this 16th July 1846.  
(Seal) John W. Taylor  
Master.

Supreme Court,

In re application of  
Francis Burrus for  
Habeas corpus.

Application.

Filed 31<sup>st</sup> Aug 1866

Wick  
66

14081

Burrus.